



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 52/10**

Luxembourg, 3 June 2010

Judgment in Case C-484/08

Caja de Ahorros y Monte de Piedad de Madrid v Asociación de Usuarios de Servicios Bancarios (Ausbanc)

## **National legislation may authorise judicial review as to the unfairness of contractual terms which are drafted in plain, intelligible language**

*Member States may adopt, throughout the area covered by the Directive on unfair terms, rules which are stricter than those provided for in that directive*

The Directive on unfair terms in consumer contracts<sup>1</sup> is applicable, in principle, to all contract terms which have not been individually negotiated. However, the Directive provides for two exceptions with regard to the assessment as to the unfairness of contractual terms. Thus, that assessment may not relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, on the one hand, as against the services or goods to be supplied in exchange, on the other, in so far as those terms are drafted in plain, intelligible language.

The Spanish legislation which transposed that directive into national law did not incorporate those exceptions. That legislation allows national courts to assess the unfairness of a term which relates to the main subject-matter of the contract, even in the case where that term was drawn up in advance by the seller or supplier in plain, intelligible language.

Caja de Ahorros y Monte de Piedad de Madrid (Caja de Madrid), a Spanish lending institution, concluded with its clients mortgage loan agreements which provided for a variable nominal interest rate which was to be altered from time to time in accordance with the agreed reference index. In addition, those agreements contained a term, drafted in advance, which provided that the rate of interest payable by the borrower was to be rounded up, with effect from the first revision, to the next quarter of a percentage point every time the variation in the rate exceeded 0.25%.

On 28 July 2000, a Spanish association of users of banking services (Ausbanc) brought an action in the Spanish courts seeking, in particular, to require Caja de Madrid to annul the rounding-up term in those loan agreements and to prohibit its use in the future.

The Tribunal Supremo (Spanish Supreme Court), which is required to deliver final judgment in this case, asks the Court of Justice, in essence, whether the Directive on unfair terms precludes a Member State from providing in its legal system, for the benefit of consumers, for an assessment as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, on the one hand, as against the services or goods to be supplied in exchange, on the other hand, even in the case where those terms are drafted in plain, intelligible language.

The Court points out, first, that the system of protection introduced by the Directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms.

Next, the Court finds that the Directive carried out only a partial and minimum harmonisation of national legislation concerning unfair terms, while recognising that Member States have the option of affording consumers a higher level of protection than that for which the Directive provides.

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

The Court thus finds that **Member States may retain or adopt, throughout the area covered by the Directive, rules which are stricter than those provided for by the Directive itself**, on condition that they are designed to afford consumers a higher level of protection.

In authorising the possibility of a comprehensive judicial review as to the unfairness of all the terms provided for in a contract concluded between a seller or supplier and a consumer, the Spanish legislation makes it possible for consumers to be afforded a higher level of effective protection than that established by the Directive.

Consequently, the Court finds that the Directive does not preclude national legislation which authorises judicial review as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, on the one hand, as against the services or goods to be supplied in exchange, on the other hand, even in the case where those terms are drafted in plain, intelligible language.

---

**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 on the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the national 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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355