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Advocate General's Opinion in Case C-365/23 | [Arce] ¹

According to Advocate General Rantos, a contractual term requiring a young sportsman to transfer part of his income if he becomes a professional athlete may potentially be unfair, provided that it is shown that that term creates a significant imbalance in the rights and obligations arising under the contract

A contract concluded between a young sportsman and an undertaking helping to develop his sports career falls, in principle, within the scope of the directive on the protection of consumers against unfair terms

In 2009, a young sportsman, who was a minor and represented by his parents, concluded a contract with a Latvian undertaking which offers sportspersons a range of services for developing their professional skills and careers. The purpose of that contract was to provide that young sportsman with a successful professional sports career in the field of basketball. That contract, which was concluded for a period of 15 years, provided for a whole range of services, such as, inter alia, training under the supervision of specialists and sports medicine services, psychological support and marketing, legal and accounting support. In return, the young sportsman undertook, if he became a professional, to pay that undertaking remuneration amounting to 10% of all net income from sports events, advertising, marketing and media appearances related to the sport concerned received during the period of that contract, provided that that income was at least €1 500 per month.

In view of the fact that the income generated by the young sportsman, who has since become a professional basketball player, as a result of contracts signed with sports clubs, amounted to a sum of more than €16 million, he was required to pay 10% of that sum to that undertaking, that is to say, more than €1.6 million.

The case was brought before the Latvian courts, which held that the contractual term in question was unfair. The undertaking concerned lodged an appeal on a point of law before the Latvian Supreme Court, which decided to refer the matter to the Court of Justice. The referring court seeks to ascertain whether the directive on unfair terms in consumer contracts ² applies to the contract at issue and, if so, the extent to which that directive precludes such a term.

In his Opinion, Advocate General Athanasios Rantos **considers that such a contract falls, in principle, within the scope of that directive and that such a contractual term may prove unfair.** That directive is intended to apply in all sectors of economic activity and, in principle, to all types of contracts for the purchase of goods and the provision of services which have been concluded between a seller or supplier and a consumer. In the present case, at the time when the contract at issue was concluded, the young sportsman had not yet begun his professional career and therefore acted as a 'consumer' who was objectively in a weaker position than the undertaking, both in terms of technical knowledge and bargaining power. That conclusion cannot be invalidated by the fact that, subsequently, that young sportsman has become a professional athlete, in so far as the unfairness of a term is assessed at the time of conclusion of the contract. It is at that moment, which coincides with any unfavourable

position vis-à-vis the seller or supplier, that the contract is likely to have unfavourable consequences, even in the long-term, for the consumer.

In its analysis, the national court must ascertain, inter alia, whether the contractual term satisfied the requirement of transparency, namely that it was drafted in plain, intelligible language, so that the consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences it could have for him or her. In the present case, that seemed, in principle, to be the case as regards the method of calculating the remuneration due, but it is also for the referring court to examine whether the information provided by the supplier enabled the young sportsman to take a prudent decision and, more specifically, whether he could estimate the value of the services offered by the undertaking as a whole in relation to the remuneration potentially due to that undertaking.

The Advocate General recalled that a contractual term which has not been individually negotiated is regarded as unfair if it causes a 'significant imbalance' in the parties' rights and obligations arising under the contract, to the detriment of the consumer. In that regard, it is for the national court to ascertain, in particular, whether applicable rules in national law exist in the absence of an agreement between the parties, so as to assess whether that contract places the young sportsman in a less favourable legal position than that provided for by national law. In the absence of such legislation, it is for that court to refer to market practices in the matter of remuneration for services in the field of the sport concerned and, more specifically, whether there is a link between the value of the service provided by the undertaking and the remuneration required of the young sportsman. That court will, in particular, have to bear in mind the risk, for the undertaking, of not having the guarantee of receiving remuneration if the young sportsman does not become a professional, whereas that remuneration will serve not only to finance the services offered to the young sportsman, but also to all other young sportspersons who have concluded similar contracts, including those who have not become professionals.

Finally, as regards the consequences of classifying a term as 'unfair', such a term must be regarded, in principle, as never having existed. It cannot therefore have any effect on the sportsman, who should be restored to the legal and factual situation in which he would have been in if that term had not existed, without the national court being able to require him to pay any amount by way of the remuneration provided for in the term held to be unfair.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

² Council [Directive 93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.