

Case C-294/24 [Zadzhova]ⁱ**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

24 April 2024

Referring court:

Rayonen sad Burgas (Bulgaria)

Date of the decision to refer:

24 April 2024

Applicant in the main proceedings:

‘Vodosnabdyavane i kanalizatsia’ EAD

Defendant in the main proceedings:

ED

Subject matter of the main proceedings

Applications for a declaration as to the defendant’s liabilities to the applicant in the amount of BGN 693.56, representing the principal amount owed for water supplied, drained and treated, plus statutory interest on that principal amount from the date on which the applications were filed with the court, that is to say, 27 October 2023, to the final settlement of the liability, and in the amount of BGN 81.30, representing compensation for default in the period from 25 September 2021 to 24 October 2023.

Subject matter and legal basis of the request

The present proceedings are governed by Articles 628 to 633 of the Grazhdanski protsesualen kodeks (Code of Civil Procedure) in conjunction with Article 267 of the Treaty on the Functioning of the European Union (TFEU).

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Question referred for a preliminary ruling

Must Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that a term such as that laid down in Article 3[1](2) of the standard business terms of the Vodospabdyavane i kanalizatsia Burgas (Burgas Water Supply and Sewerage Utility, ‘the Burgas Water Utility’) causes a significant imbalance in the rights and obligations of the contractual parties as provided for in the standard business terms, to the detriment of the consumer, given that the recoverability of a debt under those provisions of the standard business terms, and the start of the limitation period applicable to a debt for services supplied to consumers by the Burgas Water Utility, is exclusively dependent on the conduct of the water utility in relation to the issuing of an invoice, even if the utility does not comply with its obligation to issue monthly invoices?

Provisions of European Union law and case-law relied on

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts – Article 3(1)

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council – Article 1, Article 2(1), Article 3 and Article 4

Treaty on the European Union – Article 19

Treaty on the Functioning of the European Union – Article 169

Provisions of national law and case-law relied on

Zakon za zashtita na potrebitelite (Law on consumer protection, ‘the ZZP’) – Article 143; Paragraph 13 of the Dopolnitelni razporedbi (Additional provisions)

Grazhdanski protsesualen kodeks (Code of Civil Procedure, ‘the GPK’) – Articles 5 to 13 and 236

Zakon za normativnite aktove (Law on normative legal acts, ‘the ZNA’) – Article 46

Zakon za zadalzheniata i dogovorite (Law on obligations and contracts, ‘the ZZD’):

Article 69. If the liability is not subject to a time limit, the creditor may demand its immediate discharge.

Article 84. If a date for discharge of the liability is specified, the debtor shall fall into default at the end of that date. ...

If no date for discharge of the liability is specified, the debtor shall fall into default after having been sent an order to pay by the creditor.

Article 111. The following shall be subject to a limitation period of three years:

...

b) (Amended – Darzhaven vestnik [Official State Gazette] No 12/1993) Claims for compensation and penalties for non-performance of a contract;

c) Claims to rent, interest and other recurring payments.

Article 114. The limitation period shall start to run on the date on which the debt becomes recoverable.

If it has been agreed that the debt is not to become recoverable until after the issue of an order to pay, the limitation period shall start to run on the date on which the liability accrued.

Article 119. Extinguishment of the principal debt shall have the effect of also extinguishing the ancillary debts arising from the principal debt, even if they are not yet time-barred.

Standard Business Terms for the Provision of Water and Wastewater Services to Consumers by the Municipality of Burgas Water Utility:

Article 7. The water utility shall be entitled:

1. to receive from the consumer within the prescribed period the amounts owed for water and wastewater services provided;

Article 31(1) The water utility shall issue invoices on a monthly basis, unless a different billing period has been expressly agreed.

(2) Consumers are obliged to pay the amounts owed for water and wastewater services used by them within 30 of the date of issue of the invoice.

Article 42. In the event of failure to pay for services used within the prescribed period, the consumer shall owe the water utility compensation in the amount of the statutory interest laid down in Article 86(1) [of the ZZD] from the first day following the date on which the amount owed becomes enforceable to the date on which that amount is received in the water utility's account.

Judgment No 801 of 11 April 2022 of the Sofiyski gradski sad (Sofia City Court, Bulgaria) in Case No 6686/2021;

Judgment No 806 of 28 February 2019 of the Rayonen sad Plovdiv (District Court, Plovdiv, Bulgaria) in Case No 6360/2018;

Judgment No 293 of 16 April 2020 of the Okrazhen sad Varna (Regional Court, Varna, Bulgaria) in Appeal Case No 125/2020;

Judgment No 849 of 15 August 2022 of the Okrazhen sad Burgas (Regional Court, Burgas, Bulgaria) in Appeal Case No 857/2022

Succinct presentation of the facts and procedure in the main proceedings

- 1 The proceedings in the civil case before the Rayonen sad Burgas (District Court, Burgas) were initiated by the applications, filed by the Vodospabdyavane i kanalizatsia EAD (a water utility in the form of a Ednolichno aktsionerno druzhestvo [single-member company limited by shares]) against ED, seeking a declaration, in relation to the legal relationship between the parties, that the defendant owes the applicant, in accordance with Article 415(1), point 2, in conjunction with Article 422 of the GPK in conjunction with Articles 79 and 86(1) of the ZZD: the sum of BGN 693.56, representing the principal amount due for water supplied, drained and treated at the point of consumption in the city of Burgas in the billing period from 17 March 2020 to 12 May 2023 and the billing period from 25 August 2021 to 25 May 2023, plus statutory interest on the aforementioned principal amount from the date on which application was made to the court, that is to say, 27 October 2023, until final settlement of the liability, and the sum of BGN 81.30, representing compensation for default in the period from 25 September 2021 to 24 October 2023.

The essential arguments of the parties in the main proceedings

- 2 The applicant claims that, in accordance with the applicant's standard business terms, the defendant must be classified as a consumer of water and wastewater services to the immovable property at issue. During the period at issue, the defendant consumed water supplied, drained and treated at the point of consumption and invoices for those services were issued, but the defendant failed to settle its liabilities under those invoices within 30 days of their respective dates of issue, in accordance with Article 3[1](2) of the standard business terms. The defendant's non-performance triggered an obligation to pay compensation for default from the date on which each invoice became enforceable. The applicant obtained in respect of the liabilities at issue an order to pay issued to the debtor in accordance with Article 47(5) of the GPK, and the instructions issued by the court conferred on the applicant a legal interest in bringing the present action, in accordance with Article 422 of the GPK.
- 3 The applicant claims that the court should grant its applications.
- 4 It seeks reimbursement of the judicial and procedural costs.

- 5 Within the statutory time limit laid down in Article 131(1) of the GPK, the defendant submitted a defence in which it contends that the applications filed are unfounded. The applicant's assertion that the defendant is the owner of the property in question and the consumer of [the associated] water and wastewater services is disputed. The consumption which the applicant claims to have taken place in respect of the property in question and the amount of the debts concerned are disputed. The objection is raised that the three-year limitation period applicable to the debts concerned has expired. The claim for interest is disputed.
- 6 The defendant contends that the applications filed should be dismissed.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 7 The present proceedings were initiated by an action brought by a water utility against a natural person who is a national of a Member State of the European Union, the Republic of Bulgaria. It is common ground that the defendant, as a natural person party to a water supply contract, is a 'consumer' within the meaning of all definitions of that term given in both EU and Bulgarian law. It is submitted that the defendant acquired ownership of immovable properties in the Republic of Bulgaria and, in that connection, has an obligation under standard business terms approved by the water utility to pay for the quantity of water consumed, but failed to pay for it for a certain period of time. It is against that background that the applicant is claiming the value of the quantity of water supplied and compensation for default in the amount of the statutory interest accrued (default interest).
- 8 It is important first of all to provide some clarifications with respect to the terminology typically used in the national law of the Republic of Bulgaria. The ZZD draws a clear distinction between the recoverability of a debt and the enforceability of a liability, or default on the part of the debtor. The recoverability of a debt (or liability) refers to the abstract possibility of the debt's being recovered by the creditor. If the liability is subject to a time limit, in other words, if the parties have agreed a time limit upon the expiry of which the liability must be discharged, the liability becomes recoverable, and the limitation period starts to run, on the expiry of that time limit. If the liability is not subject to a time limit, in other words, if the parties have not agreed a time limit upon the expiry of which the liability must be discharged, the liability becomes recoverable, and the limitation period starts to run, upon accrual of the liability, as follows from Article 114(2) of the ZZD. Enforceability arises at the point when the debtor falls into default and the creditor is entitled to pursue the enforcement of his claim. If the liability is subject to a time limit, it becomes enforceable and the debtor falls into default upon expiry of that time limit (in the case of liabilities subject to a time limit, recoverability and enforceability, or default, arise at the same time – upon expiry of the time limit agreed between the parties). If the liability is not subject to a time limit, enforceability, or default on the part of the debtor, may not arise until after the debtor has been expressly ordered to pay by the creditor in

accordance with Article 84(2) of the ZZD (in other words, in the case of liabilities not subject to a time limit, recoverability arises upon accrual of the liability and default arises upon receipt of an order to pay by the debtor). Enforceability and default are significant because, once they have come into being, the debtor is charged default interest from the date following the date of default to the date of final settlement of the liability.

- 9 The actions to be taken by the court present certain difficulties which, in the view of the adjudicating chamber, jeopardise the guarantee of effective remedies in an area governed by EU law, namely consumer protection. Article 31(1) of the Standard business terms for the Provision of Water and Wastewater Services to Consumers by the Municipality of Burgas Water Utility, provides that the water utility is to issue monthly invoices unless a different billing period has been expressly agreed. Article 31(2) of the standard business terms states, however, that consumers are obliged to pay the amounts owed for water and wastewater services used by them within 30 days of the date of issue of the invoice. The recoverability and enforceability of debts owed to water utilities are uniformly regulated in the standard business terms of utilities in all cities in the Republic of Bulgaria – Sofia, Plovdiv, Varna, Burgas and so on. Consequently, in the event that a consumer raises the objection that the debts owed to a water utility for services it has provided are time-barred, the national courts will proceed in exactly the same way, as follows. Account will be taken of Article 114 of the ZZD, which states that the limitation period starts to run on the date on which the debt becomes recoverable, and of the fact that, if a time limit for payment has been agreed between the parties, recoverability arises on the expiry of that time limit. In the present case, there is an agreed time limit, inasmuch as Article 31(2) of the standard business terms of water utilities provides that liabilities for services used must be paid within 30 days of the date of issue of the invoice. Taking into account that the water utility has issued an invoice and the time limit of 30 days from the date of its issue has expired, the courts will therefore assess whether the debt owed to the trader is wholly or partially time-barred. In principle, there is nothing to prevent parties from agreeing a time limit for the settlement of liabilities arising under a contract concluded between them, even in the form of standard business terms. If such a time limit has been agreed, the point at which those liabilities become recoverable, and the limitation period starts to run, is the date on which that time limit expires. The issue that puts consumers in an unequal position in the present case is the fact that it is agreed under the water utility's standard business terms that that time limit starts to run from the date of issue of the invoice. Consequently, the debt owed to the trader becomes recoverable, and the limitation period for that debt starts to run, as from the issue of the invoice triggering the start of the 30-day time limit, and the limitation period does not start to run until that time limit has expired. In effect, therefore, the start of the limitation period is dependent on the conduct of the trader, a fact which represents a burden for the consumer, since it is possible and not uncommon for the trader, rather than issuing invoices monthly, when the monthly liability in question arises, as Article 31(1)(a) of the standard business terms of the Burgas Water Utility stipulates, to issue an invoice at a much later date and thus in effect to postpone

the limitation period applicable to debts owed to it. The adjudicating chamber is of the view that that raises doubts as to whether the term contained Article 31(2) of the standard business terms of the Burgas Water Utility may be unfair, since it allows traders to determine unilaterally when debts owed to them become recoverable and, therefore, when the limitation periods applicable to those debts start to run, to the detriment of consumers. That in turn calls for an interpretation by the Court of Justice of the European Union as to whether Article 31(2) of the standard business terms of the Burgas Water Utility may be unfair and whether it infringes Article 3 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ('the Directive') and point 1(b) of the annex to Article 3 of that directive, inasmuch as the water supplier regularly fails to fulfil its obligation under Article 31(1) of the standard business terms of the Burgas Water Utility to issue invoices on a monthly basis and thereby infringes the consumers' right, corresponding to that obligation, to receive a separate invoice for consumption each month. It is clear from the claim asserted by the Burgas Water Utility itself and from the invoices submitted in the present proceedings, that, in the present case, the invoices issued in the period from 25 August 2021 to 25 May 2023 relate to liabilities that arose in early 2020, which is to say that those invoices were issued well after the liabilities in question arose (the liability arises monthly on the basis of the quantity of water consumed).

- 10 The second issue raised by Article 31(2) of the standard business terms of the Burgas Water Utility has to do with the fact that, in postponing the time-barring of the principal debts owed to it, it also postpones the time-barring of the debts by way of default interest arising from them, since, in accordance with Article 119 of the ZZD, the extinguishment of a principal debt leads to the extinguishment of the ancillary debts arising from it, even if those are not yet time-barred. Consequently, the earlier extinguishment of the principal debts would have the effect of also extinguishing the debts by way of default interest. By contrast, the Bulgarian courts currently award default interest even on principal debts which would be time-barred if Article 31(2) of the standard business terms of the Burgas Water Utility proved to be an unfair term.
- 11 The third issue raised by Article 31(2) of the standard business terms of the Burgas Water Utility has to do with the following. Currently, the water utility and the courts apply that term regardless of the fact that it may be unfair and proceed on the premiss that liabilities to pay for water and wastewater services which accrue to the expense of consumers are subject to a time limit, which is to say that, following the expiry of the agreed time limit, the consumer automatically falls into default, the creditor claims default interest on the principal sum from the date of default to the date of final settlement of the debt and the court awards that default interest. The latter fact significantly increases the financial burden on the consumer, inasmuch as, if the term contained in Article 31(2) of the standard business terms of the Burgas Water Utility (which lays down a time limit for performance that runs from the date of issue of an invoice by the trader) were regarded as being unfair, and that term were deemed to have been void as from the date of conclusion of the contract, the principal liability would not be subject to a

time limit, in accordance with Article 84(2) of the ZZD, and an order to pay would have to be issued to the debtor. Since, however, no order to pay has ever been issued to the debtor, the water utility's applications for the payment of default interest would be unfounded, inasmuch as the consumer was not sent an order to pay and did not fall into default. No evidence of the water utility having issued any orders to pay to the consumers concerned has as yet been adduced in those cases, but the courts, proceeding on the premiss that, in accordance with the provision contained in Article 31(2) of the standard business terms of the Burgas Water Utility, the liability is subject to a time limit, and assuming that the consumer fell into default when that time limit expired, nonetheless award the default interest applied for.

- 12 For the reasons set out above, the Rayonen sad Burgas (District Court, Burgas) takes the view that the correct resolution of the present dispute and the proper conduct of the further proceedings in the present case call for an interpretation of the relevant provisions of EU law.