



Reports of Cases

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 – Mortgage agreement – Unfairness of the ‘floor clause’ in the agreement – National rules concerning the judicial appeal procedure – Limitation of the temporal effects of the declaration that an unfair term is void – Restitution – Power of review by the national appeal court of its own motion)

In Case C-869/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 27 November 2019, received at the Court on 28 November 2019, in the proceedings

L

v

Unicaja Banco SA, formerly Banco de Caja España de Inversiones, Salamanca y Soria SAU.

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Arabadjiev, K. Jürimäe, C. Lycourgos, E. Regan, S. Rodin (Rapporteur) and I. Jarukaitis, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, M. Safjan, F. Biltgen, P.G. Xuereb, N. Piçarra, L.S. Rossi and A. Kumin, Judges,

Advocate General: E. Tanchev,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 26 April 2021,

after considering the observations submitted on behalf of:

- L, by M. Pérez Peña, abogado,
- Unicaja Banco SA, formerly Banco de Caja España de Inversiones, Salamanca y Soria SAU, by J.M. Rodríguez Cárcamo and A.M. Rodríguez Conde, abogados,
- the Spanish Government, by S. Centeno Huerta and M.J. Ruiz Sánchez, acting as Agents,

* Language of the case: Spanish.

- the Czech Government, by M. Smolek, J. Vlácil and S. Šindelková, acting as Agents,
 - the Italian Government, by G. Palmieri, acting as Agent, and by G. Rocchitta, avvocato dello Stato,
 - the European Commission, by N. Ruiz García, J. Baquero Cruz and C. Valero, acting as Agents,
 - the Kingdom of Norway, by L.-M. Moen Jünge, M. Nilsen and J.T. Kaasin, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 15 July 2021,
- gives the following

Judgment

- 1 This request 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).
- 2 The request has been made in proceedings between L and Banco de Caja España de Inversiones, Salamanca y Soria SAU, the successor in title to which is Unicaja Banco SA (together, ‘the bank’), concerning the failure of the national appeal court to raise of its own motion a ground relating to infringement of EU law.

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 6(1) of Directive 93/13 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.’

Spanish law

- 5 Article 1303 of the Código Civil (‘the Civil Code’) states:

‘When an obligation has been declared void, the contracting parties must restore to one another those things that formed the subject matter of the contract, together with the profits derived therefrom, and the price together with interest, without prejudice to the following articles.’

- 6 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 in Article 216:

'Civil courts before which cases are brought shall dispose of them on the basis of the facts, evidence and claims put forward by the parties, save where otherwise provided by law in specific cases.'

- 7 Article 218(1) of the LEC provides as follows:

'Legal decisions must be clear and precise and must be commensurate with the request and other claims of the parties, made in a timely manner in the course of the proceedings. Those decisions must contain the requisite declarations, find in favour of or against the defendant and settle all points in dispute which form the subject matter of the litigation.'

The court, without departing from the cause of action by accepting elements of fact or points of law other than those which the parties intended to raise, must give its decisions in accordance with the rules applicable to the case, even though they may not have been correctly cited or pleaded by the parties to the procedure.'

- 8 Article 465(5) of the LEC is worded as follows:

'Orders or judgments issued in appeals must rule solely on the points and matters raised in the appeal and, where applicable, in the written statements of opposition or challenge referred to in Article 461. Decisions may not be to the detriment of the appellant, unless the detriment is the result of upholding a challenge to the decision in question brought by the original respondent.'

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

- 9 By an agreement concluded on 22 March 2006, the bank granted L a mortgage loan in the amount of EUR 120 000 to finance the purchase of a single-family house. That loan was repayable in 360 monthly instalments. The loan was taken out at the fixed rate of 3.35% for the first year, then at the variable rate for the remaining years, the latter rate being calculated by adding 0.52% to the one-year Euribor rate. That agreement provided for a 'floor clause' pursuant to which the variable rate could not be less than 3%.
- 10 The referring court states that the bank applied the 'floor clause' to L in 2009, when the Euribor rate fell sharply. In January 2016, L brought an action before the Juzgado de Primera Instancia de Valladolid (Court of First Instance, Valladolid, Spain) against the bank, seeking a declaration that that clause was void and the repayment of the sums wrongly received under the clause. L argued that since she had not been adequately informed of the existence of the clause and of its relevance in the structure of the loan agreement at issue, it had to be declared unfair on account of its lack of transparency. In its defence, the bank objected that L had been informed of the inclusion of that clause in the loan agreement.
- 11 By judgment of 6 June 2016, the Juzgado de Primera Instancia de Valladolid (Court of First Instance, Valladolid) upheld the action, finding that the 'floor clause' was unfair on the ground that it lacked transparency. That court therefore ordered the bank to repay L the sums wrongly received by it under that clause, together with interest. It held, however, that repayment took effect only from 9 May 2013, pursuant to the judgment of the Tribunal Supremo (Supreme Court, Spain) No 241/2013 of 9 May 2013 ('the judgment of 9 May 2013'), which limits the temporal effects of a declaration that such a 'floor clause' is void. It also ordered the bank to pay costs.

- 12 On 14 July 2016, the bank brought an appeal against that judgment before the Audiencia Provincial de Valladolid (Provincial Court, Valladolid, Spain), in so far as it had been ordered by that judgment to pay all the costs. The bank submitted that since L's action had been upheld only in part, because of the limitation of the temporal effects of the declaration that the clause concerned was void, it ought not to have been ordered to pay all the costs of that action.
- 13 By judgment of 13 January 2017, the appeal court allowed the appeal, setting aside the first-instance judgment in so far as it had ordered the bank to pay the costs. The referring court states that the appeal court did not vary the operative part of the first-instance judgment in so far as it relates to the restitutory effects of the declaration that the aforementioned clause was void, since those effects were not the subject of the appeal. The referring court adds that, in order to set aside the first-instance judgment in part, the appeal court did not rely on the judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980), by which the Court ruled that Article 6(1) of Directive 93/13 precludes national case-law, such as that resulting from the judgment of 9 May 2013, which temporally limits the restitutory effects, connected with a finding of unfairness by a court in respect of a clause contained in a contract concluded between a consumer and a seller or supplier, to amounts overpaid by that consumer after the delivery of the decision in which the finding of the unfairness of that clause is made.
- 14 L brought an appeal in cassation before the Tribunal Supremo (Supreme Court) against the judgment on appeal. In support of her appeal, L submitted that, by failing to apply the judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980), and by failing to order of its own motion the total repayment of the amounts paid pursuant to the 'floor clause', the Audiencia Provincial de Valladolid (Provincial Court, Valladolid) infringed, inter alia, Article 1303 of the Civil Code, which regulates the restitutory effects connected with the invalidity of obligations and contracts, read in conjunction with Article 6(1) of Directive 93/13, which establishes that unfair terms are not binding on consumers. The bank contended that that appeal should be dismissed, on the ground that since L had not appealed against the first-instance judgment in so far as it temporally limited the restitutory effects of the declaration that the unfair term at issue was void, she was not entitled to bring an appeal relating to the temporal limitation of those effects.
- 15 The referring court states that, in the disputes pending before the Spanish courts on the date of the judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980) – in which the Court held that Article 6(1) of Directive 93/13 precludes the case-law of the Tribunal Supremo (Supreme Court) arising from the judgment of 9 May 2013 temporally limiting the restitutory effects of the invalidity of the 'floor clauses' contained in contracts concluded between consumers and sellers or suppliers – consumers had, in accordance with that national case-law, limited their applications to seeking repayment of the amounts overpaid after 9 May 2013. Pursuant to various principles of Spanish civil procedure, 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*, the Audiencia Provincial de Valladolid (Provincial Court, Valladolid) did not, in the present case, order the full repayment of the amounts received under the 'floor clause', since L had not brought an appeal against the first-instance judgment.

- 16 In that regard, the referring court observes that the principle that unfair terms are not binding on consumers, laid down in Article 6(1) of Directive 93/13, is not absolute and may, therefore, be subject to limitations relating to the sound administration of justice, such as *res judicata* or the setting of reasonable time limits for bringing proceedings, failing which they will be time-barred. The rule of Spanish law according to which, where part of the operative part of a judgment is not challenged by any of the parties, the appeal court cannot deprive it of its effects or alter the wording thereof, displays certain similarities with *res judicata*.
- 17 The referring court is, however, uncertain as to the compatibility with Article 6(1) of Directive 93/13 of 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*, provided for by national law. More specifically, it asks whether, in the light of the judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980), a national court hearing an appeal brought exclusively by a bank, and not by the consumer, must, notwithstanding those principles, order the full repayment of the amounts received pursuant to the unfair term.
- 18 In those circumstances the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does Article 6(1) of [Directive 93/13] preclude the application of the procedural principles of delimitation of the subject matter of an action by the parties, correlation between the claims put forward in the action and the rulings contained in the operative part and prohibition of *reformatio in peius*, that prevent the court seised of the appeal, lodged by the bank against a judgment that placed a temporal limit on repayment of the amounts overpaid by the consumer under a “floor clause” subsequently declared void, from ordering repayment in full of the said overpayments, thereby placing the appellant in a worse position, because the consumer has not appealed against the said limit?’

Consideration of the question referred

- 19 By its question, the referring court asks, in essence, whether Article 6(1) of Directive 93/13 must be interpreted as precluding the application of principles of national judicial procedure, 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 that provision and order the repayment of those sums in full.
- 20 It must be borne in mind that, under Article 6(1) of Directive 93/13, Member States must lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier are not be binding on the consumer.
- 21 In addition, Directive 93/13, as is apparent from Article 7(1) in conjunction with the 24th recital of that directive, obliges the Member States to provide for adequate and effective means to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers (judgment of 26 June 2019, *Addiko Bank*, C-407/18, EU:C:2019:537, paragraph 44 and the case-law cited).

- 22 In the absence of EU legislation, the detailed rules governing procedures for safeguarding the rights which individuals derive from EU law fall within the domestic legal system of the Member States, by virtue of the principle of procedural autonomy of those States. However, those rules must be no 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) (judgment of 26 June 2019, *Addiko Bank*, C-407/18, EU:C:2019:537, paragraph 46 and the case-law cited).
- 23 As regards the principle of equivalence, as the Advocate General observed in point 44 of his Opinion, it is for the national court to determine, in the light of the detailed procedural rules applicable in national law, whether that principle is observed, having regard to the subject matter, cause of action and essential elements of the actions concerned (see, in particular, judgment of 20 September 2018, *EOS KSI Slovensko*, C-448/17, EU:C:2018:745, paragraph 40).
- 24 In that regard, the Court has ruled that Article 6(1) of Directive 93/13 must be regarded as a provision of equal standing to national rules which rank, within the domestic legal system, as rules of public policy (judgment of 17 May 2018, *Karel de Grote – Hogeschool Katholieke Hogeschool Antwerpen*, C-147/16, EU:C:2018:320, paragraph 35).
- 25 It follows that, in accordance with the principle of equivalence, where, under domestic law, the national court ruling in appeal proceedings has a discretion or the obligation to assess of its own motion the legality of a legal measure in the light of national rules of public policy, it must also have a discretion or the obligation, even though the question of the legality of that measure in the light of those rules was not raised at first instance, to assess of its own motion the legality of such a measure in the light of Article 6(1) of Directive 93/13. Thus, in such a situation, where the information in the file before the national appeal court leads to uncertainty as to whether a contractual term is unfair, that court is required to assess of its own motion the legality of that term in the light of the criteria laid down in that directive (see, to that effect, judgment of 30 May 2013, *Jörös*, C-397/11, EU:C:2013:340, paragraph 30).
- 26 The parties which have lodged written observations before the Court in the present proceedings differ as to the existence of case-law of the Tribunal Constitucional (Constitutional Court, Spain) or of the Tribunal Supremo (Supreme Court), according to which the application of rules of public policy by a court of its own motion would constitute an exception to the principles of judicial procedure at issue. Since Article 6 of Directive 93/13 constitutes a provision of equal standing to a national rule of public policy, it follows that if, in accordance with national case-law, such rules of public policy are regarded as an exception to the application of the principles of judicial procedure at issue, the national court hearing the appeal must be able to raise of its own motion a ground relating to the infringement of Article 6(1) of Directive 93/13.
- 27 It is for the referring court to determine whether such national case-law exists. If the existence of such case-law were to be confirmed, the referring court would be required, in accordance with the principle of equivalence, to disapply the abovementioned principles of judicial procedure and either allow the consumer to exercise the rights which he or she derives from Directive 93/13 and his or her right to invoke the case-law of the Court of Justice, or do so of its own motion.
- 28 As regards the principle of effectiveness, it follows from the Court's case-law that every case in which the question arises whether a national procedural 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, and, where relevant, 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 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 53). From that point of view, the Court has held that the need to comply with the principle of effectiveness cannot be stretched so far as to make up fully for the complete inaction on the part of the consumer concerned (judgment of 1 October 2015, *ERSTE Bank Hungary*, C-32/14, EU:C:2015:637, paragraph 62).

- 29 In addition, the Court has stated that the obligation on the Member States to ensure the effectiveness of the rights that individuals derive from EU law, particularly the rights deriving from Directive 93/13, implies a requirement for effective judicial protection, reaffirmed in Article 7(1) of that directive and also guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union, which applies, inter alia, to the definition of detailed procedural rules relating to actions based on such rights (see, to that effect, judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 29 and the case-law cited).
- 30 In this respect, the Court has ruled that, without effective review of whether the terms of the contract concerned are unfair, observance of the rights conferred by Directive 93/13 cannot be guaranteed (judgment of 4 June 2020, *Kancelaria Medius*, C-495/19, EU:C:2020:431, paragraph 35 and the case-law cited).
- 31 It follows that the conditions laid down in the national laws, to which Article 6(1) of Directive 93/13 refers, may not adversely affect the substance of the right that consumers acquire under that provision not to be bound by a term deemed to be unfair (judgments of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 71, and of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 51).
- 32 That said, attention should be drawn to the importance, both for the EU legal order and for the national legal systems, of the principle of *res judicata*. Indeed, the Court has already had occasion to observe that, in order to ensure stability of the law and legal relations, as well as the sound administration of justice, it is important that judicial decisions which have become definitive, after all rights of appeal have been exhausted or after expiry of the time limits provided to exercise those rights, can no longer be called into question (see, in particular, judgments of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraphs 35 and 36, and of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 46).
- 33 Moreover, the Court has recognised that consumer protection is not absolute. In particular, it has held that EU law does not require a national court to disapply domestic rules of procedure conferring finality on a decision, even if to do so would make it possible to remedy an infringement of a provision, regardless of its nature, contained in Directive 93/13 (see, to that effect, judgments of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 37, and of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 68), subject, however, in accordance with the case-law recalled in paragraph 22 above, to compliance with the principles of equivalence and effectiveness.
- 34 In paragraph 72 of its judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980), the Court thus held that the temporal limitation of the legal effects stemming from the declaration of nullity in respect of ‘floor clauses’ made by the

Tribunal Supremo (Supreme Court) in its judgment of 9 May 2013 is tantamount to depriving, in general, any consumer who had concluded, before that date, a mortgage loan agreement containing such a clause, of the right to obtain repayment in full of the amounts wrongly paid by him or her to the bank, on the basis of that clause, during the period before 9 May 2013.

- 35 The Court found, therefore, that national case-law, such as that following from the judgment of 9 May 2013 of the Tribunal Supremo (Supreme Court), concerning the temporal limitation of the legal effects resulting, in accordance with Article 6(1) of Directive 93/13, from the finding that a contractual term is unfair, ensures only limited protection for consumers who have concluded a mortgage loan agreement containing a ‘floor clause’ before the date of the judgment in which the finding of unfairness was made, such protection therefore being incomplete and insufficient and not constituting either an adequate or effective means of preventing the continued use of that type of term, contrary to Article 7(1) of Directive 93/13 (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 73).
- 36 In those circumstances, the Court has held that Article 6(1) of Directive 93/13 must be interpreted as precluding national case-law that temporally limits the restitutory effects connected with a finding of unfairness by a court, in respect of a clause contained in a contract concluded between a consumer and a seller or supplier, to amounts wrongly paid under such a clause after the delivery of the decision in which the finding of unfairness is made (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 75).
- 37 In the case in the main proceedings, it is common ground that the consumer did not lodge an appeal or cross-appeal against the first-instance judgment imposing a temporal limitation on the restitutory effects as regards the amounts received under the unfair term.
- 38 However, it should be pointed out that, in the circumstances of the present case, the fact that a consumer did not bring proceedings within the appropriate period may be attributable to the fact that, when the Court delivered the judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980), the period within which it was possible to bring an appeal or cross-appeal under national law had already expired. In such circumstances, the consumer cannot be regarded as having displayed complete inaction within the meaning of the case-law referred to in paragraph 28 above, in not challenging before an appeal court hitherto settled case-law of the Tribunal Supremo (Supreme Court).
- 39 It follows that, in depriving the consumer of the procedural means enabling him or her to assert his or her rights under Directive 93/13, the application of the principles of national judicial procedure at issue is liable to make the protection of those rights impossible or excessively difficult, thereby undermining the principle of effectiveness.
- 40 In the light of the foregoing, the answer to the question referred for a preliminary ruling is that Article 6(1) of Directive 93/13 must be interpreted as precluding the application of principles of national judicial procedure, 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 that provision 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.

Costs

- 41 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:

Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding the application of principles of national judicial procedure, 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 that provision 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.

[Signatures]