

## Case law

### Case Details

**National ID:** 2491

**Member State:** Italy

**Common Name:** Adiconsum v. Banco di Sicilia

**Decision type:** Other

**Decision date:** 24/02/2006

**Court:** Tribunale

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1.](#) Injunctions Directive, [Article 3](#)

### Headnote

The Tribunal of Palermo held that the interest clauses in credit contracts between banks and consumers which provided for a capitalisation of interest every three months should be considered abusive and, consequently, null and void. The judgment confirmed that a consumer association is entitled to act on the basis of the Artt. 139-140 of the Italian Consumer Code.

### Facts

Adiconsum, Associazione difesa consumatori e ambiente Onlus, sued the bank, Banco di Sicilia, before the Tribunal of Palermo and asked the judges to prohibit the insertion interest clauses in credit contracts between the bank and the consumers, which provided for a capitalisation of interest every three months. The claimant affirmed that this usage does not comply with the case-law of the Corte di Cassazione, subsequent to the judgment rendered by the Plenary Session of the Italian Supreme Court on 07.10.2004 and 04.11.2004 (decision no. 21095).

### Legal issue

In 2004, the Italian Supreme Court (Corte di Cassazione, Sezioni Unite) handed down an important decision relating to the compounding of interest or, what is traditionally known as "anatocism" in Italy (i.e. Corte di Cassazione, Plenary Session, 07.10.2004 and 04.11.2004, no. 21095).

The "anatocism" is regulated by the Art. 1283 of the Italian Civil Code providing that, in the absence of contrary usage, interest due can only produce interest from the date of institution of an action or as a result of an agreement subsequent to its becoming due, and provided always that such interest has been due for at least six months.

Since the 1990s, Italian courts have usually declared null and void any interest clauses in credit contracts between banks and consumers which provided for a capitalisation of interest every three months. In 1999, the Supreme Court officially declared this type of clause null and void on the basis that it infringes the Italian Civil Code (Artt. 1283 and 1419).

This practice was based on the fact that those interest clauses were grounded on a mere "trade usage".

Moreover, the Italian Supreme Court consistently declared that these interest clauses are not binding during the period between the termination of any agreement with the bank and the paying off of any overdraft or loan facility.

The Italian banks have duly complied with these decisions over the last decade but, as the decisions did not expressly apply retrospectively, it was not possible for a client to bring an action against its bank to recover the compound interest they had been compelled to pay in the years leading up to these decisions.

However, the judgment of the Corte di Cassazione on 04.11.2004 no. 21095 ruled that the right to claim compensation for monies paid under compound interest clauses should apply retrospectively. As a consequence of the above, the consumers are now entitled to claim compensation for any compound interest paid during the last ten years or so.

In this judgment, the Tribunal of Palermo held that the interest clauses in credit contracts between banks and consumers which provided for a capitalisation of interest every three months should be considered abusive and, consequently, null and void. It also confirmed that a consumer association is entitled to act on the basis of the Artt. 139-140 of the Italian Consumer Code.

### Decision

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result