ARTICOLE

TRANSPARENCY OF BUSINESS-TO-CONSUMER TERMS ON ATTORNEY FEES, IN CONTRACTS CONCERNING LEGAL COUNSELLING SERVICES

DOI: 10.24193/SUBBiur.69(2024).2.1
Data publicării online: 31.12.2024

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Abstract. The study examines the issue of establishing the unfair nature of clauses in legal assistance contracts between a lawyer and a consumer, prefiguring the payment of lawyer fees based on an hourly rate, as this criterion was highlighted in the jurisprudence of the CJEU, especially in the judgments pronounced in case C-395/21 and in case C-335/21. The emphasis is placed on the requirement of transparency of the costs of legal advice services in relations with consumers, in the light of the recital according to which, although the adhesion clauses are unchallengeable according to article 4, 2nd para. of Directive 93/13 if these terms concern elements of the price of services or products supplied to the consumer, those contractual provisions remain included in the analysis of unfairness in situations where they have been stated by the *proferens* in excessively technical language or when resorting to evasive and non-transparent provisions.

Key-words: consumer, legal counselling, B2C services, non-transparent content, attorney fees, unfair terms.

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I. Introduction

Providing legal services to consumers who request legal advice while acting outside their professional activity[1] may raise several practical interrogations, since these services are subsumed to the category of intellectual services subject to the provisions of consumer law, particularly those provisions repressing unfair contractual B2C terms. In the B2C relations between the lawyer and natural persons acting for extra-professional purposes, the exigencies of transparency remain central to the debate on the prerequisites of eliminating unfair terms, in a context in which certain contractual provisions elaborated by the *proferens* and accepted by the *adherens* in the absence of any optional negotiatory framework might present a disturbing non-transparent nature. Are the contractual provisions on legal services in B2C contracts subject to challenge in terms of unbalanced nature[2], from the perspective of the provisions of Directive (EC) 93/13, with the amendments brought by Directive (EU) 2019/2161? Could the consumer request the removal of a clause stipulating the payment of attorney fees using an hourly rate, without containing transparent criteria based on the amounts due by the consumer are established?

The taxonomy of B2C adhesion contracts encapsulates the criterion of the significant disequilibria generated between the contractual parties, as emphasized in a landmark decision of the CJEU, pronounced in case C-

[1] Juanita GOICOVICI, „Consumatorul aparent și profesionistul veritabil: frontierele (volutele) noțiunii de «consumator»", în Adriana Almășan, Ioana Vârsta, Cristina Elisabeta Zamșa (coord.), *In honorem Flavius Antoniu Baias. Aparența in drept*, Hamangiu, București, 2021, vol. 2, pp. 727-752.

[2] Juanita GOICOVICI, *Dreptul relațiilor dintre profesioniști și consumatori,* Hamangiu, Bucharest, 2022, pp. 172-176.

537/13[3], the reasoning of which was restated in the alignment of the recitals of the CJEU decisions in cases C-335/21[4] and C-395/21[5].

In case C-395/21, the Lithuanian consumer paid in advance the sum of EUR 5600 for the legal advice services covered by the five B2C agreements concluded with an individual law firm, each of those contracts containing the clause at issue that the fees were set at EUR 100 per hour of legal consultations provided to the client, while stipulating that certain amounts will be paid immediately after the consultations had been provided, calculated according to the number of hours of consultations involved. The dispute was caused by the consumer's refusal to pay the amounts mentioned in the invoices issued by the law firm; subsequently, a legal action has been brought before courts against the consumer for an order to pay the amount of approximately EUR 10,000 (more precisely, EUR 9900) invoiced for legal advice and the amount of approximately EUR 200 as expenses incurred in the context of enforcement, increased by annual interest in the amount of 5% of the due fees. This claim partially admitted by the court of first instance, for approximately 6500 euros. Congruently, the appellate court (Supreme Court of Lithuania), which was the referring court, highlighted a pair of issues on which it requested the interpretative intervention of the CJEU, relating to the requirements of transparency of the clauses in contracts for the provision of

[3] CJEU, C9, BIRUTĖ ŠIBA VS. ARŪNAS DEVĖNAS, C-537/13, of 15.I.2015, ECLI:EU:C:2015:14, online: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62013CJ0537&qid=1703415477562.

[4] CJEU, C9, VICENTE VS. DELIA, C-335/21, of 22.IX.2022, ECLI:EU:C:2022:720, online: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62021CJ0335&qid=1703415856504.

[5] CJEU, C4, D.V. VS. M.A., C-395/21, of 12.I.2023, ECLI:EU:C:2023:14, online: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62021CJ0395&qid=1703416001139.

legal services (i), while also requesting clarification on the effects when admitting the unfairness of a clause fixing the price (or the cost) of legal services (ii).

The referring court's first concern was centred on a possible exclusion of this type of claim from the substantial scope of Directive 93/13 on unfair terms and of Directive 2019/2161, in particular considering that it related to the issue of fixing the price component, which would have excluded it *outright* from the category of adhesion clauses eligible for the control of unfairness, except if it had presented a non-transparent and ambiguous wording for the consumer, which would have repositioned the disputed terms in the categories of contractual provisions subject, and not exempted from judicial control on unfairness, from the angle of application of article 4, 2nd para. of the revised Directive 93/13.

Saliently, in case C-395/21, the dilemmatic nature of the assessment of the unfair nature of the litigious terms related to the apparently insurmountable difficulties raised by the possible return to the previous situation, posterior to the inactivation of the litigious terms with retroactive effect, given that the retroactivity in declaring the voidance of unfair terms[6] (or in establishing their *inter partes* unenforceability) would be impossible to reconcile with the irreversibility of the effects already produced, consisting of the providing of legal advice services from which the consumer has benefited and which, by their nature, are exempt from the category of reversible effects of judicial actions. This irreversibility of the services of an intellectual nature provided to the consumer (while applying attorney fees the amount of which has been established in a non-transparent manner) could attract an

[6] Paola IAMICELI, „The «Punitive Nullity» of Unfair Terms in Consumer Contracts and the Role of National Courts: A Principle-Based Analysis", *Journal of European Consumer and Market Law*, vol. 12, n. 4, 2023, pp. 142-150.

undesirable effect, of unjust enrichment of the consumer, implying an unfair situation towards the professional who has already provided those services.

The tertiary plan of the dilemma brought before the CJEU referred to a possible reduction by the court of the level of the legal counselling fees (based not on its visibly exaggerated, exorbitant, or disproportionate nature in relation to the object of the litigious case, but based on the non-transparent criteria, which remained unexplained when issuing the consent to adhesion agreement). The intervention concerned the services that the consumer benefited from in the form of services of legal advice and whether such a reductive intervention of the court would not compromise the deterrent effect[7] of article 7, 1st para. of Directive 93/13. Saliently, the argument was based on the assertion that, if professionals could rely in advance on a moderate intervention by the courts, in the sense of partially 'amputating' the effects of the unfair term, while *pro parte* maintaining its effectiveness (for example, by reducing the amount of fees and tariffs charged by the service provider under the litigious terms), professionals would manifest disinterest in avoiding or not resorting to unfair terms[8] and instead professionals would engage in distorted contractual conduct[9], resorting *prima facie* to unfair

[7] Juanita GOICOVICI, „Aprecierea caracterului abuziv al clauzelor contractuale în cazuistica recentă a CJUE și impactul acesteia asupra jurisprudenţei naţionale: schimbări palpabile sau implicare secvenţială", *Analele Ştiinţifice ale Universităţii Alexandru Ioan Cuza din Iaşi, seria Ştiinţe Juridice,* vol. 66, n. 2, 2020, pp. 47-64.

[8] *Ibidem.*

[9] Juanita GOICOVICI, „Faţetele bunei-credinţe a profesionistului în evaluarea clauzelor abuzive din contractele de credit încheiate de consumatori", în Adriana ALMĂȘAN, Flavius-Antoniu BAIAS, Bogdan DUMITRACHE, Ioana VÂRSTA, Cristina Elisabeta ZAMȘA (coord.), *In honorem Corneliu Bîrsan. Ius est ars boni et aequi*, Hamangiu, Bucureşti, 2023, vol. II, pp. 497-528.

clauses without fear of other sanctions. The *proferens*[10] would thus rely on the tempering effects of these clauses, due to the judges' intervention and, for obvious reasons, such reasoning would undermine the preventive and deterrent effect of Directive 93/13, which postulated a general prohibition on resorting to disequilibrated terms in B2C adhesion agreements.

II. Assessing the disequilibrated nature of B2C terms based on the unfitting to the exigences of transparency

A. Clauses addressing the ancillary elements of the onerous counterpart

National courts' mission in establishing the unfair nature of contractual terms is portrayed using a preliminary criterion of selection, since, as a general principle under European Consumer Law, clauses referring to price conditions or to the core elements of the onerous object of the B2C contracts remain outside the perimeter of the analysis on 'significant imbalance' caused to consumer through inserting the litigious clause. Basically, for the terms which fall within the concept of 'object of the contract' (Article 4, 2nd para. of Directive 93/13), previous jurisprudential benchmarks have been set by the CJEU, who estimated that the assessing of the disequilibrated nature might be applied to these clauses which determine patrimonial benefits, and which describe the onerous nature of the B2C contract. Congruently, clauses that have an ancillary connection to those defining the onerous segments cannot be included in the 'main object of the contract', as illustrated, in particular, by the CJEU's decision in the *Andriciuc*

[10] Lucian BERCEA, „Contractul de adeziune. O analiză structurală şi funcţională a standardizării contractuale", *Revista Română de Drept Privat*, n. 4, 2020, pp. 367-372.

case[11], and also by the CJEU's judgment of 22 September 2022, in case C-335/21, *Vicente*[12]. Thus, when the litigious term consists in the price clause, which relates to the remuneration of legal services, based on an hourly rate, the mentioned clause, which establishes the fees and indicates the criteria for establishing their rate, is one of the clauses which remain definitory for the onerous nature of the agreement. This relationship being characterized precisely by the providing of the onerous nature of legal services, is, consequently, related to the 'main object of the contract', as described in Article 4, 2nd para. of Directive 93/13, amended by Directive 2019/2161 and remains outside the juridical assessment, except for the cases in which the litigious terms present an untransparent format.

In case C-335/21, salient questions have been raised concerning the classification of the litigious terms and the CJEU panel retained that the clause agreed between the lawyer and the consumer, which provides for the payment of fees in the event that the client withdraws from the judicial proceedings initiated while being represented by the lawyer or concludes an agreement without the knowledge of the law firm, is not to be considered as included under Article 4(2) of Directive 93/13/EEC, due to the fact it is not the main clause relating to the onerous elements, respectively to the price and it is rather a term referring to additional or ancillary onerous components, such as the penalties applicable to certain types of consumer conduct. In our opinion, although the conclusion remains adequate, these terms must be seen as eligible for judicial assessment of the unfair nature; yet, the judicial control might merely approach the transparency of the B2C penalizing term, since, although ancillary to the main price elements, it remains a marginal

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11 CJEU, C-186/16, EU:C:2017:703, paragraphes 35 and 36.

12 CJEU, C-335/21, EU:C:2022:720, paragraphe 78.

component of the onerous nature of the B2C contract on legal counselling services.

Relevancy was recognized to the fact that, in case C-335/21, the consumer approached the law firm after reading a promotional text by means of an advertorial not mentioning the 'penalization for withdrawal' clause; one may conclude that the interested person was merely informed on the price of the legal services, while the penalty clause was not explained to the consumer. Therefore, it was not established that the consumer was aware of the penalty clause applicable for withdrawal from the judicial procedures before signing the contract on legal counselling services.

B. Clarity and intelligibility of the litigious clause using the 'average consumer' standard

In terms of assessing the clarity and intelligibility of the litigious clause, one must observe that, if that clause determines the lawyer's fees by reference to a scale of a bar association, which lays down different rules applicable, without any reference to that clause being made in the context of prior disclosure, using the average consumer' epitome, the question arises as to whether that clause can be regarded as plainly intelligible[13]. The reference therefore focuses on the classification of the clause within the scope of

[13] *Idem*, paragraphe 23.

Directive 93/13/EEC[14] (i), its clarity and intelligibility[15] (ii), as well as the possible classification of dishonest B2C practices[16] (iii).

Concerning the withdrawal clause, it has been retained that the insertion of the mentioned clause in the B2C contract on legal counselling services, without being mentioned in the commercial offer or in the prior information delivered to the prophane party, constitutes a concealment of significant information influencing the consumer's assent to enter the contractual relationship (ii).

While assessing the content and accessibility of the withdrawal clause, the CJEU panel retained that the clause referred to a scale of the local Bar Association[17] not disclosed to the consumer. Basically, both the main arguments concerned the interpretation of the rules on misleading commercial practices between the lawyer and the client, such as the terms

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[14] COMMISSION DES CLAUSES ABUSIVES (France), „La clause de tarif horaire des honoraires d'avocat relève de l'objet principal du contrat. CJUE, 12 janvier 2023, affaire C-395/21 – D. V.", online: https://www.clauses-abusives.fr/jurisprudence/la-clause-de-tarif-horaire-des-honoraires-davocat-releve-de-lobjet-principal-du-contrat/.

[15] COMMISSION DES CLAUSES ABUSIVES (France), „La clause qui se limite à fixer un tarif horaire de l'avocat n'est pas compréhensible pour le consommateur. CJUE, 12 janvier 2023, affaire C-395/21 – D. V.", online: https://www.clauses-abusives.fr/jurisprudence/la-clause-qui-se-limite-a-fixer-un-tarif-horaire-de-lavocat-nest-pas-comprehensible-pour-le-consommateur/.

[16] COMMISSION DES CLAUSES ABUSIVES (France), „Si la clause fixant les honoraires de l'avocat est abusive, le juge peut exonérer le consommateur de son obligation de paiement. CJUE, 12 janvier 2023, affaire C-395/21 – D. V.", online: https://www.clauses-abusives.fr/jurisprudence/si-la-clause-fixant-les-honoraires-de-lavocat-est-abusive-le-juge-peut-exonerer-le-consommateur-de-son-obligation-de-paiement/.

[17] COMMISSION DES CLAUSES ABUSIVES (France), „Le déséquilibre significatif ne peut en principe être caractérisé du seul fait du défaut de transparence. CJUE, 12 janvier 2023, affaire C-395/21 – D. V.", online: https://www.clauses-abusives.fr/jurisprudence/le-desequilibre-significatif-ne-peut-en-principe-etre-caracterise-du-seul-fait-du-defaut-de-transparence/.

penalizing[18] the client for withdrawing from the initiated judicial procedures[19].

According to recital (41) in case C-335/21, the debate was also centred on whether the litigious clause penalizing the consumer for withdrawal from judicial proceedings must be seen as a 'compensation clause' or as a 'penalty clause' the possible unfair nature of which would be subject to national courts' control. However, even if a penalizing clause were to be considered eligible for judicial examination, since the 'penalty for withdrawal' clause relates to the predominant onerous aspects of the contract, it was necessary to examine whether it satisfied the requirements of transparency towards the consumer. In that regard, the CJEU panel observed that the 'penalty for withdrawal' clause was placing the consumer in the position of evasively anticipating the economic consequences of the unilaterally withdrawal from judicial procedures.

III. Formal exigences applicable to the formation of legal counselling contracts

The legal definition extracted from article 4 of Directive 93/13, amended by Directive 2019/2161 captures the fact that, in the economy of unfair terms, the lack of direct negotiation of the contract, the professional's breach of the exigences of lawful conduct and the existence of a consistent

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[18] Patrick LINGIBÉ, „Avocats: le contrôle des clauses abusives d'une convention d'honoraires", published on 31.X.2022, online: https://www.actu-juridique.fr/professions/avocats-le-controle-des-clauses-abusives-dune-convention-dhonoraires/.

[19] Nicolae-Horia ȚIȚ, „Încuviințarea executării silite a debitorului consumator-exigențe europene, realități naționale", *Analele Științifice ale Universităţii Alexandru Ioan Cuza din Iași, seria Științe Juridice*, vol. 66, n. 2, 2020, pp. 91-110.

imbalance[20], on either the patrimonial or the procedural part, are decisive elements in evaluating the unfair nature[21] of the litigious clause[22]. The EU legislator defined[23] the two elements, from which one presents subjective components (consisting in the coercion[24] to which the professional resorted, in the latter's capacity of *proferens,* and the malicious intent of the professional), corroborating objective elements, such as: (a) the circumstances under which the unbalanced formation of contract occurs; (b) the objective, economic or procedural effects of the term drafted by *proferens* (the significant, disproportionate imbalance disadvantaging the consumer, as *adherens*).

Under the Romanian legislation, according to the amended version in force from July 1st, 2024 of article 121 of the Statute of the legal profession of attorney, the formation of legal counselling contracts is based on the consensually exchanged wills, as a guiding principle which is postulated without differentiating according to the taxonomy of contracts concluded between professionals (B2B contracts) or between the individual law firm / associated lawyers and consumers. In terms of formal exigences, the commented statute is mentioning the validity of the contractual version

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[20] Claire-Marie PÉGLION-ZIKA, *La notion de clause abusive. Étude de droit de la consommation*, L.G.D.J., Paris, 2018, pp. 84-92.

[21] *Ibidem.*

[22] Riccardo SERAFIN, „The Court of Justice on Unfair Terms and Supplementation of the Contract: How Far Is Too Far?”, *Journal of European Consumer and Market Law*, vol. 12, n. 4, 2023, pp. 150-158.

[23] Mónika JÓZON, „Judicial governance by unfair contract terms law in the EU: Proposal for a New Research Agenda for Policy and Doctrine”, *European Review of Private Law*, vol. 28, n. 4, 2020, pp. 909-930.

[24] Juanita GOICOVICI, *Dicționar de dreptul consumului*, C.H. Beck, București, 2010, pp. 128-136.

recorded in a document under private signature, electronic signature or in an integral digital format which is requested exclusively for *ad probationem* reasons. Moreover, by specifying the validity of a verbal commitment, the commented text reinforces the consensual valences of the contracts for the providing of legal counselling. In our view, the first element which fragilizes the effectiveness of the commented statutory text lies in the absence of any differentiation according to the B2B or B2C nature of the contractual relationships, which, in our opinion, remains an omission that undermines the importance of the informative formalism imposing on the professionals a duty to expressly insert, in writing or on durable digital support, specific clauses that clarify for the consumer the onerous implications of the contractual commitment.

IV. Dual assessment: eliminating the litigious unfair terms *versus* the suppression of unfair commercial practices

Faced with the issue of finding a possible infringement of the standards of lawful conduct, by the *proferens*, in the context of resorting to untransparent contractual terms, thus infringing the prohibition of introducing unfair terms[25] in B2C contracts, but also of a possible infringement of the prohibitory norms on unfair B2C practices, the CJEU panel retained in the second paragraph of the judgment delivered on 22 September 2022, in case C-335/21, an affirmative answer to the question on the pertinency of the dual qualification, in relation to the possibility of

[25] Mónika JÓZON, „Unfair contract terms law in Europe in times of crisis: Substantive justice lost in the paradise of proceduralisation of contract fairness”, *Journal of European Consumer and Market Law*, vol. 6, n. 4, 2017, pp. 157-166.

cumulating the two legal repressive mechanisms[26] for the same non-transparent act or conduct of the professional (the qualification as an unfair clause, respectively the qualification as a B2C unfair practice), specifying that the insertion of a clause providing for a financial penalty should the client withdraw from the judicial proceedings entrusted to the lawyer, represent both a resorting to unilaterally-drafted unfair terms and an unfair B2C practice. The litigious clause referring to the scale of a professional association and not being mentioned in the B2C offer or in the informative note send to the consumer, could be eliminated by the decision of national courts, on grounds related to its untransparent content. Simultaneously, on grounds related to the unfairness of such B2C practices, this type of conduct may be described as a misleading commercial practice, prohibited in B2C relations.

Professionals' compliance to the requirements of professional diligence is assessed in terms of assessing the reasonableness of the measures taken by the professional to disclose pertinent information[27]. While the professional is not expected to engage in exorbitant efforts, the professional is not allowed to manifest an inexcusable negligence or an intentional malice in B2C relationships. Nevertheless, in almost all litigious contexts, the professional would be facing the irrebuttable presumption of knowledge in the field of its activity (presuming the possessing of an acceptable level of specialized skills). As mentioned in the previous paragraphs, the fact that the professional neglected to provide relevant, essential information remains

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[26] Juanita GOICOVICI, „Multiple-Party, Multi-Claim Litigation and Permissive Joinder – Perspectives on the Consumer Law", *Studia Universitatis Babes Bolyai Iurisprudentia*, vol. 63, n. 4, 2018, pp. 35-63.

[27] Charlotte PAVILLON, Benedikt SCHMITZ, „Measuring Transparency in Consumer Contracts: The Usefulness of Readability Formulas Empirically Assessed", *Journal of European Consumer and Market Law*, vol. 9, n. 5, 2020, pp. 191-200.

unjustifiable; instead, it can be perceived as an aggravating circumstance. It remains important to observe that the rebuttable presumption of culpable omission, at the antipode of the principles governing the proving of illicit conduct under the provisions of 'classical' Contracts law, resorts to the rule according to which the consumer vulnerability[28] is assessed by using the 'average consumer' standard, and the professional's omission to deliver pertinent information clarifying the economic reverberations for the consumer would be treated as the expression of malicious conduct[29] or of inexcusable negligence[30].

V. Typologies of 'significant imbalance' caused by the effects of the unfair terms and legal treatment of evasive clauses

The taxonomy[31] of B2C terms causing ostensible imbalance between the professional and the consumer includes the terms generating a direct economic imbalance[32]. The 'significant imbalance' may also take the form of indirect economic imbalance[33], particularly in the case of clauses that circumvent the legal provisions on statutory compensation. Imbalances in the allocation of contractual risks or imbalances of responsibility[34] (such as imbalanced liability) are also included in the category of 'significant imbalances' caused using unfair B2C terms.

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[28] Lucian BERCEA, *op. cit.,* pp. 371-372.

[29] Juanita GOICOVICI, *Dreptul relațiilor (...)*, pp. 134-137.

[30] *Idem*, pp. 138-141.

[31] *Idem*, pp. 172-173.

[32] *Idem*, pp. 174-175.

[33] *Ibidem.*

[34] *Idem*, pp. 176-177.

The legal counselling services contract may take the form of a letter of commitment indicating the legal relationship between the lawyer and the addressee of the letter, including legal services and fees, signed by the lawyer, and sent to the client. If the client signs the letter under any express mention of acceptance of the content of the letter, it acquires the value of a legal assistance contract. Congruently, the legal assistance contract might have been tacitly concluded should the consumer had paid the fee mentioned therein, the payment of the fees usually having the meaning the acceptance of the contract by the consumer, in which case the date of conclusion of the contract would be the date mentioned in the B2C contract. The legal counselling contract may exceptionally also be concluded in a verbal form, in which case the written version of the contract or the 'durable medium' version will be drafted as soon as possible and delivered to the consumer; divergent interpretations of the B2C contract would be addressed under the principle of 'favourable interpretation' enounced in article 77 of the Romanian Code of consumer rights, all evasive terms being interpreted in favour of the consumer, as *adherens*.

Conclusions

Addressing the unfair terms on attorney fees, from the angle of the non-transparent content could be pivotal for eliminating clauses causing a significant imbalance between parties, such as the clause penalizing the consumer for withdrawing from judicial procedures. Firstly, the litigious clause which gives rise to lawyer's right to fees by simply referring to a scale of a bar association, while the latter sets out different rules applicable without any reference to the clause on the establishing of the value of fees in the

commercial offer delivered to the consumer, would represent a dishonest B2C practice penalizing the consumer for ignoring the attorney's opinion and not to desist of his/her own accord from the judicial procedure the consumer has entrusted to the lawyer, under a financial penalty.

As emphasized in case C-335/21, the inserting in a B2C contract of a 'penalty for withdrawal' clause might create disproportionate advantages for the *proferens* to the detriment of the *adherens*. Thus, the national courts can examine the clause which refers, for the calculation of the contractual penalty that it provides, to the scale of the professional order of lawyers, the content of which would be difficult to access for the consumer prior to emitting his/her consent and that would create difficulties for the consumer in understanding its financial reverberations, This reasoning is pertinent particularly if that clause were to be applied, that the consumer would be obliged to payment of a contractual penalty that may reach a significant amount, of even disproportionate consequences for the *adherens*.

Corroborated to retaining the voidance of the 'penalty for withdrawal' clause, providing for a penalty to be paid should the consumer withdrew from the judicial procedures entrusted to the lawyer might represent a species of illicit and unloyal commercial conduct in B2C relations. Nevertheless, it is worth noting that national courts may resort to the rebuttable presumption of malicious conduct, reversing the burden of proof, and allowing the consumer to be exempted from proving the maleficent intention of the professional, on the latter being incumbent the burden of proof on the legitimacy of professional's omissive conduct which (under certain economic or procedural circumstances) might represent an B2C illegal commercial practice.

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