

## Jurisprudencia

### Detalles del asunto

**ID nacional:** AP de Barcelona (Sección 1a) Auto num. 51/2015 de 27 febrero

**Estado miembro:** España

**Denominación común:** N/A

**Tipo de resolución:** Resolución judicial recurrida

**Fecha de la resolución:** 27/02/2015

**Órgano jurisdiccional:** Audiencia Provincial de Barcelona

**Asunto:**

**Demandante:** CAIXABANK

**Demandado:** Unknown

**Palabras clave:** nullity, terms and conditions, unfair terms

### Artículos de la Directiva

Unfair Contract Terms Directive, [Article 3, 1](#). Unfair Contract Terms Directive, [Article 6, 1](#).

### Nota preliminar

1. Unfair clauses cannot bind consumers and must be declared null and void.
2. Judges may not amend unfair clauses, since that would not be compatible with article 6(1) of Directive 93/13.

### Hechos

The defendant had concluded a mortgage agreement with the plaintiff which had variable interests and included a term stating that the interest of the lease would remain stable at a certain minimum percentage in the event of the index to which the interest was related decreasing below a certain interest rate. The contract also included another term setting out an arrear of around 20%. The defendant, in order to stop the enforcement action of the plaintiff, alleged that those clauses were unfair.

### Cuestión jurídica

1. Is a term which, although clearly unfair, is habitually used in the economic sector valid?
2. Are judges entitled to moderate penalty/arrear clauses in contracts?

### Decisión

The Court concluded that, although a term is habitually used in the market practice, if it is unfair, it has to be declared unlawful, and its habitual use does not amend its unlawfulness.

The Court also pointed out that judges are not entitled to modify an unfair clause, therefore, where a clause is considered unfair it has to be erased from the contract as if it had never existed. The Court reasoned that if judges were entitled to do so, traders could see unfair terms included by them on standard contracts being modified but not declared null and void, which would satisfy their interest, at least partially. Unfair terms cannot bind consumers and shall be declared null and void, being erased as if they had never existed.

Texto completo: [Texto completo](#)

### Asuntos relacionados

No hay resultados disponibles

### Literatura jurídica

No hay resultados disponibles

### Resultado

The Court declared the stipulated arrear null and void, however, it did not declare the term setting out a minimum threshold for interests unfair.