



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

21 January 2015*

(Reference for a preliminary ruling — Directive 93/13/EEC — Contracts concluded between sellers or suppliers and consumers — Mortgage contracts — Default interest clauses — Unfair terms — Mortgage enforcement proceedings — Moderation of the amount of interest — Powers of the national court)

In Joined Cases C-482/13, C-484/13, C-485/13 and C-487/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia e Instrucción de Marchena (Spain), made by decisions of 12 August 2013, received at the Court on 10 September 2013, in the proceedings

Unicaja Banco, SA

v

José Hidalgo Rueda,

María del Carmen Vega Martín,

Gestión Patrimonial Hive SL,

Francisco Antonio López Reina,

Rosa María Hidalgo Vega (C-482/13),

and

Caixabank SA

v

Manuel María Rueda Ledesma (C-484/13),

Rosario Mesa Mesa (C-484/13),

José Labella Crespo (C-485/13),

Rosario Márquez Rodríguez (C-485/13),

Rafael Gallardo Salvat (C-485/13),

* Language of the cases: Spanish.

Manuela Márquez Rodríguez (C-485/13),

Alberto Galán Luna (C-487/13),

Domingo Galán Luna (C-487/13),

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin, E. Levits (Rapporteur), M. Berger 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 10 September 2014,

after considering the observations submitted on behalf of:

- Unicaja Banco, SA, by J. Almoguera Valencia, abogado,
- Caixabank SA, by J. Rodríguez Cárcamo, abogados and B. García Gómez, abogados,
- the Spanish Government, by A. Rubio González and S. Centeno Huerta, acting as Agents,
- the European Commission, by J. Rius, M. van Beek and G. Valero Jordana, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 October 2014,

gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Article 6 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
- 2 The requests have been made in proceedings between, (i), on the one hand, Unicaja Banco SA, and, on the other, Mr Hidalgo Rueda, Ms del Carmen Vega Martín, Gestión Patrimonial Hive SL, Mr López Reina and Ms Hidalgo Vega, (ii), Caixabank SA, and, firstly, Mr Rueda Ledesma and Mr Mesa Mesa, secondly, Mr Labella Crespo, Mr Márquez Rodríguez, Mr Gallardo Salvat and Ms Márquez Rodríguez, and, thirdly, Mr A. Galán Luna and Mr D. Galán Luna, concerning the recovery of unpaid debts arising from mortgage-loan contracts concluded between those parties in the main proceedings.

Legal context

Directive 93/13

- 3 Article 1(2) of Directive 90/13 provides:

‘The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party, particularly in the transport area, shall not be subject to the provisions of this Directive.’

4 Article 3(1) of that directive reads as follows:

‘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.’

5 Article 4(1) of that directive provides:

‘... the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.’

6 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.’

7 Pursuant to Article 7(1) of that 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.’

Spanish law

8 Under Spanish law, consumers were initially protected against unfair terms by General Law 26/1984 for the protection of consumers and users (*Ley General 26/1984 para la Defensa de los Consumidores y Usuarios*) of 19 July 1984 (BOE No 176 of 24 July 1984, p. 21686).

9 General Law 26/1984 was subsequently amended by Law 7/1998 on general contractual conditions (*Ley 7/1998 sobre condiciones generales de la contratación*) of 13 April 1998 (BOE No 89 of 14 April 1998, p. 12304), which transposed Directive 93/13 into Spanish national law.

10 Those provisions were codified by Royal Legislative Decree 1/2007 approving the consolidated text of the General Law for the protection of consumers and users and other supplementary laws (*Real Decreto Legislativo 1/2007 por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias*) of 16 November 2007 (BOE No 287 of 30 November 2007, p. 49181).

11 Under Article 83 of Royal Legislative Decree No 1/2007:

‘1. Unfair contract terms shall automatically be void and deemed not to have formed part of the contract.

2. That part of the contract deemed void shall be adjusted in accordance with the provisions of Article 1258 of the Civil Code and with the principle of objective good faith.

To that end, the court which rules that such terms are void shall remedy the contract and enjoy moderating powers with regard to the rights and obligations of the parties, where the contract continues in existence, and to the consequences of its being ruled ineffective in the event of

significant loss or damage to the consumer or user. Only where the remaining contract terms result in an imbalance in the respective positions of the parties which cannot be remedied may the court rule that the contract is ineffective.’

12 Following the judgment in *Aziz* (C-415/11, EU:C:2013:164), the Spanish legislation on consumer protection was amended by Law 1/2013 laying down measures for the strengthening of the protection of mortgagors, the restructuring of debt and social rent (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). That law amends, inter alia, certain provisions of Law 1/2000 on the Code of Civil Procedure (Ley 1/2000 de Enjuiciamiento Civil) of 7 January 2000 (BOE No. 7 of 8 January 2000, p. 575).

13 Accordingly, Article 552(1) of the Law on Civil Procedure, as amended by Article 7(1) of Law No 1/2013, provides:

‘When the court considers that any of the terms included in an enforceable instrument within the categories referred to in Article 557(1) can be deemed unfair, it shall allow a period of five [now 15] days for the parties to be heard. After hearing the parties, it shall make an appropriate order within the next five days, in accordance with the third subparagraph of Article 561(1).’

14 Article 7(3) of Law 1/2013 added subparagraph 3 to Article 561(1) of the Law on Civil Procedure, worded as follows:

‘When one or more terms are deemed 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 terms considered unfair.’

15 Article 7(14) of Law 1/2013 amends Article 695 of the Law on Civil Procedure by stating that the existence of unfair terms constitutes grounds for objection in the following terms:

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

...

4. The unfairness of a contractual term relied on as a basis for enforcement or determining the sum due.’

16 Article 3(2) of Law No 1/2013 also amends Article 114 of the Law on Mortgages (Ley Hipotecaria) through the addition of a third subparagraph worded as follows:

‘Default interest on loans or credits for the purchase of a habitual dwelling, secured by mortgages charged on the dwelling in question, may not be more than three times the statutory rate of interest and may accrue only on the outstanding principal. Such default interest may not in any circumstances be capitalised, except in the case provided for in Article 579(2)(a) of the Law on Civil Procedure.’

17 Finally, the Second Transitional Provision of Law No 1/2013 adds:

‘The limitation of default interest on mortgages on habitual dwellings, provided for in Article 3(2), shall apply to mortgages created after the entry into force of this Law.

Likewise, that limitation shall apply to default interest, provided for in mortgage loans secured on habitual dwellings and created before the entry into force of the Law, which falls due subsequently, and to any interest which, having accrued and fallen due by that date, has not been paid.

In proceedings for enforcement or extra-judicial sale commenced and not concluded by the time of the entry into force of this Law, and in proceedings in which the sum in respect of which an enforcement order or order for extrajudicial sale is sought has already been fixed, the Judicial Officer [Secretario judicial] or the notary shall allow the party seeking enforcement a period of 10 days in order to recalculate that sum in accordance with the preceding paragraph.'

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

- 18 The cases in the main proceedings concern mortgage enforcement proceedings initiated by Unicaja Banco and Caixabank for the enforcement of several mortgages arranged between 5 January 2007 and 20 August 2010 for amounts of between EUR 47 000 and EUR 249 000.
- 19 In Case C-482/13, the mortgage loan was subject to a default interest rate of 18%, which could be increased if the addition of four percentage points to the adjusted interest rate resulted in a higher interest rate, subject to a maximum nominal rate of 25% per annum. In Cases C-484/13, C-485/13 and C-487/13, the mortgage loans were subject to a default interest rate of 22.5%.
- 20 In addition, all the loan contracts in the cases in the main proceedings contain a clause authorising the lender, if the borrower fails to meet his payment obligations, to bring forward the maturity date initially agreed and require payment of all the outstanding capital debt, together with the interest, default interest, commission, expenses and costs agreed.
- 21 Between 21 March 2012 and 3 April 2013 Unicaja Banco and Caixabank brought enforcement proceedings before the referring court for the amounts due after application of the default interest rates laid down by the mortgage contracts at issue. As part of those actions, that court focused on the question of the 'unfair' nature, within the meaning of Article 3(1) of Directive 93/13, of the clauses relating to the default interest rates and the application of those rates to the capital whose early repayment is triggered by the delay in payment.
- 22 In that regard, the referring court nevertheless expresses doubt about the inferences which it must draw regarding the unfairness of those clauses under the Second Transitional Provision of Law 1/2013. Accordingly, if it were to apply that provision, it would fall to that court to adjust the default interest under the third subparagraph of that provision.
- 23 In those circumstances, the Juzgado de Primera Instancia e Instrucción de Marchena decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Under Directive 93/13 ..., and in particular Article 6(1) thereof, and in order to ensure the protection of consumers and users in accordance with the principles of equivalence and effectiveness, must a national court, when it finds there to be an unfair default-interest clause in mortgage loans, declare the clause void and not binding or, on the contrary, must it moderate the interest clause, referring the matter back to the party seeking enforcement, or to the lender, for adjustment of the interest?
- (2) Is the Second Transitional Provision of Law No 1/2013 ... nothing more than a clear limitation on the protection of consumer interests, in that it implicitly imposes upon the court the obligation to moderate a default-interest clause that could be considered to be unfair, adjusting the interest stipulated and maintaining in force a stipulation which was unfair, instead of declaring the clause to be void and not binding upon the consumer?

(3) Does the Second Transitional Provision of Law No 1/2013 ... contravene Directive 93/13 ..., and in particular Article 6(1) thereof, by preventing application of the principles of equivalence and effectiveness in relation to consumer protection and avoiding application of the penalty of nullity and lack of binding force in respect of default-interest clauses tainted by unfairness and stipulated in mortgage loans entered into before the entry into force of Law No 1/2013 ...?

24 By order of the President of the Court of 10 October 2013, Cases C-482/13 to C-487/13 were joined for the purposes of the written and oral procedure and of the judgment.

25 Cases C-486/13 and C-483/13 were disjoined, respectively, by orders of the President of the Court of 13 March and 3 October 2014, owing to their removal from the register.

Consideration of the questions referred

26 By its questions, which should be considered together, the referring court asks, in essence, whether Article 6(1) of Directive 93/13 must be interpreted as precluding a national provision under which the national court hearing mortgage enforcement proceedings is required to adjust the amounts due under the clause in a mortgage-loan contract providing for default interest at a rate more than three times greater than the statutory rate by applying a default interest rate which does not exceed that threshold.

27 In that regard, it should be noted at the outset that, according to the referring court, the clauses relating to default interest in the mortgage-loan contracts for which enforcement proceedings have been brought before it are unfair within the meaning of Article 3 of Directive 93/13.

28 In that context, it should be borne in mind that, as regards the inferences to be drawn from the finding of unfairness of a contract provision between a consumer and a professional, it follows from the wording of Article 6(1) of Directive 93/13 that national courts are merely required to exclude the application of an unfair contractual term in order that it may not produce binding effects with regard to the consumer, without being empowered to revise the content of that term. That contract must continue in existence, in principle, without any amendment other than that resulting from the deletion of the unfair terms, in so far as, in accordance with the rules of domestic law, such continuity of the contract is legally possible (judgments in *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 65, and in *Asbeek Brusse and de Man Garabito*, C-488/11, EU:C:2013:341, paragraph 57).

29 In particular, that provision may not be interpreted as allowing the national court, if it establishes that a penalty clause in a contract concluded between a seller or supplier and a consumer is unfair, to reduce the amount of the penalty imposed on the consumer instead of excluding the application of that clause in its entirety with regard to that consumer (judgment in *Asbeek Brusse and de Man Garabito*, EU:C:2013:341, paragraph 59).

30 Moreover, given the nature and significance of the public interest constituted by the protection of consumers, who are in a position of weakness vis-à-vis sellers or suppliers, Directive 93/13, as is apparent from Article 7(1) thereof, read in conjunction with its twenty-fourth recital, requires 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 (judgments in *Banco Español de Crédito*, EU:C:2012:349, paragraph 68, and in *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 78).

31 In fact, if it were open to the national court to revise the content of unfair terms, such a power would be liable to compromise attainment of the long-term objective of Article 7 of Directive 93/13. That power would contribute to eliminating the dissuasive effect for sellers or suppliers of the

straightforward non-application with regard to the consumer of those unfair terms, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be adjusted, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers (judgments in *Banco Español de Crédito*, EU:C:2012:349, paragraph 69, and in *Kásler and Káslerné Rábai*, EU:C:2014:282, paragraph 79).

- 32 In the light of the foregoing considerations, the Court has held that Article 6(1) of Directive 93/13 precludes a rule of national law which allows a national court, if it finds that an unfair term in a contract concluded between a seller or supplier and a consumer is void, to adjust the contract by revising the content of that term (judgments in *Banco Español de Crédito*, EU:C:2012:349, paragraph 73, and in *Kásler and Káslerné Rábai*, EU:C:2014:282, paragraph 77).
- 33 It is true that the Court has also recognised the possibility for the national court of substituting a supplementary provision of national law for an unfair term, provided that that substitution is consistent with the objective of Article 6(1) of Directive 93/13 and enables real balance between the rights and obligations of the parties to be restored. However, that possibility is limited to cases in which the invalidity of the unfair term would require the court to annul the contract in its entirety, thereby exposing the consumer to disadvantageous consequences (see, to that effect, *Kásler and Káslerné Rábai*, EU:C:2014:282, paragraphs 82 to 84).
- 34 However, in the case in the main proceedings, and subject to the checks to be made in this regard by the referring court, the annulment of the contractual clauses at issue could not have adverse consequences for the consumer, inasmuch as the amounts for which the mortgage enforcement proceedings have been brought will necessarily be lower in the absence of an increase by applying default interest laid down by those clauses.
- 35 Those principles having been reiterated, it is clear from the order for reference that the Second Transitional Provision of Law 1/2013 requires a moderation of default interest for loans or credit for the purchase of a principal residence and guaranteed by mortgages on the dwelling at issue. Accordingly, it is laid down that in proceedings for enforcement or extra-judicial sale commenced and not concluded by the time of the entry into force of that law, that is, on 15 May 2013, and in proceedings in which the sum in respect of which an enforcement order or order for extrajudicial sale is sought has already been fixed, that amount must be adjusted by applying default interest at a rate at most equal to three times the statutory rate, if the rate of default interest under the mortgage contract is higher than that rate.
- 36 As was pointed out by the Spanish Government, in its pleadings and at the hearing and by the Advocate General in points 38 and 39 of his Opinion as well, the application of the Second Transitional Provision of Law 1/2013 extends to any mortgage-loan contract and is thus distinguished from that of Directive 93/13 which concerns only unfair terms included in contracts concluded between a seller or supplier and a consumer. It follows that the obligation to respect the threshold corresponding to the default interest rate equal to three times the statutory interest rate, as it was intended by the legislature, is without prejudice to the assessment, by the court, of the unfairness of a term setting default interest.
- 37 In those circumstances, it must be borne in mind that, pursuant to Article 4(1) of Directive 93/13, the unfairness of a contractual term must be assessed taking into account the nature of the goods or services for which the contract was concluded and by referring, on the date of conclusion of the contract, to all the circumstances attending its conclusion. It therefore follows that the consequences of the term under the law applicable to the contract must also be taken into account. This requires consideration to be given to national law (see order in *Sebestyén*, C-342/13, EU:C:2014:1857, paragraph 29 and the case-law cited).

- 38 In that connection, it must be recalled, furthermore, that a national court, when hearing a case between individuals, is required, when applying the provisions of domestic law, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive (*Kásler and Káslerné Rábai*, EU:C:2014:282, paragraph 64).
- 39 Therefore, it is important to consider that, inasmuch as the Second Transitional Provision of Law 1/2013 does not prevent the national court, faced with an unfair term, performing its duties by removing that clause, Directive 93/13 does not preclude the application of such a national provision.
- 40 That implies, in particular, first, that when the national court is faced with a contractual term relating to default interest at a rate less than that provided by the Second Transitional Provision of Law 1/2013, the setting of that legislative ceiling does not prevent that court from assessing the possible unfairness of that clause, within the meaning of Article 3 of Directive 93/13. Accordingly, a default interest rate less than three times the statutory rate is not necessarily to be considered to be fair within the meaning of that directive.
- 41 Second, when the default interest rate laid down in a term in a mortgage-loan contract is higher than that provided by the Second Transitional Provision of Law 1/2013 and must, in accordance with that provision, be subject to a limitation, such a fact must not preclude the national court from, above and beyond that measure of moderation, drawing all the inferences of possible unfairness — in the light of Directive 93/13 — of the term which contains that rate, if necessary by annulling it.
- 42 Therefore, it follows from all the foregoing considerations that Article 6(1) of Directive 93/13 must be interpreted as not precluding a national provision under which the national court hearing mortgage enforcement proceedings is required to adjust the amounts due under a term in a mortgage-loan contract providing for default interest at a rate more than three times greater than the statutory rate in order that the amount of that interest may not exceed that threshold, provided that the application of that national provision:
- is without prejudice to the assessment by that national court of the unfairness of such a term and
 - does not prevent that court removing that clause if it were to find the latter to be ‘unfair’, within the meaning of Article 3(1) of that directive.

Costs

- 43 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 6 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a national provision under which the national court hearing mortgage enforcement proceedings is required to adjust the amounts due under a term in a mortgage-loan contract providing for default interest at a rate more than three times greater than the statutory rate in order that the amount of that interest may not exceed that threshold, provided that the application of that national provision:

- **is without prejudice to the assessment by that national court of the unfairness of such a term and**

— **does not prevent that court removing that term if it were to find the latter to be ‘unfair’, within the meaning of Article 3(1) of that directive.**

[Signatures]