

JUDGMENT OF THE COURT (Grand Chamber)

10 January 2006 *

In Case C-302/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Szombathelyi Városi Bíróság (Hungary), made by decision of 10 June 2004, received at the Court on 14 July 2004, in the proceedings

Ynos kft

v

János Varga,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, A. Rosas, K. Schiemann and J. Makarczyk, Presidents of Chambers, C. Gulmann, A. La Pergola, K. Lenaerts, P. Küris, E. Juhász, G. Arestis, M. Ilešič (Rapporteur) and A. Ó Caoimh, Judges,

* Language of the case: Hungarian.

Advocate General: A. Tizzano,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 21 June 2005,

after considering the observations submitted on behalf of:

- the Hungarian Government, by P. Gottfried, J. Fazekas and R. Sommsich, acting as Agents,
- the Czech Government, by T. Boček, acting as Agent,
- the Spanish Government, by F. Díez Moreno, acting as Agent,
- the Latvian Government, by A. Zikmane and E. Balode-Buraka, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Polish Government, by T. Nowakowski, acting as Agent,
- the Commission of the European Communities, by A. Aresu, K. Riczné Talabér and M.-J. Jonczy, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 September 2005,

gives the following

Judgment

- 1 The reference for a preliminary ruling concerns the interpretation of Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) ('the Directive').
- 2 That reference has been made in proceedings between Ynos kft ('Ynos'), a company which carries on activities as an estate agent, and Mr Varga concerning the performance of an agency contract for the sale of immovable property.

Relevant legal provisions

Community legislation

Accession of the Republic of Hungary to the European Union

- 3 The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part (OJ 1993 L 347, p. 2) ('the Association Agreement') was signed on 16 December 1991 and came into force on 1 February 1994.

- 4 Article 67 of the Association Agreement states:

'The Contracting Parties recognise that the major precondition for Hungary's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community. Hungary shall act to ensure that future legislation is compatible with Community legislation as far as possible.'

- 5 Article 68 of the Association Agreement provides:

'The approximation of laws shall extend to the following areas in particular; ... consumer protection ...'

- 6 Article 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33) ('the Act of Accession'), which features in Part One, entitled 'Principles', provides:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions ... before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

7 Part Five of the Act of Accession, entitled 'Provisions relating to the implementation of this Act', includes Title II 'Applicability of the acts of the institutions', which contains Articles 53 to 59.

8 Article 53 of the Act of Accession states:

'Upon accession, the new Member States shall be considered as being addressees of directives and decisions within the meaning of Article 249 of the EC Treaty and of Article 161 of the Euratom Treaty, provided that those directives and decisions have been addressed to all the present Member States. ... [T]he new Member States shall be considered as having received notification of such directives and decisions upon accession.'

9 Article 54 of that Act provides:

'The new Member States shall put into effect the measures necessary for them to comply, from the date of accession, with the provisions of directives ... within the meaning of Article 249 of the EC Treaty ..., unless another time-limit is provided for in the Annexes referred to in Article 24 or in any other provisions of this Act or its Annexes.'

The Directive

10 Article 1(1) of the Directive states:

'The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.'

11 Article 6(1) of the Directive reads as follows:

'Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.'

National legislation

12 Under Article 3(1) of the Law ratifying the Association Agreement (a Magyar Köztársaság és az Európai Közösségek és azok tagállamai között társulás létesítéséről szóló, Brüsszelben, 1991. december 16-án aláírt Európai Megállapodás kihirdetéséről szóló 1994. évi I. törvény) of 4 January 1994 (*Magyar Közlöny* 1994/1), in force since 1 February 1994, it is to be ensured that the preparation and conclusion of international agreements by the Republic of Hungary and the drafting and adoption of national laws are compatible with the Association Agreement.

13 Article 3(2) of the Law provides that, for the purpose of drafting and adopting legal rules, the obligations set out in Article 67 of the Association Agreement must be complied with.

14 The provisions of national law relating to unfair contract terms are set out, inter alia, in Articles 209 and 239 of the Hungarian Civil Code, in the version in Law No CXLIX/97 on amendments to the Civil Code of the Republic of Hungary No IV/1959 (a Magyar Köztársaság Polgári Törvénykönyvéről szóló 1959. évi IV. törvény módosításáról szóló 1997. évi CXLIX. törvény) of 19 December 1997 (*Magyar Közlöny* 1997/115) ('the Civil Code'), which came into force on 1 March 1998.

- 15 Article 209(1) of the Civil Code provides that, if a contract contains a general term which is unfair, the injured party may contest that term.
- 16 Article 209/B(1) of the Civil Code provides that a general condition in a contract or a term in a contract concluded between a consumer and a business undertaking will be unfair if, contrary to the requirements of good faith, it establishes unilaterally and without justification, to the detriment of one of the parties, the rights and obligations of those parties under the contract.
- 17 Under Article 239 of the Civil Code, if a contract is invalid in part — and unless statutorily provided otherwise — that contract is not to be regarded in its entirety as invalid, unless it is found that the parties would not have concluded it without the invalid part.
- 18 Article 11(5) of Law No CXLIX/97 and Article 3(2) of Government Decree No 18/1999 (II.5.) on terms regarded as unfair in consumer contracts (a fogyasztóval kötött szerződésben tisztességtelennek minősülő feltételekről szóló kormányrendelet) of 5 February 1999 (*Magyar Közlöny* 1999/8) ('the Government Decree') state that they contain provisions which are compatible with the Directive.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 19 On 10 January 2002, Ynos concluded with Mr Varga an agency contract ('the contract') for the sale of immovable property. Mr Varga had stated that he wished to obtain a gross price of HUF 70 187 500.

- 20 Essentially, the contract contained terms setting out the general conditions of a standard-form contract.
- 21 Under Clause 5 of the contract, the parties agreed that the agency would be regarded as having been successful and the transaction as having been completed if, within the framework of that transaction, a contract had been signed with one of the agent's customers. The second sentence of that clause also stipulated that 'the customer acknowledges that the agent is also entitled to agency commission when another customer found by the agent makes the customer an offer to purchase or rent the building belonging to him for a price equal to or higher than the price fixed by the customer and the agent in the contract, in compliance with the formalities required by the transaction in question, even if the customer rejects that proposal'.
- 22 If the agency was successful, Ynos was entitled under the contract to a commission equal to 2% of the agreed price, plus value added tax. The commission was to be payable from the time of signature of the contract of sale or the corresponding preliminary contract. If it was not paid, the agent was entitled to claim the commission plus compensation for late payment of 30%.
- 23 On 11 March 2002, the directors of Ynos, Mr Varga and the son of Mr Varga, as vendors of the property, and Mr Ragasits and Mr Kovács, as purchasers, signed an agreement in principle for the conclusion of the contract ('the agreement in principle'), in which they fixed the selling price of the property and agreed that the contract or preliminary contract of sale would be concluded by 15 March 2002 at the latest. On that date, however, neither the contract nor the preliminary contract of sale had been concluded.
- 24 The property was finally sold in 2003 to a person other than Mr Ragasits and Mr Kovács.

25 Ynos brought proceedings before the Szombathelyi Városi Bíróság (Szombathely City Court) in which it claimed that the agency had been successful within the meaning of the contract in so far as the parties had concluded the agreement in principle. It requested the court to order Mr Varga to pay to it the commission provided for in the contract, plus interest and costs.

26 Mr Varga contended that the claim should be dismissed. He submitted that the second sentence of Clause 5 of the contract was an unfair term. He added that the contract for the sale of the property had been concluded without the agency of Ynos.

27 Ynos argued that that second sentence did not constitute an unfair term within the meaning of Article 209/B of the Civil Code.

28 The national court took the view that, in so far as it was possible to determine that there was an unfair term, in accordance with the view expressed by the defendant, the dispute had to be resolved in the light of the Directive.

29 It was in those circumstances that the Szombathelyi Városi Bíróság decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1./ May Article 6(1) of the Directive..., which provides that Member States are to lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier are, as provided for under their national law, not to be binding on the consumer, be interpreted as meaning that it may constitute the basis of a national provision such as Article 209(1) of Law No IV of 1959 on the Civil

Code, applicable when a general condition in a contract stating that unfair terms do not cease to bind the consumer *ipso jure*, but do so only where an express declaration to that effect is made, that is to say, when they are successfully contested, is found to be unfair?

2. Does it follow from that provision of the Directive, according to which the contract is to continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms, that where the unfair terms inserted by a seller or supplier are not binding on the consumer as provided for under national law, but where in the absence of those terms, which form part of the contract, the seller or supplier would not have concluded the contract with the consumer, the validity of the contract as a whole cannot be affected if it is capable of continuing in existence without the unfair terms?

3. From the point of view of the application of Community law, is it relevant that the main dispute arose before the accession of the Republic of Hungary to the European Union, but after the adaptation of its domestic law to the Directive?’

The jurisdiction of the Court

- 30 By its third question, which it is appropriate to answer first, the national court is asking, essentially, whether the Court has jurisdiction to answer the first and second questions. The facts in the main proceedings occurred prior to the accession of the Republic of Hungary to the European Union, but after the approximation of that State’s legal system to the Directive.

Observations submitted to the Court

- 31 The Hungarian Government and the Commission of the European Communities submit that the Directive is not applicable to the dispute in the main proceedings, the facts of which occurred prior to the accession of the Republic of Hungary to the European Union. They maintain that this dispute must be resolved through the application of the national legal rules in force at the time when the contract in question was concluded and the dispute arose.
- 32 According to the Czech Government, the fact that the proceedings before the national court began before the accession of the Republic of Hungary is not conclusive in itself. The important point is that the legal relationship in the main proceedings came to an end before that accession.
- 33 The Spanish, Latvian and Austrian Governments, by contrast, submit that, as from accession to the European Union, the national courts of the new Member State are obliged, in a case such as that in the main proceedings here, to interpret the provisions of national law designed to approximate that national law to the Directive in the light of the latter. Where a question referred for a preliminary ruling comes from a national court or tribunal within the meaning of Article 234 EC, the Court must, as a rule, answer it. The Latvian Government also notes that, according to settled case-law, the Court has jurisdiction to deliver preliminary rulings on orders for reference concerning Community provisions in situations where the facts in the main proceedings are outside the scope of application of Community law but to which those provisions of Community law have been rendered applicable by national law (Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraph 36, and Case C-130/95 *Giloy* [1997] ECR I-4291, paragraph 23). The Latvian Government states, in that respect, that if a provision of national law is identical in content to a provision of Community law, those two provisions must be

interpreted in a uniform manner, irrespective of whether the accession of a Member State to the European Union took place before or after the approximation of the national law of that State to Community law.

Findings of the Court

34 According to the order for reference, by its first and second questions the Szombathelyi Városi Bíróság is seeking an interpretation by the Court of Article 6(1) of the Directive for the purposes of assessing the scope of rules of national law.

35 It must, however, be pointed out that the order for reference states that the facts in the main proceedings occurred before the Republic of Hungary acceded to the European Union.

36 The Court has jurisdiction to interpret the Directive only as regards its application in a new Member State with effect from the date of that State's accession to the European Union (see, to that effect, Case C-321/97 *Andersson and Wåkerås-Andersson* [1999] ECR I-3551, paragraph 31).

37 In this case, as the facts of the dispute in the main proceedings occurred prior to the accession of the Republic of Hungary to the European Union, the Court does not have jurisdiction to interpret the Directive.

- 38 In the light of the foregoing, the answer to the third question referred for a preliminary ruling must be that, in circumstances such as those of the dispute in the main proceedings, the facts of which occurred prior to the accession of a State to the European Union, the Court does not have jurisdiction to answer the first and second questions.

Costs

- 39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

In circumstances such as those of the dispute in the main proceedings, the facts of which occurred prior to the accession of a State to the European Union, the Court of Justice does not have jurisdiction to answer the first and second questions.

[Signatures]