Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2016*

(References for a preliminary ruling — Directive 93/13/EEC — Consumer contracts — Mortgage loans — Unfair terms — Article 4(2) — Article 6(1) — Declaration of nullity — Limitation by the national court of the temporal effects of the declaration of nullity of an unfair term)

In Joined Cases C-154/15, C-307/15 and C-308/15,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil No 1 de Granada (Commercial Court No 1, Granada, Spain) (C-154/15), made by decision of 25 March 2015, received at the Court on 1 April 2015, and from the Audiencia Provincial de Alicante (Provincial Court, Alicante, Spain) (C-307/15 and C-308/15), made by decisions of 15 June 2015, received at the Court on 1 July 2015, in the proceedings

Francisco Gutiérrez Naranjo

v

Cajasur Banco SAU (C-154/15),

Ana María Palacios Martínez

v

Banco Bilbao Vizcaya Argentaria SA (BBVA) (C-307/15),

Banco Popular Español, SA

v

Emilio Irles López

Teresa Torres Andreu (C-308/15),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta and M. Ilešič, Presidents of Chambers, J. Malenovský, E. Levits (Rapporteur), J.-C. Bonichot, A. Arabadjiev, C.G. Fernlund, C. Vajda, S. Rodin, F. Biltgen and K. Jürimäe, Judges,

Advocate General: P. Mengozzi,

Registrar: L. Carrasco Marco, Administrator,

* Language of the case: English.

having regard to the written procedure and further to the hearing on 26 April 2016,

after considering the observations submitted on behalf of:

— Mr Gutiérrez Naranjo, by A. Navarro Vidal, A. Martínez Muriel, D. Pineda Cuadrado and L. Pineda Salido, abogados,

— Ms Palacios Martínez, by F.J. Zambudio Nicolas, abogado, and R. López Coloma, procuradora,

— Banco Popular Español SA, by C. Fernández Vicién, I. Moreno-Tapia Rivas and J. Capell, abogados,

— Cajasur Banco SAU, by J. Remón Peñalver and D. Sarmiento Ramirez-Escudero, abogados,

— Banco Bilbao Vizcaya Argentaria SA (BBVA), by J. Rodríguez Cárcamo and A. Rodríguez Conde, abogados,

— Mr Irles López and Ms Torres Andreu, by Y. Sánchez Orts, procuradora and F. García Cerrillo, abogado,

— the Spanish Government, by A. Gavela Llopis and M. Sampol Pucurull, acting as Agents,

— the Czech Government, by S. Šindelková and by M. Smolek and J. Vláčil, acting as Agents,

— the Polish Government, by B. Majczyna, acting as Agent,

— the United Kingdom Government, by S. Simmons and L. Christie, acting as Agents, and by S. Ford, Barrister, K. Smith and B. Kennelly, QC,

— the European Commission, by D. Roussanov, N. Ruiz García and J. Baquero Cruz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2016,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of, in particular, Article 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 These requests have been made in proceedings between persons having taken out mortgage loans and credit institutions, concerning the right to repayment of amounts paid on the basis of contractual clauses that have been held by a court to be unfair.

Legal context

EU law

3 Recital 10 of Directive 93/13 provides:

‘… more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms …’

4 Recital 12 of that directive states:

'… Member States should have the option, with due regard for the Treaty, to afford consumers a higher level of protection through national provisions that are more stringent than those of this Directive.'

5 Under Recital 24 of Directive 93/13:

'… the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts.'

6 According to Article 3(1) of Directive 93/13:

'A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.'

7 Under the first subparagraph of Article 3(2) of that directive:

'A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.'

8 Article 4 of that directive reads as follows:

'1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplies in exchange, on the other, in so far as these terms are in plain intelligible language.'

9 Article 5 of the directive states:

'In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. …'

10 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.'

11 Under Article 7(1) of that Directive:

'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.'

The relevant provisions of Spanish law

Legislation

12 Article 1303 of the Código Civil (Civil Code) provides that:

'When an obligation has been declared void, the contracting parties must restore to one another those things that formed the subject-matter of the contract, together with the profits derived therefrom, and the price together with interest, without prejudice to the following articles.'

13 Article 82(1) of the texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias (recast text of the General Law for the protection of consumers and users and other supplementary laws), approved by the Real Decreto Legislativo 1/2007 (Royal Legislative Decree 1/2007) of 16 November 2007 (BOE No 287 of 30 November 2007), in the version applicable to the main proceedings ('the LGDCU'), provides:

'All stipulations not negotiated individually and all practices not expressly allowed that, contravening the requirements of good faith, give rise, in a manner detrimental to the consumer and user, to a significant imbalance of the rights and obligations of the parties under the contract, shall be regarded as unfair terms.'

14 Article 83 of the LGDCU provides:

'Unfair contractual terms shall automatically be void and deemed not to have formed part of the contract. For those purposes, having heard the parties, the court shall rule that the unfair terms included in the contract are invalid, though the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.'

15 Article 5(5) of Ley 7/1998 sobre Condiciones Generales de la Contratación (Law 7/1998 on General Contractual Conditions) of 13 April 1998 (BOE No 89 of 14 April 1998), in the version applicable to the cases in the main proceedings ('the LCGC'), provides:

'The drafting of general terms shall comply with the criteria of clarity, accuracy and simplicity.'

16 Article 7 of the LCGC provides:

'The following general terms shall be deemed not to be included in the contract:

(a) those of which the consumer has not had genuine opportunity to take full cognisance before the conclusion of the contract or that have not been signed, where appropriate, as provided in Article 5;

(b) terms that are illegible, ambiguous, obscure or incomprehensible, except in the case of the latter, if the contracting party has expressly accepted them in writing and they comply with the specific rules concerning transparency of contractual clauses in that sector.'

17 Pursuant to Article 8 of the LCGC:

'1. General conditions that infringe the provisions of this Law or any other rule ordering or prohibiting certain conduct, to the detriment of a party to the contract, shall automatically be void, save in so far as they make separate provision for cases of breach.

2. In particular, where a contract has been concluded with a consumer, general conditions that are unfair shall be void ...'

The case-law of the Tribunal Supremo (Supreme Court, Spain)

– Judgment No 241/2013 of 9 May 2013

18 Hearing a collective action for an injunction brought by a consumer association against several credit institutions, the Tribunal Supremo (Supreme Court), in Judgment No 241/2013 of 9 May 2013, after making a finding of unfairness in respect of the clauses establishing a minimum rate below which the variable rate of interest could not fall ('floor clauses') contained in the general conditions of mortgage loan agreements concluded with consumers, declared those clauses void.

19 That court held that those clauses, which related to the definition of the main subject-matter of the contract, were grammatically intelligible for consumers and satisfied, therefore, the requirement under Article 4(2) of Directive 93/13 that they be drafted in plain, intelligible language. Accordingly, there were no grounds for that court to find they were unfair, in accordance with the case-law developed by the Court in the judgment of 3 June 2010, *Caja de Ahorros y Monte de Piedad de Madrid*, (C-484/08, EU:C:2010:309).

20 However, relying inter alia upon the principles laid down by the Court of Justice in its judgment of 21 March 2013, *RWE Vertrieb* (C-92/11, EU:C:2013:180), that court held that the requirement of transparency, laid down in Article 4(2) of Directive 93/13, must be construed as involving not only formal but also substantive compliance, that requirement having the same scope as the requirement referred to in Article 5 of that directive, and relating to the adequacy of the information given to consumers at the time the contract is concluded as to the legal and financial consequences for them of the application of the terms relating, in particular, to the main subject-matter of the contract.

21 However, according to the Tribunal Supremo (Supreme Court), in the case which gave rise to the judgment of 9 May 2013 the requirement of substantive transparency was not satisfied, in that the banking institutions concerned had not provided such information to the consumers when the loan agreements containing the 'floor clauses' were concluded. Therefore, the Tribunal Supremo (Supreme Court) assessed whether those clauses were unfair in the light of the general criteria of good faith, balance and transparency set out in Articles 3(1), 4(1) and 5 of Directive 93/13 and declared that those clauses were void because of their lack of transparency due to insufficient information for the borrowers as to the material consequences of their application in practice.

22 Nevertheless, the Tribunal Supremo (Supreme Court) held that the mortgage loan agreements in question were capable of continuing in existence and, furthermore, limited the retroactive effect of the declaration of nullity in respect of the 'floor clauses'.

23 In that regard, after recalling that, in accordance with the Court's case-law on the invalidity of unfair terms, the clauses in question must be considered to be without effect, the Tribunal Supremo (Supreme Court) indicated that, notwithstanding the general rule as to the retroactive effect of a declaration of invalidity, that effect could not be impervious to the general principles of law, especially the principle of legal certainty.

24 The Tribunal Supremo (Supreme Court) held that the 'floor clauses' were in themselves lawful, that the reasons for them were objective, that they were neither unusual or extravagant, that their use had long been tolerated on the market for credit agreements for immovable property, that their invalidity was based on a lack of transparency due to insufficient information for borrowers, that the banking institutions had complied with the regulatory requirement for information, that the fixing of a minimum interest rate responded to the necessity of maintaining a minimum return on the mortgage

loans in question in order to enable the banking institutions to cover the costs of production involved and continue to provide such financing, that the 'floor clauses' were calculated in such a way as not to involve significant changes to the initial amounts to be paid, sums which borrowers take into account when deciding their financial behaviour, that the Spanish legislation provides for the replacement of a creditor and that retroactive effect of the invalidity of the clauses at issue would give rise to serious economic repercussions.

25 Therefore, in the light of those considerations, the Tribunal Supremo (Supreme Court), on the basis of the principle of legal certainty, limited the effects of its judgment to after the date of its publication, deciding that the invalidity of the 'floor clauses' in question did not affect situations in which final decisions had been made in judgments with the force of *res judicata* or payments made before 9 May 2013, so that only the amounts overpaid on the basis of those clauses after that date had to be repaid.

– Judgment No 139/2015 of 25 March 2015

26 In its judgment of 25 March 2015 ('the judgment of 25 March 2015'), the Tribunal Supremo (Supreme Court) upheld the limitation of the retroactive effect of the declaration that a 'floor clause' was void in an individual action by a consumer who claimed repayment of amounts overpaid on the basis of such a clause. In so doing, that court extended to individual actions for redress the approach previously upheld in the judgment of 9 May 2013 in respect of collective actions for an injunction. Thus, in the case which gave rise to the judgment of 25 March 2015, the obligation to provide restitution was limited to amounts overpaid after the delivery of the judgment of 9 May 2013.

The facts of the cases in the main proceedings and the questions referred for a preliminary ruling

Case C-154/15

27 Mr Francisco Gutiérrez Naranjo concluded with Cajasur Banco SAU a mortgage loan containing a 'floor clause'.

28 Mr Gutiérrez Naranjo brought proceedings before the Juzgado de lo Mercantil No 1 de Granada (Commercial Court No 1, Granada, Spain) for a declaration of nullity in respect of that 'floor clause' and for an order for the recovery of amounts overpaid on the basis of that clause, relying upon Directive 93/13 and the case-law of the Tribunal Supremo (Supreme Court).

29 The referring court is uncertain whether limiting the effects of the declaration of nullity of a contractual term on the basis of unfairness to the period after that declaration alone is compatible with Article 6(1) of Directive 93/13.

30 Therefore, the Juzgado de lo Mercantil No 1 de Granada (Commercial Court No 1, Granada) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) In such cases, is an interpretation according to which an unfair term declared void nonetheless produces effects until that declaration is made compatible with the interpretation of "non-binding" in Article 6(1) of Directive 93/13/EEC? Therefore, even though the term has been declared void, will the effects produced by that term while it was in force be considered not to be invalidated or ineffective?

(2) Is an injunction that may be issued to desist from using a particular term (in accordance with Articles 6(1) and 7(1)) in an individual action brought by a consumer when such a declaration is made compatible with a limitation of the effects of a declaration of nullity? May (the courts) alter

the reimbursement of any sums paid by the consumer — which the seller or supplier is obliged to reimburse — under the term subsequently declared void *ex tunc*, for want of information and/or of transparency?'

Case C-307/15

31 On 28 July 2006, Ms Ana María Palacios Martínez concluded a mortgage loan agreement with Banco Bilbao Vizcaya Argentaria SA (BBVA) which contained a 'floor clause'.

32 On 6 March 2014, the borrower brought an action before the Juzgado de lo Mercantil No 1 de Alicante (Commercial Court No 1, Alicante, Spain) in order to have the floor clause declared void on the ground that it is unfair and to obtain reimbursement of the amounts received improperly by the bank.

33 At first instance, that court found, relying upon the approach adopted by the Tribunal Supremo (Supreme Court) in its judgment of 9 May 2013, that the action had become devoid of purpose, without prejudice to the repayment to the applicant of the amounts which the bank could have recovered under the clause in question from the date on which that judgment was delivered.

34 On appeal, the Audiencia Provincial de Alicante (Provincial Court, Alicante, Spain) has doubts as to the compatibility of the approach adopted at first instance with Article 6(1) of Directive 93/13.

35 According to that court, the non-retroactivity of the declaration of nullity in respect of an unfair term would be liable to be inconsistent with both the objectives of that directive and with the prohibition of modification by the courts of terms found to be unfair. Furthermore, that court doubts whether the conditions required by the Court for the effects of the declaration of nullity in respect of an unfair term to be limited in time were satisfied in the case giving rise to the judgment of 9 May 2013.

36 Therefore, the Audiencia Provincial de Alicante (Provincial Court, Alicante) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is it compatible with the principle that unfair terms are not binding, laid down in Article 6(1) of … Directive 93/13 …, for the restitutory effects derived from a declaration on grounds of unfairness of the nullity of a "floor clause" included in a loan agreement not to be applied retroactively from the date of conclusion of the agreement but rather from a later date?

(2) Is the criterion that those concerned must act in good faith, which operates as a basis for limiting the retroactive effect derived from an unfair term, an autonomous concept of EU law that must be interpreted uniformly throughout the Member States?

(3) If so, what circumstances must be taken into account in order for it to be determined whether those concerned acted in good faith?

(4) At all events, is it compatible with the criterion of good faith for the actions of a seller or supplier, in creating the agreement, to have been the cause of a lack of transparency making the term unfair?

(5) Is the risk of serious difficulties, which operates as a basis for limitation of the retroactive effect derived from an unfair term, an autonomous concept of EU law that must be interpreted uniformly throughout the Member States?

(6) If so, what criteria ought to be taken into account?

(7) Must the risk of serious difficulties be assessed by taking account solely of the risk which may arise for the seller or supplier or must account also be taken of the loss caused to a consumer by the failure to reimburse in full the sums paid under that "floor clause"?'

Case C-308/15

37 On 1 June 2001, Mr Emilio Irles López and Ms Teresa Torres Andreu concluded with Banco Popular Español SA ('BPE') a mortgage loan contract containing a 'floor clause'. By amendments on 2 May 2007 and 14 June 2007, the parties agreed two increases to the principal sum lent, each containing a 'floor clause'.

38 Taking the view that the way in which their consent was obtained to the 'floor clauses' lacked transparency, the borrowers brought proceedings before the Juzgado de lo Mercantil No 3 de Alicante (Commercial Court No 3, Alicante, Spain) for a declaration that those clauses were void and for repayment of the amounts overpaid on the basis of those clauses.

39 The action was upheld at first instance by that court, which also ordered BPE to repay the borrowers the sums overpaid under those clauses as from the date of conclusion of the loan agreement and the amendments to that agreement.

40 BPE lodged an appeal before the Audiencia Provincial de Alicante (Provincial Court, Alicante) on the basis of the judgments of 9 May 2013 and of 25 March 2015.

41 The referring court expresses doubts, on the one hand, as to the compatibility of the limitation of the effects of the declaration of nullity of an unfair contract term with Article 6 of Directive 93/13. On the other hand, according to that court, the fact that the Tribunal Supremo (Supreme Court) has, by its judgment of 25 March 2015, extended to individual actions the approach taken in its judgment of 9 May 2013, in the context of a collective action, could have the effect of restricting the right of individual borrowers to effective judicial protection, in so far as the specific circumstances of each case would not be taken into consideration in order to determine the starting point for the repayment obligation incumbent upon the bank that has benefited from the effects of an unfair term.

42 Therefore, the Audiencia Provincial de Alicante (Provincial Court, Alicante) decided to stay the proceedings and to refer to the Court, in addition to the same questions referred for preliminary ruling as those in Case C-307/15, an eighth question which reads as follows:

'(8) Is it compatible with the principle that consumers are not bound by unfair terms, laid down in Article 6(1) of Council Directive 93/13/EEC, and with the right to effective judicial protection affirmed in Article 47 of the Charter of Fundamental Rights of the European Union, for the limitation of the restitutory effects deriving from the nullity of a "floor clause", declared in proceedings brought by a consumers' association against financial bodies, to be automatically extended to individual actions for a declaration that a "floor clause" is void because unfair brought by consumer customers who have concluded a mortgage loan with other financial bodies?'

43 By decision of the President of the Court of 10 July 2015, Cases C-307/15 and C-308/15 were joined for the purposes of the written and oral procedure and the judgment.

44 By order of the President of the Court of 14 August 2015, the requests of the Audiencia Provincial de Alicante (Provincial Court, Alicante) that Cases C-307/15 and C-308/15 be determined under the expedited procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and in Article 105 of the Rules of Procedure of the Court were rejected.

45 By decision of the President of the Court of 21 October 2015, Case C-154/15 was joined with Cases C-307/15 and C-308/15 for the purposes of the oral procedure and of the judgment.

Consideration of the questions referred

The first and second questions in Case C-154/15 and the first questions in Cases C-307/15 and C-308/15

46 By the two questions in Case C-154/15 and by the first questions in Cases C-307/15 and C-308/15, which may appropriately be examined together, the referring courts ask, in essence, whether Article 6(1) of Directive 93/13 must be interpreted as precluding national case-law that temporally limits the restitutory effects of the judicial declaration of unfairness, in accordance with Article 3(1) of that directive, of a clause in a contract concluded between a consumer and a seller or supplier, to amounts overpaid under that clause after the judicial decision in which a finding of unfairness was made.

47 In the first place, it is necessary to examine the argument of the Spanish Government, Cajasur Banco and BPE that the question of the effects of the finding of unfairness in respect of a clause, of the same kind as those at issue in the main proceedings, does not fall within the scope of Directive 93/13, given that in making such a finding, the Tribunal Supremo (Supreme Court) afforded a higher level of consumer protection than that guaranteed by that directive.

48 In that regard, it is clear from the decisions to refer that, in its judgment of 9 May 2013, the Tribunal Supremo (Supreme Court), in order to justify a determination of the unfairness of the 'floor clauses' in question concerning the main subject-matter of the contracts at issue, interpreted the requirement of transparency, referred to in Article 4(2) of the directive, as not being limited to the requirement for formal transparency of contractual clauses in relation to the plain and intelligible nature of their drafting, but as extending to their substantive transparency linked to the adequacy of the information supplied to the consumer concerning the extent, both legal and economic, of the consumer's contractual commitment.

49 However, as the Advocate General stated at points 46 to 50 of his Opinion, the review of the substantive transparency of the clauses relating to the main subject-matter of the contract derives from what is laid down in Article 4(2) of Directive 93/13. It provides, in the same words as those appearing in Article 5 of that directive, that contractual clauses must be 'drafted in plain, intelligible language'.

50 In that regard, the Court has already held that information, before concluding a contract, on the terms of the contract and the consequences of concluding it is of fundamental importance for a consumer. It is on the basis of that information in particular that the consumer decides whether he wishes to be bound by the terms previously drawn up by the seller or supplier (judgment of 21 March 2013, *RWE Vertrieb*, C-92/11, EU:C:2013:180, paragraph 44).

51 Therefore, the assessment of the unfairness, in accordance with Article 3(1) of Directive 93/13, of a contractual clause relating to the definition of the main subject-matter of a contract, where the consumer did not have, before the conclusion of that contract, the necessary information on the contractual conditions and the consequences of entering into that contract, falls within the scope of that directive in general and of Article 6(1) of that directive, in particular.

52 Thus, and in so far as the national courts refer to the judgment of 9 May 2013 limiting the restitutory effect of the finding that the 'floor clauses' were unfair, it is necessary to examine whether Article 6(1) of Directive 93/13 must be interpreted as authorising such a limitation by a national court.

53 Under Article 6(1) of Directive 93/13, Member States are to lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier are, as provided for under their national law, not to be binding on the consumer.

54 That provision must be regarded as a provision of equal standing to that of national rules that have, within the domestic legal system, the character of rules of public policy (see, to that effect, judgment of 30 May 2013, *Asbeek Brusse and de Man Garabito*, C-488/11, EU:C:2013:341, paragraph 44).

55 In addition, this is a mandatory provision that is intended to replace the formal balance established by the contract between the rights and obligations of the parties with an effective balance that re-establishes equality between them (judgment of 14 June 2012, *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 63, and the case-law cited).

56 Given the nature and significance of the public interest constituted by the protection of consumers, who are in a position of weakness vis-à-vis sellers or suppliers, Directive 93/13, as is apparent from Article 7(1) thereof, read in conjunction with its twenty-fourth recital, obliges the 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 of 30 April, *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 78).

57 To this end, it is for the national court purely and simply to exclude the application of an unfair contractual term in order for it not to produce binding effects with regard to the consumer, without being authorised to revise its content (see, to that effect, judgment of 14 June 2012, *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 65).

58 In that context, on the one hand, a national court is bound to assess, of its own motion, whether a contractual term falling within the scope of Directive 93/13 is unfair and by so doing to compensate for the imbalance existing between the consumer and the seller or supplier, when it has available to it the legal and factual elements necessary to that end.

59 The full effectiveness of the protection provided for by the directive requires the national court that has found of its own motion that a term is unfair to be able to establish all the consequences of that finding, without expecting the consumer, who has been fully informed of his rights, to submit a statement requesting that that term be declared invalid (judgment of 30 May 2013, *Jőrös*, C-397/11, EU:C:2013:340, paragraph 42).

60 On the other hand, the national court may not revise the content of unfair terms, lest it contribute to eliminating the dissuasive effect for sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms (see, to that effect, judgment of 21 January 2015, *Unicaja Banco and Caixabank*, C-482/13, C-484/13, C-485/13 et C-487/13, EU:C:2015:21, paragraph 31 and the case-law cited).

61 It follows from the foregoing considerations that Article 6(1) of Directive 93/13 must be interpreted as meaning that a contractual term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer. Therefore, the determination by a court that such a term is unfair must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he would have been in if that term had not existed.

62 It follows that the obligation for the national court to exclude an unfair contract term imposing the payment of amounts that prove not to be due entails, in principle, a corresponding restitutory effect in respect of those same amounts.

63 The absence of such restitutory effect would be liable to call into question the dissuasive effect that Article 6(1) of Directive 93/13, read in conjunction with Article 7(1) of that directive, is designed to attach to a finding of unfairness in respect of terms in contracts concluded between consumers and sellers or suppliers.

64 It is true that Article 6(1) of Directive 93/13 requires the Member States to lay down that unfair terms are not to be binding on the consumer, 'as provided for under their national law' (judgment of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 57).

65 However, the regulation by national law of the protection guaranteed to consumers by Directive 93/13 may not alter the scope and, therefore, the substance of that protection and thus affect the strengthening of the effectiveness of that protection by the adoption of uniform rules of law in respect of unfair terms, which was the intention of the EU legislature, as stated in recital 10 of Directive 93/13.

66 Consequently, while it is for the Member States, by means of their national legislation, to define the detailed rules under which the unfairness of a contractual clause is established and the actual legal effects of that finding are produced, the fact remains that such a finding must allow the restoration of the legal and factual situation that the consumer would have been in if that unfair term had not existed, by inter alia, creating a right to restitution of advantages wrongly obtained, to the consumer's detriment, by the seller or supplier on the basis of that unfair term.

67 In the present case, in its judgment of 9 May 2013, to which the national courts refer, the Tribunal Supremo (Supreme Court) held that the finding that the 'floor clauses' in question were unfair affected neither situations in respect of which a judgment with the force of *res judicata* had been given nor payments made before the date of delivery of that judgment and that, consequently, the consequences stemming from that finding, inter alia the consumer's right to a restitution, were limited, in the light of the principle of legal certainty, to the amounts overpaid after that date.

68 In that regard, it is true that the Court has also recognised that consumer protection is not absolute. In particular, it has ruled to the effect that EU law does not require a national court to disapply domestic rules of procedure conferring finality on a decision, even if to do so would make it possible to remedy an infringement of a provision, regardless of its nature, contained in Directive 93/13 (see, to that effect, judgment of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 37). It follows that the Tribunal Supremo (Supreme Court) was entitled to hold, in its judgment of 9 May 2013, that the latter did not affect situations in respect of which a judgment with the force *of res judicata* had been given.

69 Likewise, the Court has previously held that in the interests of legal certainty it is compatible with EU law to lay down reasonable time-limits for bringing proceedings (judgment of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 41).

70 Nevertheless, the application of a procedural rule, such as a reasonable limitation period, is to be distinguished from a temporal limitation of the effects of an interpretation of a rule of EU law (see, to that effect, judgment of 15 April 2010, *Barth*, C-542/08, EU:C:2010:193, paragraph 30 and the case-law cited). In that regard, it must be recalled that it is for the Court alone, in the light of the fundamental requirement of a general and uniform application of EU law, to decide upon the temporal limitations to be placed on the interpretation it lays down in respect of such a rule (see, to that effect, judgment of 2 February 1988, *Barra and Others*, 309/85, EU:C:1988:42, paragraph 13).

71 So, the provisions of national law to which Article 6(1) of Directive 93/13 refers may not adversely affect the substance of the right that consumers acquire under that provision, as interpreted by the case-law of the Court referred to at paragraphs 54 to 61 of the present judgment, not to be bound by a term deemed to be unfair.

72 However, the temporal limitation of the legal effects stemming from the declaration of nullity in respect of 'floor clauses' made by the Tribunal Supremo (Supreme Court) in its judgment of 9 May 2013 is tantamount to depriving, in general, any consumer having concluded, before that date, a mortgage loan contract containing such a clause of the right to obtain repayment in full of the amounts overpaid by the consumer to the bank on the basis of that clause during the period before 9 May 2013.

73 It follows that national case-law, such as that following from the judgment of 9 May 2013, concerning the temporal limitation of the legal effects resulting, in accordance with Article 6(1) of Directive 93/13, from the finding that a contractual term is unfair, ensures only limited protection for consumers who have concluded a mortgage loan contract containing a 'floor clause' before the date of the judgment in which the finding of unfairness was made. Such protection is, therefore, incomplete and insufficient and does not constitute either an adequate or effective means of preventing the continued use of that type of term, contrary to Article 7(1) of Directive 93/13 (see, to that effect, judgment of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraph 60).

74 In those circumstances, the referring courts, being bound for the purposes of the decisions to be given in the main proceedings by the interpretation of EU law given by the Court, must disapply, of their own motion, the temporal limitation which the Tribunal Supremo (Supreme Court) applied in its judgment of 9 May 2013, because that limitation does not appear to be compatible with that law (see, to that effect, judgments of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraphs 29 to 32; of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraphs 33 and 34; of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 36, and of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 67 to 70).

75 It follows from all the foregoing considerations that Article 6(1) of Directive 93/13 must be interpreted as precluding national case-law that temporally limits the restitutory effects connected with a finding of unfairness by a court, in accordance with Article 3(1) of that directive, in respect of a clause contained in a contract concluded between a consumer and a seller or supplier, to amounts overpaid under such a clause after the delivery of the decision in which the finding of unfairness is made.

The other questions

76 In view of the reply to the first and second questions in Case C-154/15 and to the first questions in Cases C-307/15 and C-308/15, it is unnecessary to reply to the other questions referred for a preliminary ruling.

Costs

77 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 (Grand Chamber) hereby rules:

Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding national case-law that temporally limits the restitutory effects connected with a finding of unfairness by a court, in accordance with Article 3(1) of that directive, in respect of a clause contained in a contract concluded between a consumer and a seller or supplier, to amounts overpaid under such a clause after the delivery of the decision in which the finding of unfairness is made.

[Signatures]