



Court of Justice of the European Union

**PRESS RELEASE No 85/22**

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Judgments in Case C-600/19 *Ibercaja banco*,  
in Joined Cases C-693/19 *SPV Project 1503*, C-831/19 *Banco di Desio e  
della Brianza and Others*,  
and in Cases C-725/19 *Impuls Leasing România* and C-869/19 *Unicaja  
Banco*

Press and Information

## **Unfair terms in consumer contracts: national procedural principles cannot impede the rights that individuals derive from EU law**

*The principle of effectiveness requires an effective review of the potentially unfair nature of the terms*

By today's judgments, the Court, sitting as the Grand Chamber, rules on several requests for a preliminary ruling brought by the Spanish, Italian and Romanian courts, concerning the interpretation of Directive 93/13/EEC on unfair terms in consumer contracts. <sup>1</sup>

The Court is asked to rule on whether national procedural principles, such as *res judicata*, may limit the powers of the national courts, in particular those dealing with enforcement, in order to assess whether contractual terms are unfair. Are principles of national procedural law which do not allow that assessment at the enforcement stage, including by the enforcing court of its own motion, because of the existence of prior national judicial decisions, compatible with Directive 93/13?

In that regard, the Court draws attention to the importance, both for the EU legal order and for the national legal systems, of **the principle of *res judicata***. Indeed, in order to ensure stability of the law and legal relations, as well as the sound administration of justice, it is important that judicial decisions which have become definitive, after all rights of appeal have been exhausted or after expiry of the time limits provided to exercise those rights, can no longer be called into question. <sup>2</sup>

That said, first of all, the Court points out 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 or her bargaining power and his or her level of knowledge. <sup>3</sup> In respect of that weaker position, Directive 93/13 provides that unfair terms are not binding on consumers. It is a mandatory provision which aims to replace the formal balance of the contract with an effective balance. <sup>4</sup>

Next, the Court states that the national court is required to assess of its own motion whether a contractual term falling within the scope of Directive 93/13 is unfair <sup>5</sup> and that Member States are required to provide for adequate and effective means to prevent the continued use of unfair terms. <sup>6</sup>

In principle, EU law does not harmonise the procedures applicable to examining whether a contractual term is unfair and those procedures accordingly fall within the domestic legal system of the Member States. National procedural principles must comply with **the principle of effectiveness**, that is to say fulfil a requirement for effective judicial protection. <sup>7</sup> In that regard, the

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

<sup>2</sup> Judgment of 6 October 2009, *Asturcom Telecomunicaciones*, [C-40/08](#).

<sup>3</sup> Judgment of 26 January 2017, *Banco Primus*, [C-421/14](#).

<sup>4</sup> Judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, [C-154/15](#), [C-307/15](#) and [C-308/15](#) (see [Press release No 144/16](#)).

<sup>5</sup> Judgment of 14 March 2013, *Aziz*, [C-415/11](#) (see [Press release No 30/13](#)).

<sup>6</sup> Judgment of 26 June 2019, *Addiko Bank*, [C-407/18](#).

<sup>7</sup> Judgment of 10 June 2021, *BNP Paribas Personal Finance*, [C-776/19 to C-782/19](#) (see [Press release No 100/21](#)).

Court finds that, without effective review of whether the terms of the contract concerned are unfair, observance of the rights conferred by Directive 93/13 cannot be guaranteed.<sup>8</sup>

It is on the basis of those considerations that the Court delivers the four judgments today.

### **Case C-869/19, *Unicaja Banco***

The request for a preliminary ruling was made in proceedings between L and Banco de Caja España de Inversiones, Salamanca y Soria SAU, the successor in title to which is Unicaja Banco SA, concerning the failure of the national appeal court to raise of its own motion a ground relating to infringement of EU law. The bank granted L a mortgage loan. That agreement provided for a 'floor clause' pursuant to which the variable rate could not be less than 3%. L brought an action against that bank, seeking a declaration that that clause was void and the repayment of the sums wrongly received, arguing that that clause had to be declared unfair on account of its lack of transparency. The first-instance court upheld the action, while temporally limiting the restitutory effects, pursuant to national case-law. The court hearing the appeal brought by the bank did not order the full repayment of the amounts received under the 'floor clause', since L had not brought an appeal against the first-instance judgment. According to Spanish law, where part of the operative part of a judgment is not challenged by any of the parties, the appeal court cannot deprive it of its effects or alter it. That rule of law displays certain similarities with *res judicata*. **The Spanish Supreme Court** therefore asked the Court of Justice whether the national law was compatible with EU law, in particular with regard to the circumstance that a national court, hearing an appeal against a judgment temporally limiting the repayment of sums wrongly paid by the consumer under a term declared to be unfair, cannot raise of its own motion a ground relating to the infringement of Directive 93/13 and order the repayment of those sums in full.

Recalling its case-law, **the Court reaffirms that EU law precludes national case-law that temporally limits restitutory effects to amounts wrongly paid under an unfair term after the delivery** of the judicial decision in which the finding of unfairness is made.<sup>9</sup>

The Court also finds that the application of the principles of national judicial procedure at issue is liable to make the protection of the aforementioned rights under Directive 93/13 impossible or excessively difficult, thereby undermining the principle of effectiveness. **EU law precludes the application of principles of national judicial procedure, under which a national court, hearing an appeal against a judgment temporally limiting the repayment of sums wrongly paid by the consumer under a term declared to be unfair, cannot raise of its own motion a ground relating to the infringement of the provision in question and order the repayment of those sums in full**, where the failure of the consumer concerned to challenge that temporal limitation cannot be attributed to his or her complete inaction.

### **Case C-600/19, *Ibercaja banco***

The request for a preliminary ruling was made in proceedings between MA and Ibercaja Banco SA concerning a **claim for payment of interest due to the bank on account of the failure** by MA and PO **to perform the mortgage loan agreement** concluded between those parties. The court having jurisdiction ordered enforcement of the mortgage instrument held by Ibercaja Banco and authorised enforcement against the consumers. It was not until during the enforcement proceedings, specifically after the auction of the mortgaged property, that MA pleaded the unfairness of the default interest clause and the floor clause, that is to say when the effect of *res judicata* and time-barring neither allow the court to examine of its own motion whether the contractual terms are unfair nor the consumer to raise the unfairness of those terms. The contract had been examined by the court of its own motion, when the mortgage enforcement proceedings were initiated, without, however, any express reference, or grounds attesting, to the examination of the terms at issue.

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<sup>8</sup> Judgment of 4 June 2020, *Kancelaria Medius*, [C-495/19](#).

<sup>9</sup> Judgment in *Gutiérrez Naranjo and Others*, [C-154/15](#), [C-307/15](#) and [C-308/15](#), cited above.

According to the Court, **EU law precludes national legislation which, by virtue of the effect of *res judicata* and time-barring, neither allows a court to examine of its own motion whether contractual terms are unfair in the course of mortgage enforcement proceedings, nor a consumer, after the expiry of the period for lodging an objection, to raise the unfairness of those terms in those proceedings or in subsequent declaratory proceedings, where the potential unfairness of those terms has already been examined by the court of its own motion, but the judicial decision authorising the mortgage enforcement does not contain any grounds, even of a summary nature, attesting to the existence of that examination, nor state that the assessment of that court at the end of that examination could no longer be called into question if an objection were not lodged within the aforementioned period.**

However, **where the mortgage enforcement proceedings have ended and the ownership rights have been transferred to a third party, a court can no longer carry out an examination of the unfairness of contractual terms** which would lead to the annulment of the acts transferring ownership and call into question the legal certainty of the transfer of ownership already made to a third party. **Nevertheless, in such a situation, the consumer must be able to rely, in separate subsequent proceedings, on the unfairness of the terms** of the mortgage loan agreement in order to be able to exercise effectively and in full his or her rights under Directive 93/13, **with a view to obtaining compensation for the financial damage caused by the application of those terms.**

#### **Joined Cases C-693/19, *SPV Project 1503*, and C-831/19, *Banco di Desio e della Brianza and Others***

The requests for a preliminary ruling were made in proceedings between (i) SPV Project 1503 Srl and Dobank SpA as agent for Unicredit SpA, and YB and (ii) Banco di Desio e della Brianza SpA and other credit institutions and YX and ZW, concerning **enforcement proceedings based on enforceable instruments which have acquired the force of *res judicata***. The Italian courts hearing the enforcement proceedings are uncertain whether the penalty clause and the clause providing for default interest in the financing contracts are unfair, and also whether certain terms in the guarantee contracts are unfair. It is on the basis of those contracts that the creditors obtained orders for payment which became final. However, those courts note that, in accordance with the principles of national procedural law, where there is no objection by the consumer, the force of *res judicata* of an order for payment encompasses the fairness of the terms of the guarantee contract even where there is no express examination, by the court which issued that order, of the unfairness of those terms.

The Court finds that such national legislation **is liable to render meaningless the national court's obligation to examine of its own motion the potential unfairness of contractual terms**. The requirement of effective judicial protection necessitates that the court hearing the enforcement proceedings is able to assess, including for the first time, whether the contractual terms which served as the basis for an order for payment issued by a court at the request of a creditor, and against which the debtor did not lodge an objection, are unfair.

#### **Case C-725/19, *Impuls Leasing România***

The request for a preliminary ruling was made in proceedings between IO and Impuls Leasing România IFN SA concerning an objection to enforcement lodged against enforcement measures relating to a leasing contract. The Romanian court states that the leasing contract, on the basis of which the enforcement proceedings were commenced, contains certain terms which could be regarded as unfair.

Nonetheless, the Romanian legislation does not allow the court hearing the enforcement proceedings in respect of a debt, before which an objection to enforcement has been lodged, to assess, of its own motion or at the request of the consumer, whether the terms of a contract concluded between a consumer and a seller or supplier, which constitutes an enforceable instrument, are unfair, on the ground that there is an action under the ordinary law in which the unfairness of the terms of such a contract may be reviewed by the court hearing that action.

Admittedly, seised of an action which is separate from that relating to the enforcement proceedings, the court having jurisdiction to rule on the substance of the case has a discretion to suspend those proceedings. However, the consumer seeking suspension of the enforcement proceedings is required to pay a security calculated on the basis of the value of the subject matter of the action.

According to the Court, it is likely that a debtor in default does not have the financial resources necessary to provide the guarantee required. In addition, those costs cannot dissuade the consumer from bringing court proceedings for the purpose of assessing the potential unfairness of the contractual terms, which would seem particularly to be the case where the value of the actions brought greatly exceeds the total value of the contract.

**Accordingly, the Court holds that EU law does not permit such national legislation.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*The full text of the judgment and résumés ([C-600/19](#), [C-693/19](#) and [C-831/19](#), [C-725/19](#), [C-869/19](#)) is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*