



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

17 July 2014*

(Reference for a preliminary ruling — Directive 93/13/EEC — Article 7 — Charter of Fundamental Rights of the European Union — Article 47 — Consumer contracts — Mortgage loan agreement — Unfair terms — Mortgage enforcement proceedings — Right to an appeal)

In Case C-169/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Provincial de Castellón (Spain), made by decision of 2 April 2014, received at the Court on 7 April 2014, in the proceedings

Juan Carlos Sánchez Morcillo

María del Carmen Abril García

v

Banco Bilbao Vizcaya Argentaria, SA,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits (Rapporteur), M. Berger, S. Rodin and F. Biltgen, Judges,

Advocate General: N. Wahl,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 30 June 2014,

after considering the observations submitted on behalf of:

- Juan Carlos Sánchez Morcillo and María del Carmen García, by P. Medina Aina, procurador de los tribunales, and P.-J. Bastia Vidal, abogado,
- Banco Bilbao Vizcaya Argentaria SA, by B. García Gómez and J. M. Rodríguez Cárcamo, abogados,
- the Spanish Government, by S. Centeno Huerta and A. Rubio González, acting as Agents,
- the European Commission, by M. Owsiany-Hornung and E. Gippini Fournier and M. van Beek, acting as Agents,

after hearing the Advocate General,

* Language of the case: Spanish.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between Mr Sánchez Morcillo and Ms Abril García, the applicants in the main proceedings, and Banco Bilbao Vizcaya Argentaria SA ('Banca Bilbao') concerning their objection to the enforcement of a mortgage against their home.

Legal context

EU law

- 3 The ninth recital in the preamble to Directive 93/13 states:

'... [A]cquirers of goods and services should be protected against the abuse of power by the seller or supplier ...'
- 4 Article 1(1) of the directive is worded as follows:

'The purpose of this directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.'
- 5 Article 3 of the directive provides:

'1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.

...

3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.'
- 6 In accordance with Article 7(1) of the directive:

'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 The annex to Directive 93/13 lists the terms referred to in Article 3(3) thereof. It includes, in particular, the following terms:

‘1. Terms which have the object or effect of:

...

(q) excluding or hindering the consumer’s right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

...’

Spanish law

- 8 Chapter III of Law 1/2013, of 14 March 2013, laying down measures to strengthen the protection of mortgage debtors, debt restructuring and social rents (Ley de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social) of 14 May 2013 (BOE No 116, of 15 May 2013, p. 36373, ‘Law 1/2013’) amended the Code on Civil Procedure (Ley de enjuiciamiento civil) of 7 January 2000 (BOE No 7, of 8 January 2000, p. 575), which was itself amended by Decree Law 7/2013, introducing urgent fiscal and budgetary measures and promoting research, development and innovation (decreto-ley 7/2013 de medidas urgentes de naturaleza tributaria, presupuestarias y de fomento de la investigación, el desarrollo y la innovación) of 28 June 2013 (BOE No 155, of 29 June 2013, p. 48767, the ‘LEC’).
- 9 Article 695 of the LEC, regarding the procedure for opposing the enforcement of the mortgage agreement, provides as follows:

‘Opposition to enforcement

1. In proceedings under this chapter, an objection to enforcement by the party against whom enforcement is sought may be admitted only if it is based on the following grounds:

- (1) Extinction of the security or the secured obligation, ...
- (2) An error in determining the amount due, ...
- (3) In the case of enforcement against movable property mortgaged or property subject to a non-possessory pledge, the existence of another pledge, movable-property or immovable-property mortgage on, or seizure of, that property registered before the charge giving rise to the procedure, which must be proved by means of the corresponding certificate from the Registry.
- (4) The unfairness of a contractual term constituting the grounds for enforcement or that has determined the amount due.

2. If an objection is lodged under the previous paragraph, the Judicial Officer shall suspend enforcement and shall summon the parties to appear before the court that issued the general enforcement order, no earlier than 15 days after the issue of the summons; at the hearing the court shall hear the parties, admit the documents presented and within two days adopt, by way of order, such decision as it thinks fit.

3. An order upholding the objection to enforcement on grounds 1 and 3 of paragraph 1 of the present article shall stay enforcement; an order upholding the objection to the enforcement on ground 2 shall determine the sum in respect of which enforcement is to continue.

If ground 4 of paragraph 1 of the present article is upheld, enforcement shall be discontinued where it is based on the contractual term. In other cases, enforcement shall be continued without the application of the unfair term.

4. An appeal may lie against the order discontinuing enforcement or disapplying an unfair term.

Save in those circumstances, no appeal shall lie against orders adjudicating upon the objection to enforcement referred to in the present article and the effects of those orders shall be confined exclusively to the enforcement proceedings in which they are made.'

10 Article 552 of the LEC, which relates to the availability of an appeal if the court refuses to make an enforcement order, provides:

'1. If the court considers that the rules and requirements laid down by law for issuing an enforcement order have not been observed, it shall make an order refusing enforcement.

If the court finds that any of the terms that appear in one of the enforceable instruments referred to in Article 557(1) may be considered to be unfair, it shall hear the parties within 15 days. After hearing the parties, it shall give a ruling within 5 working days, in accordance with the provisions of Article 561(1)(3).

2. An appeal may lie directly against an order refusing enforcement; only the creditor shall take part in this procedure. The creditor may also, if it chooses, apply for review by the same jurisdiction before bringing the appeal.

3. Once the order refusing enforcement has become final, the creditor may assert its rights only in the relevant ordinary procedure, if this is not precluded by the principle of *res judicata* of the judgment or the final decision on which the request for enforcement was based.'

11 According to Article 557 of the LEC, relating to the procedure for objecting to enforcement based on instruments that are neither judicial nor arbitral:

'1. When enforcement is ordered on the basis of instruments referred to in Article 517(2)(4), (5), (6) and (7) and of other enforceable documents referred to in Article 517(2)(9), the party against whom enforcement is sought may lodge an objection, within the period and in the form provided for in the preceding article, only if he relies on one of the following grounds:

...

7° the instrument contains unfair terms.

2. If an objection referred to in the previous paragraph is made, the Judicial Officer shall suspend the enforcement by a measure of organisation of the procedure.'

12 Article 561(1) of the LEC concerns orders ruling on the objection on substantive grounds and is worded as follows:

‘1. After hearing the parties on an objection to enforcement not based on procedural defects and after any hearing that may be held, the court shall adopt, by order, for the purposes of enforcement only, one of the following decisions:

(1) to order the enforcement to proceed in respect of the amount ordered, if the objection is rejected in its entirety. If the objection was based on an excessive claim and was dismissed in part, enforcement shall be ordered only for the corresponding sum.

An order dismissing the objection in its entirety shall also order the defendant to the enforcement to pay the costs thereof, pursuant to the provisions of Article 394 as regards orders for costs at first instance.

(2) to declare that the enforcement shall not proceed if one of the grounds of objection set out in Articles 556 and 557 is upheld or if the objection that the claim is excessive is upheld in accordance with Article 558 and held to be well founded in its entirety.

(3) if one or more clauses are held to be unfair, the order to be made shall determine the consequences of such unfairness, directing either that enforcement is unavailable or ordering enforcement without application of the clauses considered unfair.

2. If the objection to enforcement is upheld, the enforcement shall be deprived of effect and the attachments and the measures adopted to secure the charge shall be lifted, and the defendant to the enforcement shall be restored to his situation before the enforcement order, in accordance with the provisions of Articles 533 and 534. The party seeking enforcement shall be ordered to pay the costs of the objection.

3. The order giving a ruling on the objection may be subject to an appeal, which shall not suspend enforcement if the decision under appeal rejected the objection.

If the decision under appeal upheld the objection, the party seeking enforcement may request the maintenance of the attachments and measures adopted as security and the adoption of measures pursuant to Article 697 of the present law. The court shall rule on these matters by way of order, provided that the party seeking enforcement provides sufficient security, fixed in the decision itself, to guarantee the compensation to which the defendant to the enforcement would be entitled if the decision in favour of the defendant were upheld.’

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

13 According to the order for reference, on 9 June 2003 the applicants in the main proceedings signed a notarial act with Banco Bilbao for the loan of EUR 300 500 secured by a mortgage on their property.

14 The repayment of that sum was due by 30 June 2028 spread over 360 monthly payments. If the debtors failed to meet their payment obligations, Banca Bilbao was authorised to claim the accelerated repayment of the loan granted to the debtors. Under clause 6 *bis* of the loan agreement, default interest was to be charged at 19% per annum, the statutory interest rate in Spain being, at the material time, 4% per annum.

- 15 Owing to failure by the applicants in the main proceedings to meet their obligation to make monthly repayments of the loan, on 15 April 2011 Banco Bilbao demanded payment of the entire loan together with ordinary interest and default interest and the enforced sale of the property mortgaged in its favour.
- 16 Following the bringing of enforcement proceedings, the applicants in the main proceedings lodged an objection thereto, which was rejected by a decision dated 19 June 2013 of the Juzgado de Primera Instancia No 3 de Castellón (Court of First Instance No 3, Castellón). The applicants in the main proceedings then brought an appeal against that decision which, being declared admissible, was sent before the Audiencia Provincial de Castellón (Provincial Court, Castellón).
- 17 The referring court explains that while Spanish civil procedure allows an appeal to be brought against a decision which, upholding the objection raised by a debtor, terminates the enforcement proceedings, it does not, by contrast, allow the debtor whose objection has been dismissed to bring an appeal against the judgment at first instance ordering the enforcement procedure to be carried out.
- 18 The referring court entertains doubts as to whether this national legislation is compatible with the objective of consumer protection pursued by Directive 93/13 or with the right to an effective remedy guaranteed by Article 47 of the Charter. That court specifies that the availability of an appeal to debtors could prove even more critical given that certain clauses in the loan agreement at issue could be considered to be ‘unfair’, within the meaning of Article 3(1) of Directive 93/13.
- 19 In those circumstances, the Audiencia Provincial de Castellón decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is it incompatible with Article 7(1) of Directive 93/13, which imposes on Member States the obligation to ensure that, in the interests of consumers, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers, for a procedural rule, such as that laid down in Article 695(4) [of the LEC], which, as regards the right to an appeal against a decision determining the outcome of an objection to enforcement proceedings in relation to mortgaged or pledged assets, to permit an appeal to be brought only against an order discontinuing the proceedings or disapplying an unfair clause and to exclude an appeal in other cases, the immediate consequence of which is that whilst the party seeking enforcement may appeal when an objection to enforcement is upheld and the proceedings are brought to an end or an unfair term is disappplied, the consumer party against whom enforcement is sought may not appeal if his objection is dismissed?
- (2) Within the ambit of EU legislation on consumer protection in Directive 93/13, does the principle of the right to an effective remedy, to a fair trial and to equality of arms, guaranteed by Article 47 of the Charter, preclude a provision of national law, such as that laid down in Article 695(4) [of the LEC], which, concerning the right of appeal against a decision ruling on an objection to enforcement against mortgaged or pledged assets, allows an appeal to be brought only against an order discontinuing the proceedings or disapplying an unfair term but excludes appeals in other cases, the direct result of which is that whilst the party seeking enforcement may appeal when an objection to enforcement is upheld and the proceedings brought to an end or an unfair term is disappplied, the party against whom the enforcement is sought may not bring an appeal if his objection is dismissed?’
- 20 Acceding to the request of the referring court, the President of the Court decided that this case should follow an accelerated procedure, under Article 23a of the Statute of the Court of Justice of the European Union and Article 105(1) of the Rules of Procedure of the Court (order in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:1388).

Consideration of the questions referred

- 21 By its two questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 7(1) of Directive 93/13, read in combination with Article 47 of the Charter, must be interpreted as precluding a system of enforcement, such as that at issue in the main proceedings, which provides that mortgage enforcement proceedings may not be stayed by the first instance court, which, in its final decision, may at most award compensation in respect of the damage suffered by the consumer, in so far as the latter, the debtor against whom mortgage enforcement proceedings are brought, may not appeal against a decision dismissing his objection to that enforcement, whereas the seller or supplier, the creditor seeking enforcement, may bring an appeal against a decision terminating the proceedings or declaring an unfair term inapplicable.
- 22 In this regard, it should be observed, first, that according to the Court's settled case-law, the system of protection introduced by the directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge (judgments in *Barclays Bank*, C-280/13, EU:C:2014:279, paragraph 32, and *Aziz*, C-415/11, EU:C:2013:164, paragraph 44).
- 23 As regards that weaker position, Article 6(1) of the directive provides that unfair terms are not binding on the consumer. That is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them (judgment in *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 40 and case-law cited).
- 24 In that context, the Court has already stated on several occasions that the national court is required to assess of its own motion whether a contractual term falling within the scope of the directive is unfair, compensating in this way for the imbalance which exists between the consumer and the seller or supplier, where it has available to it the legal and factual elements necessary to that end (*Aziz*, EU:C:2013:164, paragraph 46, and *Barclays Bank*, EU:C:2014:279, paragraph 34).
- 25 National enforcement proceedings, such as mortgage enforcement proceedings, are subject to the requirements arising out of this case-law of the Court which seeks to ensure the effective protection of consumers.
- 26 Thus, in connection with such proceedings, the Court has held that Directive 93/13 must be interpreted as precluding legislation of a Member State which does not allow the court before which an application for an order for payment has been brought to assess of its own motion, *in limine litis* or at any other stage during the proceedings, even though it already has the legal and factual elements necessary for that task available to it, whether a term concerning interest on late payments contained in a contract concluded between a seller or supplier and a consumer is unfair, in the case where that consumer has not lodged an objection (see *Banco Español de Crédito*, EU:C:2012:349, paragraph 57).
- 27 The Court has also decided that the directive must be interpreted as precluding the legislation of a Member State which, while not providing in mortgage enforcement proceedings for grounds of objection based on the unfairness of a contractual term on which the right to seek enforcement is based, does not permit the court before which declaratory proceedings have been brought, which does have jurisdiction to assess the unfairness of such a term, to grant interim relief, including, in particular, the staying of those enforcement proceedings, where the grant of such relief is necessary to guarantee the full effectiveness of its final decision (see *Aziz*, EU:C:2013:164, paragraph 64).
- 28 The Court's case-law has also established that Directive 93/13 precludes national legislation which does not allow the court responsible for the enforcement, in mortgage enforcement proceedings, either to assess of its own motion or at the consumer's request, the unfairness of a term contained in the contract which gives rise to the debt claimed and which constitutes the basis of the right to

enforcement, or to grant interim relief, including, in particular, staying the mortgage enforcement proceedings, where such relief is necessary to ensure the full effectiveness of the final decision of the court hearing the declaratory proceedings before which the consumer argues that that term is unfair (order in *Banco Popular Español and Banco de Valencia*, C-537/12 and C-116/13, EU:C:2013:759, paragraph 60).

- 29 In accordance with this case-law, and more particularly in response to the delivery of the judgment in *Aziz* (EU:C:2013:164), Law 1/2013 amended, in particular, those articles of the LEC relating to enforcement proceedings against mortgaged or pledged assets by introducing into Article 695(1) the possibility for the party opposing the mortgage enforcement proceedings to object to those proceedings on the ground that the contractual clause upon which the enforcement was based was unfair.
- 30 That legislative amendment has given rise to a new issue compared with that which resulted in the judgment in *Aziz* (EU:C:2013:164) and the order in *Banco Popular Español and Banco de Valencia* (EU:C:2013:759). That issue concerns the fact that the national legislation limits the possibility of appealing against a decision exclusively to the case in which the court at first instance has upheld an objection relying on the unfairness of the contractual clause upon which the enforcement is based, the legislation having created a difference of treatment between the consumer and the seller or supplier in their position as parties to the proceedings. In so far as an appeal is possible only when an objection is upheld, the seller or supplier may appeal against a decision which is contrary to its interests whilst, if the objection is dismissed, the consumer does not have that right.
- 31 In this respect, it must be noted that, in the absence of harmonisation of national enforcement procedures, the detailed rules establishing the right of appeal against a decision ruling on the legality of a contractual clause, arising in the course of mortgage enforcement proceedings, are matters falling within the domestic legal order of each Member State, in accordance with the principle of the procedural autonomy of the Member States. Nonetheless, the Court has emphasised that those detailed rules must meet the conditions that they should be no less favourable than those governing similar domestic situations (principle of equivalence) and that they should not in practice render impossible or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness) (see, to that effect, judgments in *Mostaza Claro*, C-168/05, EU:C:2006:675, paragraph 24; *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 38; *Aziz*, EU:C:2013:164, paragraph 50; and *Barclays Bank*, EU:C:2014:279, paragraph 37).
- 32 As regards, first, the principle of equivalence, it must be observed that the Court does not have before it any evidence that might raise doubts as to the compatibility of the legislation at issue in the main proceedings with that principle.
- 33 It is apparent, notably from the provisions of Article 695(1) and (4) of the LEC, that the Spanish procedural system does not provide that a consumer may bring an appeal against a decision dismissing his objection to the enforcement, not only when that objection is based on the unfairness, within the meaning of Article 6 of Directive 93/13, of a clause in the contract agreed between a seller or supplier and the consumer, but also when it is based on breach of a national rule of public policy, which it is, nevertheless, for the national court to ascertain (see *Aziz*, EU:C:2013:164, paragraph 52).
- 34 Second, as regards the principle of effectiveness, the Court has previously held 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, 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 (see, to that effect, judgments in *Asociación de Consumidores Independientes de Castilla y León*, C-413/12, EU:C:2013:800, paragraph 34, and *Pohotovost*, C-470/12, EU:C:2014:101, paragraph 51 and case-law cited).

- 35 Thus, the obligation for the Member States to ensure the effectiveness of the rights that the parties derive from Directive 93/13 against the use of unfair clauses implies a requirement of judicial protection, also guaranteed by Article 47 of the Charter, that is binding on the national court (see, to that effect, judgment in *Banif Plus Bank*, C-472/11, EU:C:2013:88, paragraph 29). That protection must be assured both as regards the designation of courts having jurisdiction to hear and determine actions based on EU law and as regards the definition of detailed procedural rules relating to such actions (see, to that effect, the judgment in *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 49).
- 36 In that connection, it should be observed that, according to EU law, the principle of effective judicial protection does not afford a right of access to a second level of jurisdiction but only to a court or tribunal (see, to that effect, judgment in *Samba Diouf*, C-69/10, EU:C:2011:524, paragraph 69). Consequently, the fact that the only remedy available to the consumer, as a debtor against whom mortgage enforcement proceedings are brought, is to bring an action before a single jurisdictional level in order to protect the rights derived from Directive 93/13 is not, in itself, contrary to EU law.
- 37 However, taking into consideration the role of Article 695(1) of the LEC within the context of the procedure as a whole, the following findings must be made.
- 38 First, it is apparent from the case-file submitted to the Court that, according to the Spanish procedural rules, mortgage enforcement proceedings relating to an asset that meets an essential need of the consumer, namely, provision of a dwelling, may be initiated by a seller or supplier on the basis of an enforceable notarial instrument, without the contents of that instrument having been subject to judicial scrutiny in order to determine whether one of more of the clauses is unfair. Such a right, afforded to a seller or supplier, renders it all the more necessary that the consumer, in the position of a debtor against whom mortgage enforcement proceedings are brought, can avail himself of effective judicial protection.
- 39 As regards the scrutiny exercised by the enforcing court, it should be observed, on the one hand, that as the Spanish Government confirmed at the hearing, notwithstanding the legislative amendments to the LEC made after the judgment in *Aziz* (EU:C:2013:164) introduced by Law 1/2013, Article 552(1) of the LEC does not oblige the enforcing court to examine of its own motion whether the contractual clauses upon which the request is based are unfair, but only a discretionary power to do so.
- 40 On the other hand, pursuant to Article 695(1) of the LEC, as amended by Law 1/2013, the party against whom mortgage enforcement proceedings are brought may raise an objection when founded, in particular, on the unfairness of a contractual clause upon which the enforcement is based or which allowed the sum due to be determined.
- 41 In that respect, however, it must be emphasised that, under the terms of Article 552(1) of the LEC, the assessment by the court of an objection based on the unfairness of the contractual clause is subject to time constraints, such as that of hearing the parties within 15 days and giving a ruling within 5 days.
- 42 Furthermore, it is apparent from the information provided to the Court that the Spanish procedural system in relation to mortgage enforcement is characterised by the fact that, once the procedure has been initiated, any other legal claim that the consumer might bring, including claims contesting the validity of the instrument enforced, enforceability, certainty, or extinction or the amount of the debt, is dealt with in separate proceedings and by a separate decision, without either one or the other having the effect of staying or terminating the pending enforcement proceedings, except in the

residual circumstances in which a consumer has lodged a preliminary application for annulment of the mortgage before the marginal note regarding issue of the security certificate (see, to that effect, *Aziz*, EU:C:2013:164, paragraphs 55 to 59).

- 43 Having regard to those characteristics, if the consumer's objection to the enforcement of the mortgage against his property is dismissed, the Spanish procedural system, taken as a whole and in the manner applicable in the main proceedings, exposes consumers, and possibly, as is the case in the main proceedings, their family, to the risk of losing their dwelling in an enforced sale, while the enforcing court may have, at most, delivered a rapid assessment of the validity of the contractual clauses upon which the seller or supplier bases his application. The protection that the consumer, as a mortgage debtor against whom enforcement proceedings are brought, might obtain by way of a separate judicial scrutiny undertaken in the context of substantive proceedings brought in parallel with the enforcement proceedings, cannot offset that risk because, even if the scrutiny revealed the existence of an unfair clause, the consumer would not be granted a remedy reflecting the damage he had suffered by restoring him to the situation he was in before the enforcement proceedings against the mortgaged property, but, at best, an award of compensation. The purely compensatory nature of the remedy that might be awarded to the consumer would confer on him only incomplete and insufficient protection. It would not constitute either adequate or effective means, within the meaning of Article 7(1) of Directive 93/13, of preventing the continued use of the clause, found to be unfair, in the instrument that contains a pledge by way of mortgage against a property on the basis of which enforcement proceedings were brought against that property (see, to that effect, *Aziz*, EU:C:2013:164, point 60).
- 44 In the second place, having regard once again to the role played by Article 695(4) of the LEC within the scheme of mortgage enforcement proceedings as a whole under Spanish law, it should be noted that that provision gives the seller or supplier, as a creditor seeking enforcement, the right to bring an appeal against a decision ordering a stay of enforcement or declaring an unfair clause inapplicable, but does not permit, by contrast, the consumer to exercise a right of appeal against a decision dismissing an objection to enforcement.
- 45 Therefore, it is clear that the procedure for objecting to enforcement, laid down by Article 695 of the LEC, before the national court places the consumer, as a debtor against whom mortgage enforcement proceedings are brought, in a weaker position compared with the seller or supplier, as a creditor bringing mortgage enforcement proceedings, as regards the judicial protection of the rights that he is entitled to rely on by virtue of Directive 93/13 against the use of unfair clauses.
- 46 In those circumstances, it must be stated that the procedural system at issue in the main proceedings places at risk the attainment of the objective pursued by Directive 93/13. The imbalance between the procedural rights available to the consumer, on the one hand, and to the seller or supplier on the other hand, simply accentuates the imbalance existing between the parties to the agreement, already mentioned at paragraph 22 of this judgment, and which is also echoed in the context of an individual action involving a consumer and the seller or supplier who is his co-contractor (see, by way of analogy, *Asociación de Consumidores Independientes de Castilla y León*, EU:C:2013:800, paragraph 50).
- 47 Furthermore, such a procedural system proves to be contrary to the Court's case-law according to which the specific characteristics of court proceedings, which take place under national law between sellers or suppliers and consumers, cannot constitute a factor liable to affect the legal protection from which consumers must benefit under the provisions of Directive 93/13 (see, to that effect, *Aziz*, EU:C:2013:164, paragraph 62).
- 48 It also follows that, in Spanish Law, if a consumer and a seller or supplier are parties to mortgage enforcement proceedings, the way in which the proceedings before the national court hearing an objection to the enforcement of the mortgage progress, under Article 695 of the LEC, is contrary to the principle of equality of arms or procedural equality. That principle is, however, an integral

element of the principle of effective judicial protection of the rights that individuals derive from EU law, such as that guaranteed by Article 47 of the Charter (see, to that effect, judgments in *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 48, and *Banif Plus Bank*, EU:C:2013:88, paragraph 29).

- 49 It is settled case-law that the principle of equality of arms, together with, among others, the principle *audi alteram partem*, is no more than a corollary of the very concept of a fair hearing that implies an obligation to offer each party a reasonable opportunity of presenting its case in conditions that do not place it in a clearly less advantageous position compared with its opponent (see the judgment in *Sweden v API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 88).
- 50 In those circumstances, it must be held that a national procedure for mortgage enforcement, such as that at issue in the main proceedings, is liable to jeopardise the effectiveness of consumer protection intended by Directive 93/13, read in conjunction with Article 47 of the Charter, in that the procedural system reinforces the inequality of arms between sellers or suppliers, as creditors in mortgage enforcement proceedings, on the one hand, and consumers, as debtors subject to mortgage enforcement proceedings, on the other hand, in the exercise of legal claims based on the rights that the latter derive from Directive 93/13, all the more so because the detailed procedural rules giving effect to such claims are incomplete and inadequate for preventing the continued application of an unfair clause contained in the instrument establishing the mortgage on the basis of which the seller or supplier brings enforcement proceedings against the property pledged as security.
- 51 In the light of these considerations, the answer to the questions referred is that Article 7(1) of Directive 93/13, read in conjunction with Article 47 of the Charter, must be interpreted as precluding a system of enforcement, such as that at issue in the main proceedings, which provides that mortgage enforcement proceedings may not be stayed by the court of first instance, which, in its final decision, may at most award compensation in respect of the damage suffered by the consumer, inasmuch as the latter, the debtor against whom mortgage enforcement proceedings are brought, may not appeal against a decision dismissing his objection to that enforcement, whereas the seller or supplier, the creditor seeking enforcement, may bring an appeal against a decision terminating the proceedings or ordering an unfair term to be disapplied.

Costs

- 52 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 (First Chamber) hereby rules:

Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding a system of enforcement, such as that at issue in the main proceedings, which provides that mortgage enforcement proceedings may not be stayed by the court of first instance, which, in its final decision, may at most award compensation in respect of the damage suffered by the consumer, inasmuch as the latter, the debtor against whom mortgage enforcement proceedings are brought, may not appeal against a decision dismissing his objection to that enforcement, whereas the seller or supplier, the creditor seeking enforcement, may bring an appeal against a decision terminating the proceedings or ordering an unfair term to be disapplied.

[Signatures]