



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-154/15 Francisco Gutiérrez Naranjo v Cajasur Banco SAU, C-307/15 Ana María Palacios Martínez v Banco Bilbao Vizcaya Argentaria SA and C-308/15 Banco Popular Español SA v Emilio Irlés López and Teresa Torres Andreu

Spanish case-law placing a temporal limitation on the effects of the invalidity of ‘floor clauses’ included in mortgage loan contracts in Spain is incompatible with EU law

Such a limitation makes consumer protection incomplete and insufficient and is not an adequate and effective means for preventing the use of unfair terms

In Spain, many individuals have initiated judicial proceedings against financial institutions seeking a declaration that the ‘floor clauses’ inserted in mortgage loan agreements concluded with consumers are unfair and that, consequently, they are not binding on the consumers. The clauses in question provide that, even if the interest rate falls below a certain threshold (or ‘floor’) defined in the agreement, the consumer must continue to pay minimum interest equivalent to that threshold, without being able to benefit from a lower rate.

By judgment of 9 May 2013, the Tribunal Supremo (Supreme Court, Spain) held the ‘floor clauses’ to be unfair, given that the consumers had not been informed properly about the economic and legal burden which the contract would place upon them. Nevertheless, the Tribunal Supremo decided to limit the temporal effects of the declaration of invalidity of those clauses, so that they would have effect only for the future, as from the date of delivery of the abovementioned judgment.

Some of the consumers affected by the application of those clauses are asking for repayment of the sums they claim have been unduly paid to the financial institutions from the date on which their loan agreements were concluded. The matter having been brought before them, the Juzgado de lo Mercantil n.º 1 Granada (Commercial Court No 1, Granada, Spain) and the Audiencia Provincial de Alicante (Provincial High Court, Alicante, Spain) ask the Court of Justice whether the limitation of the effects of the declaration of invalidity from the date of delivery of the judgment of the Tribunal Supremo is compatible with the Directive on unfair terms,¹ given that, according to that directive, such clauses are not binding on consumers.

In today’s judgment, **the Court holds that EU law precludes national case-law in accordance with which the restitutory effects connected with the invalidity of an unfair term are restricted to the amounts overpaid after the delivery of the decision holding that the term is unfair.**

The court notes first that, according to the directive, unfair terms must not bind consumers as provided for under the national law of the Member States, with the obligation being on those States to provide adequate and effective means to prevent the use of unfair terms. The Court explains that the national court must purely and simply exclude the application of an unfair contract term in such a way that it is deemed never to have existed and so that it does not bind the consumer. **The finding of unfairness must have the effect of restoring the consumer to the situation that consumer would have been in if that term had not existed.** Consequently, the finding that ‘floor clauses’ are unfair must allow the restitution of advantages wrongly obtained by the seller or supplier to the consumer’s detriment.

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

According to the Court, the Tribunal Supremo was entitled to hold that its judgment was not, in the interests of legal certainty, to affect situations in which judgments with the force of *res judicata* had been given. EU law cannot require national courts to disapply domestic rules of procedure.

However, in the light of **the fundamental requirement of a general and uniform application of EU law**, it is for the Court and the Court alone to decide upon the temporal limitations to be placed on the interpretation it lays down in respect of an EU rule. In that context, the Court makes it clear that the provisions of national law must not adversely affect the consumer protection guaranteed by the directive.

As it is, the temporal limitation of the effects of the declaration of nullity in respect of 'floor clauses' deprives Spanish consumers who have concluded a mortgage loan contract before the date on which the judgment of the Tribunal Supremo is given of the right to obtain repayment in full of the amounts overpaid to the banks. Therefore, **the effect of that temporal limitation is an incomplete and insufficient protection that cannot constitute an adequate or effective means of preventing the use of unfair terms, as required by the directive.**

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 is published on the CURIA website on the day of delivery.

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