



Reports of Cases

Case C-725/19

IO

v

Impuls Leasing România IFN SA

(Request for a preliminary ruling from the Judecătoria Sector 2 București)

Judgment of the Court (Grand Chamber), 17 May 2022

(Reference for a preliminary ruling – Directive 93/13/EEC – Unfair terms in consumer contracts – Principle of equivalence – Principle of effectiveness – Enforcement proceedings in respect of a leasing contract constituting an enforceable instrument – Objection to enforcement – National legislation not allowing the court hearing that objection to determine whether the terms of an enforceable instrument are unfair – Power of the court hearing the enforcement proceedings to examine of its own motion whether a term is unfair – Existence of an action under ordinary law allowing the review of whether those terms were unfair – Requirement of a security in order to suspend the enforcement proceedings)

Consumer protection – Unfair terms in consumer contracts – Directive 93/13 – Enforcement proceedings in respect of a leasing contract constituting an enforceable instrument – No power for the national court hearing the objection to enforcement to ascertain whether the terms of that instrument were unfair – Power of the court adjudicating on the substance to ascertain whether those terms were unfair in an action under ordinary law – No power for that court to suspend the enforcement proceedings – Requirement of a security to be paid by the consumer – Not permissible – Inconsistent with the principle of effectiveness

(Council Directive 93/13, Arts 6(1) and 7(1))

(see paragraphs 39-45, 53-60, operative part)

Résumé

The Court has received five requests for a preliminary ruling from, Spanish courts (*Ibercaja Banco*, C-600/19, and *Unicaja Banco*, C-869/19), an Italian court (*SPV Project 1503*, C-693/19 and C-831/19) and a Romanian court (*Impuls Leasing România*, C-725/19), all concerning the interpretation of the Directive on unfair terms.¹

Those requests form part of different types of proceedings. Thus, the request in *Ibercaja Banco* concerns mortgage enforcement proceedings in which the consumer did not lodge any objection and the right of ownership of the mortgaged property had already been transferred to a third party. In *Unicaja Banco*, the request was made in appeal proceedings brought following the

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29, ‘the Directive on unfair terms’).

judgment in *Gutiérrez Naranjo and Others*.² For their part, the requests for a preliminary ruling in the Joined Cases *SPV Project 1503* concern enforcement proceedings based on enforceable instruments which have acquired the force of *res judicata*. Lastly, the request in *Impuls Leasing România* has been made in the context of enforcement proceedings on the basis of a leasing contract forming an enforceable instrument.

By its four Grand Chamber judgments, the Court of Justice develops its case-law on the obligation and power of national courts to examine of their own motion whether contractual terms are unfair under the Directive on unfair terms. In that regard, the Court clarifies the interaction between the principle of *res judicata* and time-barring, on the one hand, and the review of unfair terms by the courts, on the other. The Court also rules on the scope of that review in accelerated proceedings for the recovery of consumer debt and on the relationship between certain procedural principles enshrined in national law relating to appeals and the power of a national court to examine of its own motion whether contractual terms are unfair.

Findings of the Court

In the first place, the Court clarifies the relationship between the principle of *res judicata* and the power of the court hearing the enforcement proceedings to examine of its own motion, in the course of order for payment proceedings, whether a contractual term forming the basis of that order is unfair.

In that regard, the Court finds that the Directive on unfair terms³ precludes national legislation under which, where an order for payment has not been the subject of an objection lodged by the debtor, the court hearing the enforcement proceedings may not review the potential unfairness of the contractual terms on which that order is based, on the ground that the force of *res judicata* of that order applies by implication to the validity of those terms. More specifically, legislation under which an examination of the court's own motion of the unfairness of contractual terms is deemed to have taken place and to have the force of *res judicata*, even where there is no statement of reasons to that effect in the decision issuing the order for payment, is liable to render meaningless the national court's obligation to examine of its own motion the potential unfairness of those terms. In such a case, the requirement of effective judicial protection necessitates that the court hearing the enforcement proceedings is able to assess, including for the first time, whether the contractual terms which served as the basis for the order for payment are unfair. The fact that, at the time when the order became final, the debtor was unaware that he or she could be classified as a 'consumer', within the meaning of that directive, is irrelevant in that regard.

In the second place, the Court examines the interaction between the principle of *res judicata*, time-barring and the power of a national court to examine of its own motion whether a contractual term is unfair in the course of mortgage enforcement proceedings.

² Judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980). In that judgment, the Court of Justice essentially held that the case-law of the Tribunal Supremo (Supreme Court, Spain) imposing a temporal limitation on the repayment of amounts that consumers wrongly paid to banks on the basis of an unfair term known as a 'floor clause', was contrary to Article 6(1) of the Directive on unfair terms and that those consumers are, therefore, entitled to repayment in full of those amounts pursuant to that provision.

³ In particular, Article 6(1) and Article 7(1) of that directive.

First, the Court finds that the Directive on unfair terms⁴ precludes national legislation which, by virtue of the effect of *res judicata* and time-barring, neither allows a court to examine of its own motion whether contractual terms are unfair in the course of mortgage enforcement proceedings, nor a consumer, after the expiry of the period for lodging an objection, to raise the unfairness of those terms in those proceedings or in subsequent declaratory proceedings. That interpretation of the directive is applicable where those terms have already been examined by the court of its own motion, at the stage when the mortgage enforcement proceedings were initiated, but the decision authorising the mortgage enforcement does not contain any express reference or grounds concerning that examination, nor state that such an examination could no longer be called into question if an objection were not lodged. Since the consumer was not informed of the existence of an examination by the court of its own motion of the unfairness of the contractual terms, in the decision authorising the mortgage enforcement, he or she was unable to assess, with full knowledge of the facts, whether it was necessary to bring proceedings against that decision. An effective review of the possible unfairness of contractual terms could not be guaranteed if the force of *res judicata* extended also to judicial decisions which do not indicate such a review.

Secondly, the Court finds, on the other hand, that national legislation which does not allow a national court, acting of its own motion or at the request of the consumer, to examine the possible unfairness of contractual terms once the mortgage security has been realised, the mortgaged property sold and the ownership rights in that property transferred to a third party, is compatible with the Directive on unfair terms.⁵ That conclusion is, however, subject to the condition that the consumer whose mortgaged property has been sold can assert his or her rights by means of subsequent proceedings with a view to obtaining compensation for the financial damage caused by the application of the unfair terms.

In the third place, the Court examines the relationship between certain national procedural principles governing appeal proceedings, such as the principle of the delimitation of the subject matter of an action by the parties, the principle of the correlation between the claims put forward in the action and the rulings contained in the operative part, and the principle of the prohibition of *reformatio in peius*, and the national court's power to examine of its own motion whether a term is unfair.

In that regard, the Court considers that the Directive on unfair terms⁶ precludes the application of such national procedural principles, under which a national court, hearing an appeal against a judgment temporally limiting the repayment of sums wrongly paid by the consumer under a term declared to be unfair, cannot raise of its own motion a ground relating to the infringement of a provision of that directive and order the repayment of those sums in full, where the failure of the consumer concerned to challenge that temporal limitation cannot be attributed to his or her complete inaction. As regards the case in the main proceedings before the referring court, the Court states that the fact that the consumer concerned did not bring an appeal within an appropriate period might be attributable to the fact that the period within which she could bring an appeal had already expired when the Court delivered the judgment in *Gutiérrez Naranjo and Others*, by which it held that national case-law temporally limiting the restitutory effects connected with the finding of unfairness of a contractual term by a court was incompatible with that directive. Consequently, in the case in the main proceedings, the consumer concerned had not displayed complete inaction in failing to bring an appeal. In those circumstances, the

⁴ Idem.

⁵ Idem.

⁶ In particular Article 6(1) of that directive.

application of the national procedural principles depriving her of the means enabling her to assert her rights under the Directive on unfair terms is contrary to the principle of effectiveness, since it is liable to make the protection of those rights impossible or excessively difficult.

In the fourth and last place, the Court considers the power of the national court to examine of its own motion whether the terms of an enforceable instrument are unfair when hearing an objection to enforcement of that instrument.

In that regard, the Court finds that the Directive on unfair terms⁷ and the principle of effectiveness preclude national legislation which does not allow the court hearing the enforcement proceedings in respect of a debt, before which an objection to enforcement has been lodged, to assess, of its own motion, or at the request of the consumer, whether the terms of a contract which constitutes an enforceable instrument are unfair, where the court having jurisdiction to rule on the substance of the case, which may be seised of a separate action under the ordinary law with a view to an assessment as to whether the terms of that contract are unfair, may only suspend the enforcement proceedings until a decision has been given on the substance if a security is paid, calculated for example on the basis of the value of the subject matter of the action, at a level that is likely to dissuade the consumer from bringing and maintaining such an action. As regards that security, the Court states that the costs which legal proceedings would entail in relation to the amount of the disputed debt must not be such as to discourage the consumer from bringing an action before the court. However, it is likely that a debtor in default does not have the financial resources necessary to provide the guarantee required. That is all the more so if the value of the actions brought greatly exceeds the total value of the contract, as would appear to be the case in the action in the main proceedings.

⁷ In particular, Article 6(1) and Article 7(1) of that directive.