

Case law

Case Details

National ID: 75/2011

Member State: Spain

Common Name: Francisco v. Banco Popular, S. A.

Decision type: Other

Decision date: 02/03/2011

Court: Tribunal Supremo (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

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

Headnote

1. Despite the fact that the mortgage contracts are partially regulated by the Ministerial Decree of May 5th. 1994, this does not mean that, by virtue of art. 4.2 of the Law 7/1998, these contracts had to be excluded from the scope of application of the Legislation on Standard Terms.
2. A clause to round up the interest of reference in the revisions of the loan must be considered unfair because it is contrary to the requirement of good faith and causes an unjustified damage and imbalance.
3. The Spanish law of transposition of the Directive 93/13 on unfair terms (Law 7/1998) did not implement art. 4.2. According to the ECJ judgment of 3rd. June 2010 a Member State may increase the level of protection for the consumers and, therefore, that provision does not apply in Spain.

Facts

The plaintiff brought up a lawsuit against the defendant regarding the use of a standard term included in variable rate mortgages, which was used to calculate the interest of reference in the revisions of the interests of his loan. According to this clause, the interest had to be always rounded up in favour of the bank. The plaintiff demanded the nullity of this "unfair contract term" and the refund 110.000 pesetas (around 660 euros) that the bank charged on the basis of this clause plus the court costs and the legal interests. On April 22nd. 2002 the Court of First Instance dismissed the claim. On October 19th. 2002, on the contrary, the Appeal Court of Valencia declared the standard term "unfair" and void. The Supreme Court confirmed the judgment of the latter.

Legal issue

The clause established that "with the exception of those cases in which, under provision of law, the bank is exempted from duty, the borrower must be notified prior to application of any changes in the rate [used to calculate the interest of reference]". With the Bank of Spain Circular 8/1990, the term became devoid of purpose, "creating false expectations on the consumer (...) being contrary to the requirement of good faith and causing a significant imbalance in the parties' rights and obligations arising under the contract".

Decision

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