



Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 13 May 2015¹

Case C-8/14

BBVA SA, formerly Unnim Banc SA,

v

Pedro Peñalva López,

Clara López Durán,

Diego Fernández Gabarro

(Request for a preliminary ruling)

from the Juzgado de Primera Instancia No 4 de Martorell (Spain))

(Reference for a preliminary ruling — Unfair terms in consumer contracts — Mortgage loan — Enforcement proceedings — Objection — One-month time-limit from the day following the date of publication of a law — Principles of equivalence and effectiveness)

I – Introduction

1. The Juzgado de Primera Instancia No 4 de Martorell (Court of First Instance No 4, Martorell, Spain) seeks in essence to ascertain whether the principles of equivalence and effectiveness of EU law preclude a national transitional provision which imposes on consumers a one-month time-limit, from the day following the date of publication of the law containing that provision in the official journal of the Member State concerned, within which to submit an objection based on the alleged unfairness of terms of the contract in the context of mortgage enforcement proceedings that are in progress.
2. That question joins the long list of questions raised in references for preliminary rulings concerning the conformity with EU law of various Spanish national provisions relating to mortgage enforcement proceedings which began with the judgment in *Aziz*.²
3. The present case is therefore an opportunity for the Court to clarify its case-law with regard to reasonable time-limits in the area of consumer protection.

II – Legal background

A – EU law

4. Article 6(1) of Directive 93/13 provides:³

¹ — Original language: French.

² — C-415/11, EU:C:2013:164.

³ — Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

‘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.’

5. Article 7(1) of that directive provides:

‘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.’

B – *Spanish law*

6. Directive 93/13 was transposed into Spanish law by Law 7/1998 on general contractual conditions (Ley 7/1998 sobre condiciones generales de la contratación) of 13 April 1998,⁴ and by Royal Legislative Decree 1/2007 approving the revised 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 2007.⁵

7. Law 1/2013 on the protection of mortgagors, restructuring of debt and social rent (Ley 1/2013, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social) of 14 May 2013⁶ (‘Law 1/2013’) amended the Civil Procedure Code (Ley de enjuiciamiento civil) of 7 January 2000,⁷ 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 2013.⁸

8. The Fourth Transitional Provision of Law 1/2013 (‘the Fourth Transitional Provision’) concerns enforcement proceedings instituted before the entry into force of Law 1/2013 and not yet concluded. That provision reads as follows:

- ‘1. The amendments to the Civil Procedure Code introduced by the present Law shall apply to enforcement proceedings that have been instituted at the date of entry into force of the present law only in respect of those enforcement measures still to be taken.
2. In any event, in enforcement proceedings in progress on the date of the entry into force of the present law in which the 10-day period for lodging an objection to enforcement laid down by Article 556.1 of the Civil Procedure Code has expired, the parties against whom enforcement is sought shall have a period of one month within which to submit an extraordinary application objecting to enforcement on the basis of the existence of the new grounds for objecting to enforcement set out in Article 557.1(7) and Article 695.1(4) of the Civil Procedure Code.

The period of one month shall start to run from the day following the entry into force of the Civil Procedure Code and the effect of the lodging by the parties of the application objecting to enforcement shall be to suspend proceedings until the application has been adjudicated upon, in accordance with the provisions of Article 558 *et seq.* and Article 695 of the Civil Procedure Code.

4 — BOE No 89 of 14 April 1998, p. 12304.

5 — BOE No 287 of 30 November 2007, p. 49181.

6 — BOE No 116 of 15 May 2013, p. 36373.

7 — BOE No 7 of 8 January 2000, p. 575.

8 — BOE No 155 of 29 June 2013, p. 48767.

The present transitional provision shall be applicable to all enforcement proceedings that have not led to the mortgagee's taking possession of the property in accordance with the provisions of Article 675 of the Civil Procedure Code.

3. Likewise, in enforcement proceedings in progress in which, on the entry into force of the present Law, the 10-day period for objecting to enforcement laid down by Article 556.1 of the Civil Procedure Code has already started to run, the parties against whom enforcement is sought shall enjoy the same period of one month provided for in the previous paragraph in order to submit an application on the basis of the existence of any of the grounds for objecting to enforcement provided for under Articles 557 and 695 of the Civil Procedure Code.
4. Publication of the present provision shall be considered full and valid notification for the purposes of notifying and calculating the periods provided for in paragraphs 2 and 3 of the present article, without its being necessary in any circumstances expressly to make an order in that respect.

...'

9. Proceedings for the enforcement of a mortgage are governed by Articles 681 to 698 of the Civil Procedure Code. In addition to those special provisions, other general provisions of the Civil Procedure Code are relevant for a proper understanding of such proceedings.

10. Article 556 of the Civil Procedure Code lays down a period of 10 days from the notification of the act ordering the enforcement within which the party against whom enforcement is sought may bring an action objecting to enforcement. That period is applicable to mortgage enforcement since a reference to that period appears in Article 557 of the Civil Procedure Code, relating to the procedure for objecting to enforcement based on instruments that are neither judicial nor arbitral (which includes authenticated instruments relating to mortgage loans which provide the basis for mortgage enforcement).

11. Article 557 of the Civil Procedure Code, as it reads in Law 1/2013, provides:

'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 Court Registry shall suspend the enforcement by a measure of organisation of the procedure.'

12. Article 695.1(4) of the Civil Procedure Code, as it reads in Law 1/2013, provides follows:

'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:

...

(4) the unfairness of a contractual term constituting the basis for enforcement or which has enabled the amount due to be calculated.

2. If an objection is lodged under the previous paragraph, the Court Registry 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.

...'

III – The facts of the case in the main proceedings, the question referred for a preliminary ruling and the proceedings before the Court

13. BBVA SA, formerly Unnim Banc SA, ('BBVA') brought proceedings for the enforcement of a mortgage against Mr Peñalva López, Ms López Durán and Mr Fernández Gabarro. Those proceedings were instituted before the entry into force of Law 1/2013, namely, on 15 May 2013. The proceedings had not yet been concluded on that date.

14. The defendants in the main proceedings brought an extraordinary action objecting to such enforcement on 17 June 2013, that is to say, after the expiry of the one-month period laid down in the Fourth Transitional Provision within which an extraordinary action objecting to enforcement must be brought. They contended before the referring court that the imposition of a limitation period for pleading the unfairness of terms contained in the enforceable decision was incompatible with Directive 93/13. In support of that contention, the defendants in the main proceedings rely on the case-law of the Court, inter alia the judgment in *Cofidis*.⁹

15. In addition, they claim that in any event that one-month period is blatantly too short and that the high number of people affected results in legal professionals being overwhelmed in dealing with all the situations arising.

16. The referring court considers it necessary, in order for it to be able to adjudicate on the case before it, for the Court to give a ruling on the influence or effect that procedural time-limits must have in order for it to be possible to make claims when it becomes apparent that a term that may be unfair is contained in the instrument permitting enforcement.

17. In those circumstances, the Juzgado de Primera Instancia No 4 de Martorell, by decision of 28 October 2013 received at the Registry of the Court on 10 January 2014, decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is the time-limit of one month provided for by the [Fourth Transitional Provision] contrary to the terms of Articles 6 and 7 of Directive 93/13?'

18. Written observations have been submitted by the parties to the main proceedings, the Spanish Government and the European Commission.

⁹ — C-473/00, EU:C:2002:705.

19. The parties to the main proceedings, the Spanish Government and the Commission presented their oral observations at a hearing held on 11 February 2015.

IV – Analysis

A – *The admissibility of the question referred for a preliminary ruling*

20. In its written observations, BBVA challenges the admissibility of the request for a preliminary ruling. It argues, first, that the question raised is hypothetical and that it is of no use to the referring court for the purposes of resolving the case before it. The referring court does not in fact specify the contractual terms at issue. BBVA considers, secondly, that following the delivery of the judgment in *Aziz*¹⁰ that same court was in a position to assess of its own motion the terms at issue. Thirdly, it claims that the unfair terms in question contained in the contract of which enforcement is sought have already been the subject of two complaints brought before the referring court.

21. I consider that those arguments should be dismissed. First of all, contrary to BBVA's assertions, the interpretation of EU law sought is relevant to the question referred for a preliminary ruling. Next, I consider that the referring court clearly states the reasons that led it to regard an interpretation of EU law as being necessary in order for it to give its judgment and that the question referred would have an impact on the outcome of the dispute in the main proceedings. Lastly, the fact that the referring court is entitled, following the delivery of the judgment in *Aziz*,¹¹ to raise of its own motion the issue of the existence of such unfair terms does not affect the right of the parties in the main proceedings to rely on the presence of unfair terms in the enforceable order on which the enforcement proceedings are based.

22. I note in that regard that, in the context of the judicial cooperation introduced in Article 267 TFEU, questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only in certain specific situations.¹² Moreover, the national court has sole jurisdiction to determine both the need for a preliminary ruling and the relevance of the questions which it submits to the Court.¹³

23. I therefore consider that the question referred is admissible.

B – *Analysis of the question referred for a preliminary ruling*

24. The question, as framed by the referring court, concerns the interpretation of Directive 93/13 in the context of a mortgage loan agreement, enforcement of which was in progress at the date of entry into force of Law 1/2013.

10 — C-415/11, EU:C:2013:164.

11 — C-415/11, EU:C:2013:164.

12 — Judgment in *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103, paragraph 35).

13 — See, inter alia, judgment in *Rosado Santana* (C-177/10, EU:C:2011:557, paragraph 32).

25. It should be noted first of all that, in the context of the procedure for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. In that light, the Court may have to reformulate the questions referred to it.¹⁴ To that end, the Court may extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the legislation and the principles of EU law that require interpretation in view of the subject-matter of the dispute.¹⁵

26. In the present case, I am of the view that, in the question it has referred for a preliminary ruling, the Juzgado de Primera Instancia No 4 de Martorell is actually asking the Court to interpret the principles of equivalence and effectiveness in the context of the implementation of Articles 6 and 7 of Directive 93/13, in order to enable it to assess whether the Fourth Transitional Provision complies with EU law.

27. In those circumstances, it is necessary to understand the question referred for a preliminary ruling as asking essentially whether, in the light of the principles of equivalence and effectiveness, Articles 6 and 7 of Directive 93/13 preclude a national transitional provision, such as that at issue in the case in the main proceedings, which imposes on consumers a one-month time-limit, from the day following that of the publication of the law containing that provision, within which to submit an objection based on the alleged unfairness of terms of the contract in the context of mortgage enforcement proceedings in progress.

28. In replying to that question I will examine it in four stages. In the first place, I will describe the background to the present case, putting forward a number of considerations with regard to Law 1/2013 in general and the Fourth Transitional Provision of that law in particular. Secondly, with regard to that transitional provision, I will look at the relevant case-law of the Court concerning the principles of equivalence and effectiveness, as they apply to different types of time-limits. Thirdly, I shall analyse in the light of that case-law the particular features of the time-limit at issue in the main proceedings, and, fourthly and lastly, I shall give the referring court guidance enabling it to decide whether EU law precludes such a time-limit.

1. Preliminary observations

29. The referring court, the parties to the main proceedings, the Spanish Government and the Commission have all made reference to the scope of Law 1/2013 and the Fourth Transitional Provision thereof.

a) Law 1/2013

30. According to the documents submitted to the Court, before the entry into force of Law 1/2013 a consumer was unable to plead unfairness of terms of a loan agreement as grounds for objecting to enforcement of a mortgage. The unfairness of such terms could not be assessed by the enforcing court either of its own motion or at the request of the consumer. The consumer was therefore deprived, both in specific mortgage enforcement proceedings in respect of mortgaged or pledged assets and in ordinary enforcement proceedings in respect of extrajudicial documents,¹⁶ of the possibility of obtaining a stay of those proceedings by the enforcing court, where such a measure was needed in order to ensure the effectiveness of the final decision.

14 — See, inter alia, judgments in *Krüger* (C-334/95, EU:C:1997:378, paragraphs 22 and 23); *Byankov* (C-249/11, EU:C:2012:608, paragraph 57); and *Efir* (C-19/12, EU:C:2013:148, paragraph 19).

15 — See, to that effect, inter alia, judgments in *Redmond* (83/78, EU:C:1978:214, paragraph 26) and *Byankov* (C-249/11, EU:C:2012:608, paragraph 58).

16 — For example, authenticated documents or instruments of commercial agreements such as bank contracts.

31. As is clear from the order for reference, that situation underwent significant change in response to the delivery of the judgment in *Aziz*.¹⁷ Law 1/2013 amended those articles of the Civil Procedure Code relating, in particular, to enforcement proceedings in respect of mortgaged or pledged assets in order to adapt mortgage enforcement proceedings to comply with that case-law.¹⁸ More specifically, the Spanish legislature amended the Civil Procedure Code, first, by permitting the enforcing court to assess of its own motion, at any point in the proceedings, the unfairness of such terms¹⁹ and, secondly, by adding a new ground of objection, based on the unfairness of a contractual term constituting the grounds for enforcement or that has determined the sum due.²⁰ Those amendments were regarded by legal writers as being a completely new feature of the Spanish legal system.²¹

32. It is also apparent from the documents in the case that objection by the party against whom enforcement is sought on grounds of the unfairness of a contractual term now permits *suspension of the mortgage enforcement proceedings* until the application objecting indirectly to enforcement has been adjudicated upon.²² Such objection is applicable in enforcement proceedings, whether ordinary or relating to a mortgage,²³ instituted after the entry into force of Law 1/2013 and must be brought within an ordinary period of 10 days from the notification of the act ordering enforcement.

17 — C-415/11, EU:C:2013:164. As a reminder, the Court held in that judgment that Directive 93/13 ‘must be interpreted as precluding 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’.

18 — See thirteenth and sixteenth recitals in the preamble to Law 1/2013.

19 — See Article 552.1 of the Civil Procedure Code. That article appears among the general provisions applicable to any enforcement proceedings. Consequently, review by the court of its own motion relates both to ordinary enforcement proceedings and proceedings for the enforcement of a mortgage. However, it should not be forgotten that the first paragraph of the Fourth Transitional Provision provides that the amendments to the Civil Procedure Code introduced by that Law are to be applicable to enforcement proceedings that have been instituted at the date of its entry into force, *only in respect of those enforcement measures that are pending*. According to the Commission, it is not clear from the Spanish law whether at the later stages of enforcement proceedings (for example, at the time of organising a sale by auction or an eviction) it is still possible for the court to conduct such a review of the unfair terms of own motion. See *Banco Primus* case (C-421/14) pending before the Court, in which a similar question is addressed.

20 — As regards proceedings for the enforcement of a mortgage, see Article 695.1(4) of the Civil Procedure Code. So far as ordinary enforcement proceedings are concerned, see Article 557.1(7) of the Civil Procedure Code. An accelerated maturity clause included in a payment protection policy is an example of a contractual term constituting grounds for enforcement.

21 — See, inter alia, Cordero Lobato, E., ‘Control judicial sobre cláusulas abusivas y ejecuciones hipotecarias’, *Revista Aranzadi Doctrinal*, 2, 2013, pp. 205 to 212, and Sánchez González, M. P., *Revista de Derecho Comunitario Europeo*, 2013, pp. 327 to 344.

22 — See Article 695.1(4) of the Civil Procedure Code.

23 — However, Law 1/2013 has made no provision for the court adjudicating on the substance to order, as a preventive measure, the suspension of enforcement of the mortgage until it has delivered the decision by which it declares unfair those terms of the instrument permitting enforcement on which the enforcement is based. Article 698 of the Civil Procedure Code, which was not amended by Law 1/2013, provides that ‘[a]ny claim that the debtor, a third-party holder or any other interested party may bring which is not included under the preceding articles, including any concerning the nullity of title or on the expiry, certainty, extinction or amount of the debt, shall be dealt with in the relevant trial *without ever having the effect of staying or hindering the proceedings set forth in this chapter*’. Thus, the final vesting of mortgaged property in a third party is always irreversible, 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 judgments in *Aziz* (C-415/11, EU:C:2013:164, paragraphs 55 to 59) and *Sánchez Morcillo and Abril García* (C-169/14, EU:C:2014:2099, paragraph 42). In that regard, the Court has held that, ‘[w]ithout that possibility [of suspension], where enforcement in respect of the mortgaged immovable property took place before the judgment of the court in the declaratory proceedings declaring unfair the contractual term on which the mortgage is based and annulling the enforcement proceedings, that judgment would enable that consumer to obtain only subsequent protection of a purely compensatory nature, which would be incomplete and insufficient and would not constitute either an adequate or effective means of preventing the continued use of that term, contrary to Article 7(1) of Directive 93/13’. See judgment in *Aziz* (C-415/11, EU:C:2013:164, paragraph 60), and Opinion of Advocate-General Kokott in *Aziz* (EU:C:2012:700, paragraph 50). See also judgment in *Sánchez Morcillo and Abril García* (C-169/14, EU:C:2014:2099, paragraph 50). According to some legal writers, the choice of the Spanish legislature to grant, not to the court adjudicating on the substance, but to the court responsible for enforcement, the option of staying the proceedings is connected with the purpose of proceedings for enforcement of a mortgage. See, inter alia, Benaloché Palao, J., ‘Cláusulas abusivas y suspensión de la ejecución hipotecaria: una práctica equivocada’, *La Ley*, No 86, 2014, pp. 1 to 6.

33. On the other hand, in enforcement proceedings in progress at the date of the entry into force of Law 1/2013 in which the 10-day period for bringing an action objecting to enforcement²⁴ has already started to run or has expired, the legislature laid down the Fourth Transitional Provision. That provision institutes a time-limit of one month from the day following the entry into force of that Law within which the party against whom enforcement is sought may submit an extraordinary application on the basis *inter alia* of the existence of unfair terms.²⁵

b) The Fourth Transitional Provision

34. The reason for the existence of the Fourth Transitional Provision is the retrospective effect of the interpretation of Article 3 of Directive 93/13 given in the judgment in *Aziz*,²⁶ which means that the interpretation given is the interpretation applying from the time the provision interpreted came into force.²⁷ As a consequence, the Spanish legislature was required to provide a mechanism whereby decisions that would be taken in enforcement proceedings in progress, instituted under the previous law and not concluded on the date of entry into force of Law No 1/2013, would not be incompatible with EU law.²⁸

35. It is that procedural rule, contained in the Fourth Transitional Provision, to which the referring court's question relates. In the case in the main proceedings, the objection on the ground of unfairness of the contractual terms, a new ground for objecting to enforcement provided for by that law, was submitted after the time-limit had expired. The referring court asks, as stated in point 27 above, whether the time-limit at issue is contrary to EU law.

36. It is that question which I shall now address, after first considering the relevant case-law of the Court concerning the principles of equivalence and effectiveness, as they apply to the various types of limitation period.

2. Brief summary of the case-law of the Court

37. The question which arises as a preliminary point is whether the case-law of the Court relating to reasonable time is relevant when analysing a limitation period laid down by a transitional provision of a national law, the starting point for which is calculated in relation to the day following the date of publication of the law in the official journal of the Member State concerned. Like the Commission, I think that this is so and that, as a consequence, that case-law provides us with useful guidance on interpretation, although it has not expressly considered a period such as that at issue in the main proceedings.

24 — See Article 556.1 of the Civil Procedure Code.

25 — Article 695.1(4) of the Civil Procedure Code refers to 'a contractual term constituting the grounds for enforcement or that has determined the sum due'.

26 — C-415/11, EU:C:2013:164.

27 — See, *inter alia*, judgment in *Kempter* (C-2/06, EU:C:2008:78, paragraph 35 and the case-law cited).

28 — Mortgage enforcement proceedings concluded before the entry into force of Law 1/2013 do not fall within the scope of that law. The Fourth Transitional Provision provides that it is applicable 'to all enforcement proceedings that have not led to the mortgagee's taking possession of the property'. Thus, the Court has held that, in the light of the principles of legal certainty and acceptance of *res judicata* which are the basic principles of the national judicial system, its possible unlawfulness would not in principle justify reopening the proceedings. See, to that effect, judgments in *Eco Swiss* (C-126/97, EU:C:1999:269, paragraphs 46 and 47) and *Kapferer* (C-234/04, EU:C:2006:178, paragraph 21): '[EU] law does not require a national court to leave unapplied domestic rules of procedure rendering a decision *res judicata*, even if that would make it possible to remedy an infringement of [EU] law by the decision at issue'. It should also be noted in that regard that EU law requires Member States to afford reparation of damage caused to individuals as a result of an infringement of EU law for which they are responsible. See also, judgment in *Impresa Pizzarotti* (C-213/13, EU:C:2014:2067, paragraph 59).

38. I note, first of all, that the Court has on a number of occasions held that, there being no harmonisation of procedural rules, that question is a matter for the national legal order of the Member States, in accordance with the principle of the procedural autonomy of the latter. None the less, the Court has stressed that those rules must meet the dual requirement that they should be no less favourable than those governing similar domestic actions (principle of equivalence) and should not make it in practice impossible or excessively difficult to exercise the rights conferred on consumers by EU law (principle of effectiveness).²⁹

39. The principle of equivalence requires that the national rule in question be applied without distinction, whether the infringement alleged is of EU law or national law, where the purpose and cause of action are similar. In order to establish whether the principle of equivalence has been complied with, it is for the national court, which alone has direct knowledge of the procedural rules governing actions under national law, to ensure, in national law, that the procedural rules intended to ensure that the rights derived by individuals from EU law are safeguarded respect that principle and to consider both the purpose and the essential characteristics of allegedly similar domestic actions. To that end, the national court must assess the similarity of the actions concerned in terms of their purpose, cause of action and essential characteristics. In order to determine whether a national procedural provision is less favourable, the national court must take account of the role of that provision in the procedure, viewed as a whole, of the conduct of that procedure and of its special features.³⁰

40. As regards application of the principle of effectiveness, the Court has also held that every case in which the question arises as to 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. For those purposes, the Court has stated that account must be taken, where appropriate, of the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure.³¹

41. Furthermore, the Court has recognised that it is compatible with EU law to lay down reasonable time-limits for bringing proceedings, on pain of the action being time-barred. According to its case-law, such time-limits are not liable to render practically impossible or excessively difficult the exercise of rights conferred by EU law.³² The Court has also held that in respect of national legislation which comes within the scope of EU law, it is for the Member States to establish those periods in the light of, inter alia, the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration.³³ Moreover, the Court has stated that the periods must be sufficient in practical terms to enable the applicant to prepare and bring an effective action.³⁴

29 — See, inter alia, judgment in *Rewe-Zentralfinanz and Rewe-Zentral* (33/76, EU:C:1976:188, paragraph 5); *Peterbroeck* (C-312/93, EU:C:1995:437, paragraph 12) and *Impact* (C-268/06, EU:C:2008:223, paragraphs 44 to 46). See also, judgments in *Aziz* (C-415/11, EU:C:2013:164, paragraph 50) and *Barclays Bank* (C-280/13, EU:C:2014:279, paragraph 37).

30 — See, inter alia, judgment in *Rosado Santana* (C-177/10, EU:C:2011:557, paragraph 90).

31 — Judgments in *Peterbroeck* (C-312/93, EU:C:1995:437, paragraph 14) and *Asturcom Telecomunicaciones* (C-40/08, EU:C:2009:615, paragraph 39).

32 — See judgments in *Rewe-Zentralfinanz and Rewe-Zentral* (33/76, EU:C:1976:188, paragraph 5); *Marks & Spencer* (C-62/00, EU:C:2002:435, paragraph 35); *Grundig Italiana* (C-255/00, EU:C:2002:525, paragraph 34); and *Kempter* (C-2/06, EU:C:2008:78, paragraph 35).

33 — See, to that effect, judgments in *Sopropé* (C-349/07, EU:C:2008:746, paragraph 40) and *Pontin* (C-63/08, EU:C:2009:666, paragraph 48).

34 — See judgments in *Samba Diouf* (C-69/10, EU:C:2011:524, paragraph 66) and *Texdata Software* (C-418/11, EU:C:2013:588, paragraph 80).

42. The Court has also given rulings in cases concerning transitional provisions similar to those at issue in the main proceedings. It has held that if Member States reduce the period within which repayment of sums collected in breach of EU law may be sought, it is subject to the condition not only that the new time-limit is reasonable but also that the new legislation includes transitional arrangements allowing an adequate period after the enactment of the legislation for lodging the claims for repayment which persons were entitled to submit under the original legislation.³⁵

43. Lastly, according to settled case-law, it is not for the Court to rule on the interpretation of national law, that being exclusively for the national court, which must, in the present case, determine whether the requirements of equivalence and effectiveness are met by the provisions of the relevant national legislation.³⁶ However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give the national court guidance in its assessment.³⁷

44. Having thus briefly summarised the general background of case-law concerning the principles of equivalence and effectiveness as they apply to the different types of time-limits, I now propose to move on to analyse the specific features of the time-limit at issue in the main proceedings before determining whether that time-limit complies with those principles of EU law.

3. Analysis of the specific features of the time-limit at issue in the case in the main proceedings

45. The time-limit at issue in the main proceedings has two main elements, namely, its one-month duration and, secondly, the point from which it starts to run, that is to say, the day following that of publication of Law 1/2013 in the *Boletín Oficial del Estado* ('BOE').

a) The duration of the limitation period

46. I consider that a procedural time-limit of one month provides sufficient time for lodging an objection to mortgage enforcement. This view of the matter, it seems to me, is in accordance with the Court's case-law. The Court has often accepted shorter procedural time-limits, of 14 or 15 days for example. Thus, for the purposes of an application for refugee status under an accelerated procedure, a 15-day period was held by the Court to be sufficient to enable the applicant to prepare and bring an effective action.³⁸ Likewise, the Court has held that a period of 14 days was sufficient for challenging an administrative penalty for failure to disclose accounting documents of a commercial company.³⁹

47. Accordingly, in my view, the time-limit of one month does not, as such, raise any difficulty from the point of view of whether the Fourth Transitional Provision complies with the principles of equivalence and effectiveness.

48. It is also necessary to consider the point in time from which the time-limit in question starts to run.

35 — See judgments in *Marks & Spencer* (C-62/00, EU:C:2002:435, paragraph 38); *Grundig Italiana* (C-255/00, EU:C:2002:525, paragraph 37); and *Test Claimants in the Franked Investment Income Group Litigation* (C-362/12, EU:C:2013:834, paragraph 37).

36 — See judgments in *Angelidaki and Others* (C-378/07 to C-380/07, EU:C:2009:250, paragraph 163) and *Pontin* (C-63/08, EU:C:2009:666, paragraph 49).

37 — See judgments in *Haim* (C-424/97, EU:C:2000:357, paragraph 58); *Marrosu and Sardino* (C-53/04, EU:C:2006:517, paragraph 54); *Vassallo* (C-180/04, EU:C:2006:518, paragraph 39); and *Fiamingo and Others* (C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 66).

38 — See judgment in *Samba Diouf* (C-69/10, EU:C:2011:524, paragraphs 67 and 68).

39 — See judgment in *Texdata Software* (C-418/11, EU:C:2013:588, paragraph 81). However, in a case concerning the time-limit for lodging an objection in an order for payment procedure following the notification of the order by the competent national court, the Court held that the 20-day period provided for a consumer to object to enforcement was 'particularly short'. See judgment in *Banco Español de Crédito* (C-618/10, EU:C:2012:349, paragraph 54). See also, Póltorak, N., *European Union Rights in National Courts*, Wolters Kluwer, 2015, p. 266.

b) The point from which the time-limit in question starts to run

49. The second subparagraph of paragraph 2 of the Fourth Transitional Provision provides that the period at issue in the main proceedings starts to run from the day following the entry into force of Law 1/2013. In that regard, the fourth final provision of that law provides that the law is to enter into force on the actual day of publication in the BOE. Moreover, paragraph 4 of the Fourth Transitional Provision states that such publication ‘shall be considered full and valid notification for the purposes of notifying and calculating the time-limits provided for in paragraphs 2 and 3 of [that transitional provision], without its being necessary in any circumstances expressly to make an order in that respect’.

50. Expressed more simply, that means that the Spanish legislature regarded publication of Law 1/2013 in the BOE as being equivalent to notification for procedural purposes.

51. It should be noted that it is the fact that the time-limit at issue in the case in the main proceedings starts to run from the day following the date of publication of Law 1/2013 in the BOE without having been notified to the defendants in the main proceedings which raises the problem in the present case with regard to the principles of equivalence and effectiveness.

i) Compliance with the principle of equivalence

52. BBVA and the Spanish Government contend that there is no evidence to support the finding that the time-limit in question is less favourable than other similar time-limits under Spanish law. First, BBVA makes reference to the time-limit for bringing proceedings before the Tribunal Constitucional (Constitutional Court) for infringements of fundamental rights originating immediately and directly from measures taken by courts or tribunals. That period starts to run from the notification of the judicial decision. Secondly, the Spanish Government compares the period at issue in the main proceedings with other procedural time-limits under Spanish law, such as that for replying to an application in ordinary substantive proceedings, which starts to run from the time the document instituting proceedings is served.⁴⁰ For its part, the Commission notes that the time-limit at issue in the main proceedings is expressly designed to provide transitional protection, during the time between the old and the new laws, for rights conferred on consumers by Directive 93/13. Consequently, rights based on the EU legal system are not subject to less favourable conditions.

53. I am not persuaded by these arguments. The time-limits mentioned by BBVA and by the Spanish Government do not appear to me to be similar to the time-limit at issue in the main proceedings. However, although I have doubts as to whether the time-limit at issue complies with the principle of equivalence, I find it difficult to identify comparable procedural time-limits which would enable me to conclude with certainty that the Fourth Transitional Provision, based on EU law, is less favourable than other similar provisions designed to ensure the protection of similar rights of litigants under Spanish law, which it is for the national court to determine.

ii) Compliance with the principle of effectiveness

54. As I shall explain below, there are several aspects which give me reason to consider, however, that the time-limit at issue in the case in the main proceedings has rendered it impossible or excessively difficult to exercise the rights conferred by Directive 93/13.

⁴⁰ — See Article 404 of the LEC.

55. In the first place, it is clear from the documents available to the Court that, under Spanish procedural law, it is not usual for a procedural time-limit to start to run from the date of publication in the BOE, except in the case of an initial action against a general measure.⁴¹ The Commission notes that, with regard to procedural acts in proceedings that are in progress, time-limits normally start to run from receipt of the various notices sent by the competent court, which guarantees that the person concerned or his legal representatives derive full benefit from the time-limit.⁴²

56. Furthermore, I would point out that the procedural time-limit examined by the Court in its case-law differ from the transitional time-limit at issue in the main proceedings in that they start to run from the service of a specific procedural notice.⁴³ That means that once the notice addressed to them has been received, litigants or their legal representatives have ample time within which to prepare and bring an effective action. However, the period at issue in the main proceedings starts to run from the day following the publication of Law 1/2013, which does not ensure that the time-limit is available in full, since that depends on whether the persons concerned are actually aware of the existence of the Fourth Transitional Provision.

57. In that regard, it should be noted that the Court has already ruled against a time-limit in the context of measures to encourage improvements in the safety and health at work of pregnant workers,⁴⁴ because that time-limit started to run, not from the receipt of the letter of dismissal, but from the time that letter was posted. Consequently, some of the days included in that period might have expired before the pregnant woman could obtain proper advice and pursue her claim by judicial process.⁴⁵

58. It seems to me clear therefore that a consequence of the time-limit at issue in the main proceedings might have been that a large part of it, indeed all of it as in the case in the main proceedings, would have expired without consumers being able to obtain proper advice or bring the actions necessary to protect their rights.

59. Secondly, it is also clear from the documents in the case that under the Spanish legal system the involvement of a lawyer ('abogado') and a court representative ('procurador') is necessary in order to lodge an objection to the act ordering enforcement.⁴⁶ The Commission notes, however, that in a large majority of mortgage enforcement proceedings, enforcement is adjudicated on without the parties against whom enforcement is sought appearing in court or lodging an objection. The financially precarious situation in which such parties find themselves, the difficulty of objecting to enforcement and the cost of the enforcement proceedings are factors that act to the disadvantage of consumers,

41 — In that regard, the Commission draws a comparison with the arrangements under the last paragraph of Article 263 TFEU and Article 50 of the Rules of Procedure of the Court.

42 — Article 133.1 of the Civil Procedure Code provides that '[t]he time periods shall begin on the day following the day on which the notice which the law makes the commencement of the time limit depend on is given and this shall include the expiry date, up to midnight'. Articles 149 to 168 of the Civil Procedure Code, which relate to the service of judicial notices, provide that procedural notices are to be served on the representatives of the parties, or on the parties themselves if they are not represented, or, where the notice is an initial summons or order to attend, it is to be sent to the litigants' address (Article 155 of the Civil Procedure Code). Where it is not possible to ascertain the address of the person on whom the notice is to be served, it may, as an exception, be served by means of publication (Article 164 of the Civil Procedure Code). That provision states that '[o]nly at the request and expense of a party, shall notification be published in the official journal of the province, of the Autonomous Region, in the [BOE] or in a national or provincial daily newspaper'.

43 — See judgments in *Samba Diouf* (C-69/10, EU:C:2011:524, paragraphs 67 and 68); *Texdata Software* (C-418/11, EU:C:2013:588, paragraph 81); and *Banco Español de Crédito* (C-618/10, EU:C:2012:349, paragraph 54).

44 — Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

45 — See judgment in *Pontin* (C-63/08, EU:C:2009:666, paragraphs 62 to 65). In that case, the Court ruled against that limitation period in view inter alia of the situation in which a woman finds herself at the start of her pregnancy.

46 — See Articles 23 and 31 of the Civil Procedure Code. For a non-exhaustive list of the factors to be taken into account in order to determine whether or not a specific time-limit complies with the principle of effectiveness, see Opinion of Advocate General Ruiz-Jarabo Colomer in *Recheio — Cash & Carry* (C-30/02, EU:C:2003:666, points 29 and 32).

who generally decide not to take any part in such proceedings.⁴⁷ In that context, it seems to me that there is no doubt that, in general, there was a high risk that the consumers concerned would not be able to lodge an objection to enforcement of the mortgage. In my view, that risk is connected either with the potentially deterrent costs of objecting (the requirement to have both a lawyer and a court representative) or with the fact that the consumers were unaware of their rights because they did not know about the publication of Law 1/2013 and the Fourth Transitional Provision,⁴⁸ or else if they did know about it they found out too late, once the period for submitting an extraordinary application had already started to run.

60. I note in that regard that the Court has held that a situation marked by significant legal uncertainty may involve a breach of the principle of effectiveness, pointing out the need to be able to determine the applicable time-limit with a reasonable degree of certainty.⁴⁹ In the case in the main proceedings, the fact that the transitional time-limit started to run from the day following the date of publication of Law 1/2013 in the BOE, as I explained in points 58 to 60 of this Opinion, resulted in a very high degree of legal uncertainty for the defendants in the main proceedings, which seems to me to be unacceptable in an area such as that of consumer protection. In my view, that period was not sufficient for preparing and bringing an effective action.

61. Lastly, as I explained in point 41 above, in respect of national legislation which comes within the scope of EU law, it is for the Member States to establish time-limits in the light of, inter alia, the significance for the parties concerned of the decisions to be taken, the complexity of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration.⁵⁰

62. With regard, first, to the significance for the parties concerned of the decisions to be taken, it seems clear to me that, since those decisions may lead to the irreversible loss of their immovable property, the significance of those decisions for the consumers concerned is particularly great.⁵¹

63. With regard, secondly, to the complexity of the procedures and of the legislation to be applied, it is also clear that the relationship between the enforcement proceedings, the substantive proceedings and the mortgage regulations forms a very complex legal framework, particularly for consumers.

64. As regards, thirdly, the number of persons who may be affected by the Fourth Transitional Provision in the dispute in the main proceedings, it is apparent from the observations of the defendants in the main proceedings and of the Commission that at the time of the entry into force of Law 1/2013 hundreds of thousands of enforcement proceedings were pending. The Commission, quoting figures from a report by the Consejo General del Poder Judicial, states that, in 2013, 82 680 mortgage enforcement proceedings were initiated.⁵²

47 — That risk is borne out by the statistics submitted by the Commission in its written observations. According to those figures, after the entry into force of Law No 1/2013, parties against whom enforcement was sought appeared in court and lodged an objection in only 19.79% of mortgage enforcement proceedings. Before the adoption of that law, the percentage was less than 5% (data from the Judicial Statistics Service of the Consejo General del Poder Judicial (General Council of the Judiciary)). The Commission points out that those data are partial. Although the Ministry of Justice's table does not cover certain autonomous communities (Andalusia, Basque Country, Canary Islands, Catalonia, Madrid, Navarre and Valencia), it does give an idea of the limited number of mortgage enforcements that gave rise to objections. Thus, in 2013, objections lodged represented 19.79% of registered mortgage enforcements (3 826 objections for 19 330 registered mortgage enforcements), in 2012, 4.92% (1 078 objections for 21 896 mortgage enforcements) and, in 2001, 3.84% (700 objections for 18 201 mortgage enforcements).

48 — See judgment in *Banco Español de Crédito* (C-618/10, EU:C:2012:349, paragraph 54).

49 — See, inter alia, judgment in *Danske Slagterier* (C-445/06, EU:C:2009:178, paragraph 33).

50 — See, to that effect, judgments in *Sopropé* (C-349/07, EU:C:2008:746, paragraph 40) and *Pontin* (C-63/08, EU:C:2009:666, paragraph 48).

51 — The immovable property concerned in the dispute in the main proceedings is a parking space. However, at the hearing, the defendants in the main proceedings maintained that they had been unable to lodge an objection to enforcement proceedings concerning their residence since those mortgage enforcement proceedings had taken place before the entry into force of Law 1/2013. As regards their parking space, as is apparent from point 35 above, the objection based on the unfairness of contractual terms, a new ground for objection provided for in that law, had been lodged out of time.

52 — In respect of the preceding years, that report lists 91 622 instances of mortgage enforcement proceedings in 2012, 77 854 in 2011, 96 636 in 2010 and 93 319 in 2009.

65. Therefore, on the basis of all the above considerations, can one still regard the time-limit at issue in the main proceedings as reasonable? I very much doubt it.

66. I am of the view that, in the procedural context under consideration, the granting by the Spanish legislature of a reasonable time for consumers to object to enforcement, and thus put an end to the use of unfair terms, is essential for the appropriate and effective exercise of the rights conferred on them by Directive 93/13. I am sure that that objective has not been achieved by the Fourth Transitional Provision.

67. I am therefore led to conclude, in short, that it is because the time-limit at issue in the case in the main proceedings started to run from the day following the date of publication of Law 1/2013 that it cannot be regarded as reasonable, and that it made effective exercise of the rights conferred by Directive 93/13 excessively difficult.

4. Final considerations

68. It seems to me important to note, first of all, that the system of protection introduced by Directive 93/13 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.⁵³

69. In order to guarantee the protection intended by Directive 93/13, the Court has already stated on several occasions that the imbalance which exists between the consumer and the seller or supplier can be corrected only by positive action unconnected with the actual parties to the contract.⁵⁴ Such positive action includes inter alia review, of its own motion, by the competent court of whether or not unfair terms exist.

70. In the context of Spanish mortgage enforcement proceedings, such review did not exist before the judgment was delivered in *Aziz*.⁵⁵ As is clear from points 31 and 32 above, following that judgment, the courts were entitled to raise of their own motion the existence of such terms.⁵⁶ However, although such review by the courts of their own motion is necessary, it is not sufficient to protect, fully and effectively, the rights granted to consumers by Directive 93/13. Consequently, like the Commission, I am convinced that positive action unconnected with the actual parties to the contract should also include adequate time for consumers to exercise their rights effectively.

71. I note also that in the area of consumer rights the principles of equivalence and effectiveness, as a restriction on the procedural autonomy of the Member States, are particularly significant and so the Court must ensure that they are strictly observed.

72. Lastly, it is clear to me that a transitional provision which imposes on consumers an extraordinary time-limit, starting to run from the day following the date of publication of a law in the official journal of the Member State concerned, does not meet the obligation to make consumers aware of the possibility of submitting an objection based on the alleged unfairness of terms of the contract constituting the grounds for enforcement. It seems to me essential therefore that consumers should

53 — See judgments in *Océano Grupo Editorial and Salvat Editores* (C-240/98 to C-244/98, EU:C:2000:346, paragraph 25); *Mostaza Claro* (C-168/05, EU:C:2006:675, paragraph 25); *Asturcom Telecomunicaciones* (C-40/08, EU:C:2009:615, paragraph 29); *Barclays Bank* (C-280/13, EU:C:2014:279, paragraph 32); *Aziz* (C-415/11, EU:C:2013:164, paragraph 44); and *Sánchez Morcillo and Abril García* (C-169/14, EU:C:2014:2099, paragraph 22).

54 — See judgments in *Océano Grupo Editorial and Salvat Editores* (C-240/98 to C-244/98, EU:C:2000:346, paragraph 27); *Mostaza Claro* (C-168/05, EU:C:2006:675, paragraph 26); *Asturcom Telecomunicaciones* (C-40/08, EU:C:2009:615, paragraph 31); and *Banco Español de Crédito* (C-618/10, EU:C:2012:349, paragraph 41).

55 — C-415/11, EU:C:2013:164.

56 — See also, Article 27 of Law 3/2014 of 27 March 2014 amending the revised text of the general law for the protection of consumers and users and other supplementary laws (*Ley 3/2014, de 27 de marzo, por la que se modifica el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias*).

be informed personally of the time available to them to obtain proper advice and bring the actions necessary to protect the rights conferred on them by Directive 93/13.⁵⁷ I note in that regard that the maxim ‘ignorance of the law is no excuse’ does not apply, or, at least, applies only subject to certain qualifications in the area of consumer protection.⁵⁸

73. All those considerations militate in favour of a time-limit which should be notified to the parties concerned personally. In other words, the defect regarding notification of the parties should be remedied using the same method as is used under national law to give notice to defendants that enforcement proceedings have been initiated against them. Consequently, like the Commission, I think that the Spanish legislature should have made provision for all defendants in such enforcement proceedings to be notified of the possibility of bringing an extraordinary action within a period of one month from such notification. That could have been done through the intermediary of the courts having jurisdiction to hear cases relating to mortgage enforcement, either through the legal representatives of the parties or by notice served on the parties at their home address, where they did not appear in court during the mortgage enforcement proceedings.

74. Accordingly, in the light of the above, I am of the opinion that, in the light of the principle of effectiveness, Articles 6 and 7 of Directive 93/13 preclude a national transitional provision, such as that at issue in the case in the main proceedings, which imposes on consumers a one-month time-limit, from the date of publication of the law containing that provision, within which to submit an objection based on the unfairness of terms of the contract in the context of mortgage enforcement proceedings in progress.

V – Conclusion

75. In view of all the above considerations, I propose that the Court answer the question referred for a preliminary ruling by the Juzgado de Primera Instancia No 4 de Martorell as follows:

In the light of the principle of effectiveness, Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts preclude a national transitional provision, such as that at issue in the case in the main proceedings, which imposes on consumers a one-month time-limit, from the date of publication of the law containing that provision, within which to submit an objection based on the unfairness of terms of the contract in the context of mortgage enforcement proceedings in progress.

⁵⁷ — See, by analogy, judgments in *RWE Vertrieb* (C-92/11, EU:C:2013:180) and *Invitel* (C-472/10, EU:C:2012:242, paragraph 29).

⁵⁸ — See Mikłaszewicz, P., *Obowiązki informacyjne w umowach z udziałem konsumentów na tle prawa Unii Europejskiej*, Wolters Kluwer Polska, Warsaw, 2008, pp. 46, 185, 272 and 317.