

**Jurisprudencia****Detalles del asunto****ID nacional:** 308/2004**Estado miembro:** España**Denominación común:** "Unión Financiera Asturiana" v Laurenó, Concepción and Arsenio**Tipo de resolución:** Otros**Fecha de la resolución:** 09/07/2004**Órgano jurisdiccional:** Audiencia Provincial**Asunto:****Demandante:****Demandado:****Palabras clave:****Artículos de la Directiva**Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1.](#)**Nota preliminar**

A disproportionate interest on a loan contract can be considered unfair when it was not negotiated individually and does not fit within the provision of art. 4.2 of the Directive 93/13/EEC on unfair contract terms (the essential elements of the contract are not unfair, like the price) since this article was not included in the Spanish Law of transposition, which increases that way the level of protection for the consumers.

**Hechos**

In a loan contract which purpose was "financing families" signed by a bank with a consumer on 27th July 2001 the annual interest was established on the 22'5% ("TAE" interest). This type of interest was very much beyond the legal interest of money of that date (5'5%) as well as from the maximum limit established by art. 19.4 of the Consumer Credit Law 7/1995 (13,75%). The bank requested the consumer the payment in full and, due to the allegations of the consumer, the judgment in the first instance as well as the one in the appeal reduced the interest to pay to the ones established by law.

**Cuestión jurídica****Decisión**

The claimant bank which requested the payment of the interests in full rejected that art. 19.4 of the Law 7/1995 on consumer credit had to be applied – whereby the consumer would have to pay 13'75% of interests, instead of 22'5% which was established in the contract-, arguing that if the Directive 93/13/EEC was to be applied the validity of the interests agreed by the parties could be supported.

The court acknowledges that art. 19.5 of the Law 7/1995 as well as section 29 of the list of unfair clauses of the Law 26/1984 (First Additional Disposition) make reference to the limits of the interests that can be charged in the event of debts within current accounts (current accounts overdraft) but they do not make reference to the interests of the loan contract. With these dispositions the legislator points out which one is the fair criterion for interests on debt and it is a point of reference that the case law uses to decide whether an interest rate has to be considered proportionate or unfair (thus SAP La Coruña of 24th July 1998, SAP Córdoba of 4th May 2001, SAP Córdoba of 18th February 2003, SAP Jaén of 18th December 2000 and SAP Huelva of 20th September 2000).

According to art. 4.2 of the Directive 93/13, the unfair nature of the clauses will not have to do with the main object of the contract, nor to the proportionality between price and services. The court states that "independently of the doubts that could arise on whether in this section has to be included the agreement on interests or not in a loan contract drawn by a bank, what must be highlighted is that the aforementioned Directive, as it is made clear in its list of reasons, it reserves the possibility that the Member States guarantee for the consumer a higher protection through more strict dispositions than the ones in the present Directive". Therefore, that clause can be considered unfair (since that article has not been transposed) according to art. 10 bis of the Law 26/1984, since it is a standard-form contract, and therefore the interest could not be negotiated by the consumer, and it is disproportionate and abusive. The bank has not proved, as the aforementioned art. 10 bis establishes, that a clause of one of these was individually negotiated, so it is declared unfair.

Texto completo: [Texto completo](#)**Asuntos relacionados**

No hay resultados disponibles

**Literatura jurídica**

No hay resultados disponibles

**Resultado**