Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

29 October 2015*

(Reference for a preliminary ruling — Directive 93/13/EEC — Mortgage loan agreement — Unfair terms — Enforcement proceedings — Opposition — Time-limits)

In Case C-8/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia No 4 de Martorell (Court of First Instance No 4, Martorell, Spain), made by decision of 28 October 2013, received at the Court on 10 January 2014, in the proceedings

BBVA SA, formerly Unnim Banc SA,

v

Pedro Peñalva López,

Clara López Durán,

Diego Fernández Gabarro,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, F. Biltgen, A. Borg Barthet, E. Levits (Rapporteur), and, S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: M. Ferreira,

having regard to the written procedure and further to the hearing on 11 February 2015,

after considering the observations submitted on behalf of:

— BBVA SA, formerly Unnim Banc SA, by J. Rodríguez Cárcamo and B. García Gómez, abogados,

— Mr Peñalva López, Ms López Durán and Mr Fernández Gabarro, by M. Alemany Canals, A. Martínez Hiruela, T. Moreno and A. Davalos, abogados,

— the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,

— the European Commission, by J. Baquero Cruz and M. van Beek, acting as Agents,

* Language of the case: Spanish.

after hearing the Opinion of the Advocate General at the sitting on 13 May 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The request has been made in proceedings between BBVA SA, formerly Unnim Banc SA ('BBVA'), and Mr Fernández Gabarro, Mr Peñalva López and Ms López Durán concerning their objection to mortgage enforcement proceedings in respect of a parking space and a shed.

Legal context

EU law

3 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.'

4 Article 7(1) of the 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.'

Spanish law

5 Law 1/2013 on measures to strengthen the protection of mortgage debtors, debt restructuring and social rents (Ley 1/2013 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) amended the Civil Procedure Code (Ley de enjuiciamiento civil) of 7 January 2000 (BOE No 7 of 8 January 2000, p. 575), itself amended by Decree-Law 7/2013 on urgent fiscal and budgetary measures promoting research, development and innovation (Decreto-ley 7/2013, de medidas urgentes de naturaleza tributaria, presupuestarias y de foment de la investigación, el desarrollo y la innovación) of 28 June 2013 (BOE No 155 of 29 June 2013, p. 48767, 'the Civil Procedure Code').

6 The Fourth Transition Provision of Law 1/2013 ('the transitional provision at issue') concerns enforcement procedures instituted before the entry into force of Law 1/2013 and not yet concluded. That provision is worded as follows:

'1. The amendments [to the Civil Procedure Code] introduced by the present Law, shall apply to enforcement proceedings already in progress 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 based on the existence of new grounds for opposition, set out in Article 557.1(7) and Article 695.1(4) [of the Civil Procedure Code].

In accordance with the provisions of Articles 558 and 695 [of the Civil Procedure Code], the time-limit of one month shall start to run from the day following the entry into force of the present Law, 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.

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.'

7 Article 556.1 of the Civil Procedure Code provides as follows:

'If the enforceable decision is a procedural or arbitral decision making an award, or a mediation agreement, the party against whom enforcement is sought may, within 10 days of service of the enforcement order, challenge it in writing by relying on payment or compliance with the operative part of the judgment, arbitral award or agreement, documentary evidence must be provided.

It is also possible to challenge the time-limit for the enforcement action and the agreements and transactions which have been concluded in order to avoid enforcement, provided that those agreements and transactions are set out in a notarised act.'

8 According to Article 557 of the Civil Procedure Code relating to the procedure to objecting to enforcement based on non-judicial decision or arbitration awards:

'1. Where enforcement is ordered in respect of the enforceable orders referred to in Article 517.2(4), (5), (6) and (7), and for other enforceable orders mentioned in Article 517.2(9), the party against whom enforcement is sought may, within the periods and in the forms prescribed in the preceding article, object to enforcement only if he relies on one of the following grounds:

…

7°. The document contains unfair terms.

2. If the opposition referred to in the preceding paragraph is lodged the court registry shall suspend enforcement by measure of organisation of procedure.'

9 Article 695.1(4) and (2) of the Civil Procedure Code provides as follows:

‘1. In proceedings under this chapter, an objection to enforcement by the party against whom enforcement is sought may be upheld 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 preceding paragraph, the court registry shall stay enforcement and summon the parties to a hearing before the court which ordered the enforcement. There shall be at least four days between the summons and the date of the hearing in question. At that hearing, the court shall hear the parties, examine the documents that are submitted and issue the decision that it considers reasonable within two days in the form of an order.’

Dispute in the main proceedings and the question referred for a preliminary ruling

10 Before the entry into force of Law 1/2013, on 15 May 2013, BBVA brought mortgage enforcement proceedings against Mr Fernández Gabarro, Mr Peñalva López and Ms López Durán. On that date, the proceedings had not yet been concluded. It is apparent from the documents submitted to the Court that those enforcement proceedings concern a parking space and a shed.

11 On 17 June 2013, after the expiry of the one-month period for bringing an extraordinary application objecting to the mortgage enforcement proceedings provided for by the transitional provision at issue, the defendants in the main proceedings argued before the national court that the time-limit laid down by that measure was contrary to Directive 93/13.

12 First, the one-month time-limit for raising the unfairness of terms in the enforceable order was insufficient for the courts, called upon to review of their own motion the content of loan or credit agreements accompanied by a mortgage guarantee in the process of being enforced and, *a fortiori* for consumers, who have to raise the possible unfairness of the terms in those contracts.

13 Second, the defendants in the main proceedings submit that, if, according to paragraph 4 of the transitional provision at issue, the one-month time-limit began to run from notification effected by means of the publication of the law in an official journal, and not to the defendants individually, access by consumers to justice would be very difficult, even if they had the benefit of legal assistance.

14 The referring court considers that, in order to decide the case before it, it is necessary for the Court of Justice to give a ruling on how to reconcile the principle that procedural periods are subject to a time-bar, which is closely connected into the principle of legal certainty, with the protection of consumers of the Court’s own motion, which is not subject to any limitation period, by means of the finding of that the unfair term is wholly void and not part of the contract, as provided by Directive 93/13 and as interpreted by the Court of Justice in its recent case-law.

15 In those circumstances, the Juzgado de Primeria Instancia No 4 de Martorell (Court of First Instance No 4 Martorell), decided to stay the proceedings and to 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 of Law 1/2013 contrary to the terms of Articles 6 and 7 of Directive 93/13?’

Consideration of the question referred for a preliminary ruling

16 By its question, the referring court asks essentially whether Articles 6 and 7 of Directive 93/13 must be interpreted as meaning that they preclude a national transitional provision, such as that at issue in the main proceedings, which makes consumers, against whom mortgage repossession proceedings have been instituted before the entry into force of the Law of which that provision forms part and which have not been concluded at that date, subject to a one-month time-limit, calculated from the day following the publication of that law, to bring an objection to enforcement, in particular on the basis of the alleged unfairness of the contractual terms.

17 In order to answer that question, it should be noted 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 (judgments in *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).

18 As regards such a weaker position, Article 6(1) of Directive 93/13 provides that unfair terms are not to be binding on the consumer. It is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them (judgment in *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 40, and the case-law cited).

19 Furthermore, given the nature and significance of the public interest which constitutes the basis of the protection guaranteed to consumers, who are in such a weak position, Article 7(1) of Directive 93/13 requires 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 (judgment in *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 68; *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 78; and *Unicaja Banco and Caixabank*, C-482/13, C-484/13, C-485/13 and C-487/13, EU:C:2015:21, paragraph 30).

20 Thus, the Court has emphasised that national enforcement proceedings, such as mortgage enforcement proceedings, are subject to the requirements arising out of its settled case-law which seeks to ensure the effective protection of consumers (judgment in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 25).

21 In order to take account of that case-law and more specifically in response to the judgment in *Aziz* (C-415/11, EU:C:2013:164), Law 1/2013 amended, inter alia, the articles in the Civil Procedure Code relating to the enforcement procedure of mortgaged assets. Thus, for proceedings opened after the entry into force of Law 1/2013, the defendant's objection to enforcement, based on the unfairness of a contractual term, brought within the normal 10-day period from the date of service of the document ordering enforcement, henceforth allows the suspension of the mortgage enforcement proceedings until the objection to enforcement has been adjudicated upon.

22 In the context of that legislative reform, the transitional provision at issue aims to take account of enforcement proceedings in progress at the date of entry into force of Law 1/2013, in which the 10-day period for objecting to enforcement have already started to run or have expired. Thus, as the Advocate General observed, in point 34 of his Opinion, despite the fact that judgments of the Court have immediate effect and, therefore, from the date of entry into force of the measure interpreted, the Spanish legislature deemed it necessary to provide a transitional mechanism for time-limits, in order to enable consumers involved in enforcement proceedings in progress to bring, at a procedural level, within a period to be prescribed by the Spanish legislature, an extraordinary application objecting to enforcement based, inter alia, on the existence of unfair terms.

23 It must be determined whether, and, if appropriate, to what extent, Directive 93/13, as interpreted by the case-law of the Court, expounded, in particular since its judgment in *Aziz* (C-415/11, EU:C:2013:164) precludes the transitional mechanism for limitation periods adopted by the Spanish legislature and established by Law 1/2013.

24 In that connection, it is true, that in the absence of harmonisation of the national mechanisms for enforcement, the rules fixing the period within which to bring proceedings objecting to enforcement allowed in mortgage enforcement proceedings are a matter for the national legal order of each Member State. However, the Court has emphasised that those mechanisms must satisfy the two conditions: that they are no less favourable than those governing similar domestic actions (principle of equivalence) and do not make it in practice impossible or excessively difficult to exercise the rights conferred on consumers by EU law (principle of effectiveness) (judgments in *Aziz*, C-415/11, EU:C:2013:164, paragraph 50, and *Barclays Bank*, C-280/13, EU:C:2014:279, paragraph 37)

25 As regards, first, the principle of equivalence, it must be observed that the Court does not have before it any information which might raise doubts as to the compliance of the transitional provision at issue with that principle.

26 As regards, second, application of the principle of effectiveness, the Court has held that every case in which the question arises as to whether a national procedural measure makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that measure in the procedure, its conduct and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 34 and the case-law cited).

27 Those aspects, raised by the case-law cited, must be taken into account in the analysis of the characteristics of the period at issue in the main proceedings. Thus, as the Advocate general observed, in point 45 of his Opinion, that analysis must cover two aspects, namely the duration of the time-limit laid down by the legislature and the mechanism adopted to start that period running.

28 First, as far as concerns the duration of the period, it should be noted that, according to settled case-law, laying down reasonable time-limits within which to bring proceedings in the interests of legal certainty is compatible with EU law. Such time-limits do not make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (judgment in *Asturcom Telecommunicaciones*, C-40/08, EU:C:2009:615, paragraph 41 and the case-law cited).

29 The Court has also held that the time-limit laid down must be sufficient in practical terms to enable the applicant to prepare and bring an effective action (see, to that effect, judgment in *Samba Diouf*, C-69/10, EU:C:2011:524, paragraph 66).

30 In the present case, it must be noted that the one-month period is laid down, on an exceptional basis, by a transitional provision aiming to ensure that consumers, the defendants in enforcement proceedings in progress in which the normal period of 10 days within which to object to enforcement has already begun to run or has expired, the possibility, in the same proceeding, to raise a new ground of opposition which was not foreseen when the legal proceedings concerned were brought.

31 Therefore, it must be held that, having regard to the position of the transitional provision at issue within the mortgage enforcement proceedings as a whole, a time-limit of one month within which to bring an extraordinary application opposing enforcement does not, in principle, appear to be insufficient to prepare and bring an effective action and thus appears reasonable and proportionate with regard to the rights and interests concerned.

32 It follows that, having regard to the length of the period within which to oppose enforcement granted to the consumer in mortgage enforcement proceedings ongoing at the date of entry into force of Law 1/2013, the transitional provision at issue cannot be regarded as undermining the principle of effectiveness.

33 Second, as regards the analysis of the second aspect of the characteristics of the limitation period at issue in the main proceedings concerning the mechanism chosen by the legislature to start the period running, the following conditions apply.

34 First, it is common ground that Law 1/2013, of which the contested transitional provision is part, lays down a legislative framework of general scope. That law entered into force on the day of its publication in the *Boletín Oficial del Estado*.

35 Aiming to provide increased protection to citizens in a broad range of situations relating to mortgage loans, Law 1/2013 expressly addresses the situation of consumers who, on the date of entry into force of that law, are defendants in ongoing enforcement proceedings relating to one of their assets.

36 Those consumers were, on the date on which the enforcement proceedings against them were instituted, informed individually by a notice sent to them personally of their right to oppose enforcement within 10 days from the date of notification.

37 However, that notification, prior to the date of entry into force of Law 1/2013, did not contain any information concerning their right to bring an application objecting to enforcement by raising the unfairness of a contractual term constituting the basis of the enforceable order, since that possibility was incorporated into Article 557(1)(7) of the Civil Procedure Code only by Law 1/2013.

38 In those circumstances, in particular having regard to the principles of the rights of the defence, legal certainty and the principle of the protection of legitimate expectations, consumers could not reasonably take advantage of a further opportunity to make an application objecting to enforcement if they were not notified about it through the same procedural means used to convey the initial information.

39 Therefore, it should be found that the contested transitional provision, in so far as it provides that the time-limit begins to run in the present case without the consumers concerned being personally informed of the possibility to raise a new ground of objection in enforcement proceedings which were already in progress before the entry into force of that law, is not such as to guarantee full enjoyment of that period and, therefore, the effective exercise of the new right recognised by the legislative amendment concerned.

40 Taking into account the progress and the special features and complexity of the proceedings and the applicable legislation, there is a significant risk that the time-limit will expire without the consumers in question being able effective and usefully to exercise their rights through legal action because they are unaware of or do not appreciate the exact extent of their rights (see, to that effect, judgment in *Aziz*, C-415/11, EU:C:2013:164, paragraph 58 and the case-law cited).

41 Therefore, it must be held that the contested transitional measure infringes the principle of effectiveness.

42 In the light of all of those considerations, the answer to the question referred is that Articles 6 and 7 of Directive 93/13 must be interpreted as meaning that they preclude a national transitional provision, such as that at issue in the main proceedings, which, as regards mortgage enforcement proceedings which were instituted before the date of entry into force of the law of which that provision forms part

and which were not concluded at that date, imposes a time-limit on consumers calculated from the day following the publication of that law, to object to enforcement on the basis of the alleged unfairness of contractual terms.

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:

Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that they preclude a national transitional provision, such as that at issue in the main proceedings, which, as regards mortgage enforcement proceedings which were instituted before the date of entry into force of the law of which that provision forms part and which were not concluded at that date, imposes a time-limit on consumers calculated from the day following the publication of that law, to object to enforcement on the basis of the alleged unfairness of contractual terms.

[Signatures]