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Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

7 April 2022 (\*)

(Reference for a preliminary ruling – Unfair terms in consumer contracts – Directive 93/13/EEC – Principle of effectiveness – Principle of equivalence – Judicial proceedings seeking a declaration that a contractual term is unfair – National court's power of review of its own motion – National proceedings for taxation of costs – Costs recoverable in respect of lawyers' fees)

In Case C-385/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia no 49 de Barcelona (Court of First Instance No 49, Barcelona, Spain), made by decision of 7 July 2020, received at the Court on 12 August 2020, in the proceedings

**EL,**

**TP**

v

**Caixabank SA,**

THE COURT (Fourth Chamber),

composed of K. Jürimäe, President of the Third Chamber, acting as President of the Fourth Chamber, S. Rodin (Rapporteur) and N. Piçarra, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– EL and TP, by P. Gabeiras Vázquez, abogada,

- Caixabank SA, by J. Gutiérrez de Cabiedes Hidalgo de Caviedes, abogado,
- the Spanish Government, by J. Rodríguez de la Rúa Puig and S. Centeno Huerta, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by N. Ruiz García and J. Baquero Cruz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 October 2021,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The request has been made in proceedings between EL and TP, on the one hand, and Caixabank SA, on the other hand, concerning recoverable costs in respect of lawyers' fees payable following judicial proceedings seeking a declaration that a contractual term is unfair.

## **Legal context**

### *European Union law*

3 The 24th recital of Directive 93/13 states that 'the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts'.

4 Article 4 of that directive provides:

'1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language.'

5 Article 6(1) of that directive provides:

'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.'

6 According to Article 7(1) of Directive 93/13:

‘Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.’

7 Article 8 of that directive provides:

‘Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer.’

### *Spanish law*

8 Article 243(1) of Ley 1/2000 de Enjuiciamiento Civil (Law 1/2000 on the Code of Civil Procedure) of 7 January 2000 (BOE No 7 of 8 January 2000, p. 575; ‘the LEC’) provides that the costs are to be calculated, inter alia, by the registrar responsible for enforcement of the judgment. The latter shall reduce the amount of the fees charged by lawyers and other professionals who are not subject to a specific scale of costs where the amount of those fees exceeds the limit referred to in Article 394(3).

9 Article 251(1) and (8) of the LEC provides:

‘The value of the claim shall be fixed on the basis of the financial interest of the claim, which shall be calculated in accordance with the following rules:

1. If a specified sum of money is claimed, the value of the claim shall be represented by that sum, and if no sum is specified, even in relative terms, the claim shall be deemed to be for an unspecified amount.

...

8. In proceedings concerning the existence, validity or effectiveness of a debt instrument, the value of that instrument shall be represented by the total amount owed, even if payment is made in instalments. That rule of valuation shall apply in proceedings concerning the creation, amendment or extinguishment of a debt instrument or of an individual debt, provided that another rule laid down in this article does not apply.’

10 According to Article 253 of the LEC:

‘1. The applicant shall indicate and justify the value of the claim in the application initiating proceedings. That value shall be calculated, in any event, in accordance with the rules laid down in the preceding provisions.

A change in the value of the property forming the subject matter of the dispute, which occurs after the action has been brought, shall not result in any change in the value of the claim or of the type of proceedings.

2. The value of the claim shall be indicated clearly and precisely. It may, however, be indicated in relative terms if the applicant duly proves that the financial interest of the claim is at least equal to the minimum value corresponding to the ordinary procedure or does not exceed the maximum amount fixed for the summary procedure (*juicio verbal*). The applicant may not under any

circumstances merely indicate the type of procedure to be followed or leave to the defendant the task of specifying the value of the claim.

3. If the applicant is unable to calculate the amount of the claim, even in relative terms, because the subject matter of the action has no financial interest since it is not possible to calculate that interest in accordance with any of the statutory rules for specifying the amount of the claim, or because, although an applicable calculation rule exists, that amount could not be determined at the time when the action was lodged, the action shall be conducted in accordance with the rules applicable to ordinary proceedings.’

11 Article 394(3) of the LEC provides:

Where, under paragraph 1 of this article, the unsuccessful party is ordered to pay the costs, that party shall be required to pay, of the portion of costs corresponding to the remuneration of lawyers or other professionals not subject to a scale of costs or fees, only a total sum which does not exceed one third of the amount at issue in the proceedings, in respect of each of the parties to the proceedings who obtained such an order. For those purposes alone, claims the amount of which cannot be estimated shall be valued at EUR 18 000 unless the court orders otherwise on account of the complexity of the case.’

12 Article 411 of the LEC is worded as follows:

‘Changes which occur after the commencement of proceedings in relation to the domicile of the parties, the property in dispute or the subject matter of the action shall not alter jurisdiction or competence, which shall be determined in accordance with the information furnished at the outset of the proceedings.’

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

13 On 25 April 2008, the applicants in the main proceedings and Caixabank concluded a loan agreement, secured by a mortgage, for an amount of EUR 159 000 denominated in a foreign currency.

14 In 2016, the applicants in the main proceedings made an application to the referring court seeking a declaration of partial nullity of that agreement, claiming that the terms relating to repayment in a foreign currency were unfair.

15 In that application, the applicants in the main proceedings submitted that, even though, at the date on which the application was made, the outstanding balance was EUR 127 269.15, the amount of that application should be regarded as unspecified. Since the application at issue sought annulment of the terms relating to repayment of the loan, the actual amount of that loan could be calculated only at the stage of enforcement of a decision upholding that application.

16 By judgment of 29 November 2018, the referring court upheld the application of the applicants in the main proceedings, finding that the terms of the contract relating to repayment in a foreign currency were void and ordering that the outstanding balance be recalculated taking into account the amount that would already have been repaid by the applicants in the main proceedings if the monthly payments already paid had been paid in euro, not in a foreign currency. Since Caixabank was unsuccessful, it was ordered to pay the costs.

17 By decision of 1 October 2019, the registrar set the value of the claim, as regards costs, at EUR 30 000 for the purpose of calculating lawyers' fees, in accordance with criterion 15 of the guidance criteria of the Barcelona Bar (Spain), and at EUR 18 000 for the purpose of calculating the costs of court agents, in accordance with Article 394(3) of the LEC. Furthermore, under the latter provision, the total amount of lawyers' fees which may be charged to the party ordered to pay the costs may not exceed one third of the amount of the proceedings, that is to say, in this case EUR 10 000, the agents, for their part, being subject to a specific scale.

18 The applicants in the main proceedings brought an action for review of the registrar's decision of 1 October 2019, in the context of which the referring court made the present reference for a preliminary ruling, since it has doubts as to whether the Spanish legislation concerning the calculation of costs complies with Directive 93/13.

19 The referring court cites a judgment of the Audiencia Provincial de Barcelona (Provincial Court, Barcelona, Spain) of 15 February 2011 (ES:APB:2011:1791), which refers to the relevant case-law of the Tribunal Constitucional (Constitutional Court, Spain) and the Tribunal Supremo (Supreme Court, Spain).

20 According to that judgment, first, it is clear from the settled case-law of the Tribunal Constitucional (Constitutional Court) that the value of the claim, as set in the application, may not be altered subsequently, including at subsequent instances.

21 Second, according to the same judgment, it is apparent from the settled case-law of the Tribunal Supremo (Supreme Court) that the value of the claim, in the absence of any dispute between the parties, is to be set definitively in the application and the defence, so that the parties may no longer alter that value in the event of an action or where they dispute the calculation of costs.

22 According to the referring court, the registrar's decision of 1 October 2019 applied that settled case-law of the Tribunal Constitucional (Constitutional Court) and the Tribunal Supremo (Supreme Court).

23 However, the referring court states that there is another line of reasoning in the national case-law according to which, irrespective of the value of the claim, lawyers' fees must be calculated on the basis of their actual financial value and the work carried out by the professional concerned. It cites, in that regard, a judgment of the Tribunal Supremo (Supreme Court) of 5 October 2001 (ES:TS:2001:7567).

24 In those circumstances, the Juzgado de Primera Instancia no 49 de Barcelona (Court of First Instance No 49, Barcelona, Spain) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the interpretation of Articles 251, 394(3) and 411 of the [LEC] set out in the reasoned decision of 1 October 2019, which equates the amount at issue in the proceedings with the financial interest of the dispute and, consequently, leads to a reduction of the fees that the consumer has paid his or her lawyer, on the basis of a fixed sum (EUR 18 000), established in law only in respect of an amount that cannot be estimated and not an amount that is unspecified, conflict with Articles 6(1) and 7(1) of [Directive 93/13], since it cannot restore the consumer to the factual and legal position which he or she would have been in if that term had not existed, even though there is, in the consumer's favour, a judicial declaration that the term is unfair, and since it does not remove an unreasonable procedural requirement relating to a limitation of costs where such removal would

ensure that the consumer has the most suitable and effective means of legitimately exercising his or her rights?

(2) Does Article 394(3) of the LEC in itself conflict with Articles 6(1) and 7(1) of [Directive 93/13] and make it impossible or excessively difficult to exercise in court the rights which the directive grants to consumers, since the limitation which that article imposes on consumers, in the sense that they have to bear a portion of their own procedural costs, means that the consumer cannot be restored to the factual and legal position which he or she would have been in if that term had not existed, even though there is, in the consumer's favour, a judicial declaration that the term is unfair, and since it does not remove an unreasonable procedural requirement relating to a limitation of costs where such removal would ensure that the consumer has the most suitable and effective means of legitimately exercising his or her rights?'

### **Consideration of the questions referred**

#### ***The jurisdiction of the Court***

25 Caixabank and the Spanish Government contest the Court's jurisdiction to rule on the two questions referred for a preliminary ruling. They submit, in essence, that Directive 93/13 is not applicable since the procedure relating to the examination of the contractual term at issue in the main proceedings has already been concluded by a judgment which has found that the contractual term at issue in the main proceedings is unfair and the present request for a preliminary ruling is made in the context of incidental proceedings for taxation of costs, the calculation of which falls exclusively within the scope of national legislation.

26 It is true that the scheme for taxation of costs at issue in the main proceedings constitutes specific proceedings before the national courts and is therefore, in principle, governed by Spanish procedural law.

27 However, it is apparent from the order for reference that the taxation of costs proceedings, in the context of which the present request for a preliminary ruling was made, are intrinsically linked to and incidental to the judicial proceedings which led to a finding that a contractual term is unfair. Therefore, Caixabank and the Spanish Government cannot claim that Directive 93/13 is inapplicable since it is necessary to ascertain that the taxation of costs scheme at issue in the main proceedings is not such as to deter consumers from exercising the right to effective protection required by Article 7 of that directive with regard to unfair contract terms, on account of the costs which a legal action would entail for them (see, by analogy, judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraphs 44 and 45).

28 In those circumstances, it must be held that the Court has jurisdiction to rule on the request for a preliminary ruling.

#### ***Admissibility***

29 Caixabank and the Spanish Government also submit that the questions referred for a preliminary ruling are inadmissible.

30 In the first place, they submit, in essence, that the order for reference does not contain the factual or legal material necessary for the Court to give a useful answer to the questions referred. They add that the order for reference does not indicate the amount in respect of fees claimed by the

applicants in the main proceedings or the sum they actually paid in that regard. Since Caixabank agreed to pay the sum of EUR 7 018, that is to say more than the fixed sum of EUR 1 200 provided for in the fee agreement, the applicants in the main proceedings should therefore be regarded as having been reimbursed in full for their costs and the questions referred for a preliminary ruling should be regarded as hypothetical.

31 In the second place, Caixabank and the Spanish Government claim that there is a contradiction as regards the amount used as the basis for calculating the lawyer's fees for which reimbursement may be sought by the applicants in the main proceedings. There is, in that regard, a difference between the wording of the first question and the content of the order for reference.

32 In the third place, the Spanish Government maintains that the first question is inadmissible in so far as it relates to the interpretation of Article 411 of the LEC.

33 At the outset, it should be recalled that it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is bound, in principle, to give a ruling (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 27 and the case-law cited).

34 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 28 and the case-law cited).

35 In addition, in view of the spirit of judicial cooperation which governs relations between national courts and the Court of Justice in the context of preliminary-ruling proceedings, the fact that the referring court did not make certain initial findings does not necessarily mean that the request for a preliminary ruling is inadmissible if, in spite of those deficiencies, the Court, in the light of the information contained in the case file, considers that it is in a position to provide a useful answer to the referring court (judgment of 17 October 2019, *Comida paralela 12*, C-579/18, EU:C:2019:875, paragraph 21).

36 In the present case, it should be noted, first, that the referring court has raised in its questions for a preliminary ruling the factual premiss that the applicants in the main proceedings are in the position of having to bear the portion of the fees claimed by their lawyer which exceeds the amount of the fees reimbursed by Caixabank. Accordingly, the questions referred do not appear to be hypothetical.

37 Moreover, although the national court has not indicated all the evidence to which Caixabank refers, the description of the facts set out in the order for reference is sufficient to enable the Court to give a useful answer to the questions referred for a preliminary ruling. Thus, that court specifies, *inter alia*, the financial harm suffered by the applicants in the main proceedings through the application of the taxation of costs scheme at issue in the main proceedings.

38 Furthermore, as noted in paragraph 34 of the present judgment, the Court must take into account, under the division of jurisdiction between the Courts of the European Union and the national courts, the factual and legislative context as set out in the order for reference of the questions referred for a preliminary ruling. Therefore, irrespective of the criticisms made by Caixabank and the Spanish Government of the findings of fact made by the referring court, the present reference for a preliminary ruling must be examined on the basis of those findings (see, to that effect, judgment of 26 March 2020, *A.P. (Probation measures)*, C-2/19, EU:C:2020:237, paragraph 27 and the case-law cited).

39 Second, even though there is a contradiction regarding the amount serving as a basis for calculating the lawyers' fees for which the applicants in the main proceedings can obtain reimbursement, that amount is not decisive for the purpose of answering the question whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding the application of the taxation of costs scheme at issue in the main proceedings.

40 Third, as regards the arguments put forward by the Spanish Government in support of the inadmissibility of the first question in so far as it relates to Article 411 of the LEC, it appears, as the Advocate General stated in point 28 of his Opinion, that they relate to the substance and not to admissibility.

41 In the light of all the foregoing, it must be held that the questions referred for a preliminary ruling are admissible.

### ***Substance***

#### *The second question*

42 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, must be interpreted as precluding national legislation which provides, in the context of the taxation of costs relating to an action concerning the unfairness of a contractual term, for an upper limit applicable to the lawyers' fees recoverable by a consumer who has been successful on the merits from the seller or supplier ordered to pay the costs.

43 As a preliminary point, it should be recalled that a contractual term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer. Therefore, the determination by a court that such a term is unfair must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he or she would have been in if that unfair term had not existed (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 61).

44 It should be noted that, in the case in the main proceedings, the term of the contract relating to the repayment of the loan in a foreign currency, the annulment of which was sought by the consumers concerned, was declared unfair and that the bank in question was ordered to recalculate the outstanding balance, taking into account the amount that would already have been repaid by them if the monthly payments already paid had been paid in euro, and not in a foreign currency. Therefore, as regards the loan which had been concluded by the consumers concerned, those consumers may be considered, within the meaning of the case-law of the Court, to have been restored to the legal and factual situation in which they would have been in the absence of the term declared unfair.



45 However, in the present case, it is with regard to the taxation of costs, which is the subject of incidental proceedings, that the referring court asks whether the national legislation applicable to Article 6(1) and Article 7(1) of Directive 93/13 is compatible with that directive.

46 It should be noted, in that regard, as the Advocate General stated in point 51 of his Opinion, that the rules relating to taxation of costs in civil proceedings are procedural rules which, as regards costs relating to proceedings seeking a declaration that a contractual term is unfair, are not laid down in Directive 93/13.

47 In that regard, the Court has held that, in the absence of specific EU legislation in this area, the rules implementing consumer protection, provided for in Article 6(1) and Article 7(1) of Directive 93/13, are a matter for the domestic legal order of the Member States, in accordance with the principle of the procedural autonomy of the latter. However, those rules must not be less favourable than those governing similar domestic actions (principle of equivalence) nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness). It follows that the award of the costs of judicial proceedings before the national courts falls within the procedural autonomy of the Member States, subject to compliance with the principles of equivalence and effectiveness (see judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraphs 83 and 95 and the case-law cited).

48 With regard to the principle of effectiveness, which alone is at issue in the main proceedings, the Court has already held that each case in which the question arises as to whether a national provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 26 June 2019, *Addiko Bank*, C-407/18, EU:C:2019:537, paragraph 48 and the case-law cited).

49 In the present case, Directive 93/13 gives consumers the right to apply to a court to have a contractual term declared unfair and disapplied. However, the Court has held that making the decision on the award of costs in such proceedings exclusively dependent on how much has been unduly paid and must be refunded is likely to deter consumers from exercising that right, given the costs which legal action would entail. It concluded that Article 6(1) and Article 7(1) of that directive and the principle of effectiveness must be interpreted as precluding a system whereby the consumer may be made to bear part of the costs of proceedings depending on the level of the unduly paid sums which are refunded to him or her following a finding that a contractual term is void for being unfair, given that such a system creates a substantial obstacle that is likely to discourage consumers from exercising the right to an effective judicial review of the potential unfairness of contractual terms such as that conferred by that directive (see judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraphs 98 and 99 and the case-law cited).

50 However, it is necessary to distinguish that legal situation from that in which, as in the case in the main proceedings, the costs are borne exclusively by the seller or supplier who has concluded an agreement with the consumer who has obtained the cancellation of an unfair term, but with a limit, determined by the value of the dispute, on the maximum amount of costs which that consumer may obtain from the other party to the contract.

51 As the Advocate General observed in point 52 of his Opinion, the principle of effectiveness does not preclude, in general, a consumer from incurring certain legal costs when he or she brings proceedings for a declaration that a contractual term is unfair. Furthermore, it is indisputable that lawyers' fees generally constitute a substantial part of the costs incurred by the consumer in the context of court proceedings (see, to that effect, judgment of 28 July 2016, *United Video Properties*, C-57/15, EU:C:2016:611, paragraph 22).

52 It follows that, in principle, it is not contrary to the principle of effectiveness if the successful consumer is not reimbursed, by the unsuccessful party, for all the lawyer's fees he or she has paid.

53 Since the consumer has chosen the lawyer entrusted with his or her defence, and has agreed with him or her the fees to which he or she would be entitled, it cannot be ruled out that those court fees may prove excessive because of unusually high fees agreed between the successful party and his or her lawyer. In that context, the Court has recognised that legislation providing for a flat-rate of reimbursement of a lawyer's fees could, in principle, be justified, provided that it is intended to ensure the reasonableness of the costs to be reimbursed, taking into account factors such as the subject matter of the proceedings, the sum involved, or the work to be carried out to represent the client concerned (see, to that effect, judgment of 28 July 2016, *United Video Properties*, C-57/15, EU:C:2016:611, paragraph 25).

54 In that regard, it should nevertheless be pointed out that procedural arrangements which give rise to overly high costs for the consumer could have the effect of deterring that consumer from bringing legal proceedings, having regard to the costs which legal proceedings would entail in relation to the amount of the disputed debt, or the proper defence of his or her rights before the court before which proceedings have been brought by the seller or supplier (see, to that effect, judgments of 13 September 2018, *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 69, and of 3 April 2019, *Aqua Med*, C-266/18, EU:C:2019:282, paragraph 54).

55 The court fees for which the successful consumer must be able to obtain reimbursement, by the unsuccessful party, must therefore constitute a sufficient amount in relation to the total cost of the court proceedings in order for there to be no deterrent effect as regards that consumer's recourse to the legal protection afforded to him or her by Directive 93/13.

56 It is therefore for the Member States to set out, in the context of their procedural autonomy, a scheme for reimbursement of lawyers' fees, including a limitation on the amount to be paid by the seller or supplier ordered to pay the costs, a limit allowing the consumer to be reimbursed for the costs which he or she has incurred up to a reasonable amount that is proportionate to the cost of legal proceedings relating to the unfairness of a contractual term.

57 It is for the national court to ascertain whether that is so in the case in the main proceedings.

58 In the light of the foregoing considerations, the answer to the second question is that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as not precluding national legislation which provides, in the context of the taxation of costs in connection with proceedings concerning the unfairness of a contractual term, for a limit applicable to the lawyers' fees recoverable by the successful consumer from the seller or supplier ordered to pay the costs, provided that that limit allows the consumer to obtain, in that connection, the reimbursement of a reasonable and proportionate amount in relation to the costs that he or she was objectively required to incur in order to bring such an action.

*The first question*

59 By its first question, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, must be interpreted as precluding national legislation under which the value of the claim, which constitutes the basis for calculating the costs recoverable by the successful consumer in an action relating to an unfair contractual term, must be determined in the application or, otherwise, is set by that legislation, without it being possible to amend that information subsequently.

60 It should be noted, in the first place, that according to file before the Court, the national legislation at issue in the main proceedings states that the amount to be reimbursed in relation, in particular, to lawyers' fees by the party ordered to pay the costs may not exceed one third of the value of the claim. Under Article 253 of the LEC, that amount must be stated in the application initiating proceedings. Furthermore, it follows from Article 251 of the LEC that if a sum of money is claimed, the value of the claim is deemed, if that sum has not been specified, to be for an unspecified amount. Finally, Article 394(3) of the LEC provides that, for the purposes of calculating the sum that the party ordered to pay the costs may be required to pay in respect of lawyer's fees alone, claims the amount of which cannot be estimated are to be valued at EUR 18 000 unless the court orders otherwise on account of the complexity of the case.

61 As regards the latter provision, it must therefore be observed that the value of the claim does not appear to have been determined since it may be altered by the registrar of the court having jurisdiction and the court responsible ultimately for the taxation of costs, on account of the complexity of the case in question. In that regard, it is apparent from the information in the order for reference that, although the applicants in the main proceedings had not stated the value of the claim in their application, it was subsequently set, in the incidental taxation of costs proceedings, at EUR 30 000.

62 In the second place, as has already been pointed out in paragraph 48 of the present judgment, the protection of the rights which the consumer derives from Directive 93/13 is assessed in the light of the principle of effectiveness, the observance of which by the Member States is analysed, *inter alia*, taking into consideration the principle of legal certainty.

63 The determination of the value of the claim as soon as the application initiating proceedings is lodged appears to be consistent with the principle of legal certainty in that, as the Advocate General observed in point 76 of his Opinion, such a determination enables the parties to the proceedings to ascertain, as soon as that application is made, the potential financial cost of the proceedings.

64 Furthermore, as regards the amount of the costs for which the consumer may seek reimbursement, in respect of the lawyers' fees incurred, from the unsuccessful party, it does not appear contrary to the principle of effectiveness that, in accordance with the principle of legal certainty, the national legislation provides that the value of the claim may not be changed during the court proceedings, since it is at the end of the proceedings that it is necessary to ensure that the costs incurred by the consumer are actually reimbursed, taking into account the amount of the fees which the consumer may, given the value attributed to the claim, seek reimbursement from the seller or supplier who has been ordered to pay the costs.

65 In that regard, it has already been pointed out in paragraphs 62 and 64 of the present judgment that the effectiveness of the protection intended by Directive 93/13 must be guaranteed by ensuring that consumers are reimbursed for the costs which they have incurred up to a reasonable amount that is proportionate to the cost of lawyers' fees in judicial proceedings seeking a finding that a contractual term is unfair. It is therefore for the national the court responsible ultimately for

the taxation of costs to satisfy itself that the national rules in question do not make it impossible or excessively difficult for consumers to exercise their rights under that directive.

66 In the present case, the determination of the value of the claim at EUR 30 000 where the taxation of costs appears to show that the registrar of the court having jurisdiction, under the supervision of the court ultimately responsible, has the discretion necessary to assess the value of the claim concerned taking into account the statutory limit for the recoverable costs as a third of that value. It is for the national court responsible ultimately for the taxation of costs to satisfy itself, when making those calculations, that the costs which must actually be reimbursed in view of that statutory limit correspond to a reasonable amount that is proportionate to the costs which the consumer had to incur objectively in bringing the action in question.

67 In the light of the foregoing considerations, the answer to the first question is that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as not precluding national legislation under which the value of the claim, which constitutes the basis for calculating the costs recoverable by the consumer who has been successful in an action relating to an unfair contractual term, must be determined in the application or, otherwise, is set by that legislation, without it being possible to alter that information subsequently, on condition that the court responsible ultimately for the taxation of costs remains free to determine the actual value of the claim for the consumer, ensuring that he or she is entitled to reimbursement of a reasonable amount that is proportionate to the costs that he or she objectively had to incur in order to bring such an action.

### **Costs**

68 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 (Fourth Chamber) hereby rules:

- 1. Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in the light of the principle of effectiveness, must be interpreted as not precluding national legislation which provides, in the context of the taxation of the costs in connection with proceedings concerning the unfairness of a contractual term, for a limit applicable to the lawyers' fees recoverable by the successful consumer from the seller or supplier ordered to pay the costs, provided that that limit allows the consumer to obtain, in that connection, the reimbursement of a reasonable and proportionate amount in relation to the costs that he or she was objectively required to incur in order to bring such an action.**
- 2. Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as not precluding national legislation under which the value of the claim, which constitutes the basis for calculating the costs recoverable by the consumer who has been successful in an action relating to an unfair contractual term, must be determined in the application or, otherwise, is set by that legislation, without it being possible to alter that information subsequently, on condition that the court responsible ultimately for the taxation of costs remains free to determine the actual value of the claim for the consumer, ensuring that he or she is entitled to reimbursement of a reasonable amount that is proportionate to the costs that he or she objectively had to incur in order to bring such an action.**

[Signatures]

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\* Language of the case: Spanish.

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