

**Literatura jurídica****Detalles de la literatura jurídica****Estado miembro:** España**Título:** Can the price of contracts through the regulation of unfair terms truly be controlled? From the STJUE of 3 June 2010 (Caja de Madrid, C-484/08) and its clear and real impact in Spanish jurisprudence to the STS (plenary session) of 9 May 2013 regarding floor clauses.**Subtítulo:****Tipo:** Article**URL:** <https://e-revistas.uc3m.es/index.php/CDT/article/view/1815>**Autor:** CÁMARA LAPUENTE, S.**Referencia:** Cuadernos de derecho transnacional, Vol. 5, Nº. 2, págs. 209-233**Año de publicación:** 2013**Palabras clave:** Price of contracts, unfair terms, controll**Artículos de la Directiva**Unfair Contract Terms Directive, [Article 4](#)**Nota preliminar**

The lack of formal implementation into Spanish Law of article 4.2 of the Directive 93/13/EEC on unfair terms in consumer contracts produced a strong legal uncertainty in the Spanish caselaw, as for determining whether a non-negotiated term which defines the «main subject matter» of the contract (and even the «adequacy» between price as against goods or services in exchange) can be declared void as an unfair term, provided that these terms are in plain intelligible language. The “Caja Madrid” judgment published by the Court of Justice of the European Union (CJUE) on 3rd June 2010, answered the three preliminary rulings sent by the Spanish Supreme Court (TS) in the sense that Member States, when faced with the transposition of that article, may allow full jurisdictional control of all kind of terms, including the so-called core terms, since this represents an increase in the level of consumer protection.

Furthermore, the CJUE even upheld, relying on the statements of the Spanish TS, that that was the law currently in force in the Spanish legal system. While the apparent impact of the “Caja Madrid” judgment would at first sight seem to have settled the issue, allowing the control of the main subject of the contract and the price-quality ratio using the unfairness test, its real impact is very different: neither the ECJ nor the Spanish Supreme Court had managed to settle the issue in national law. This has been so until the STS 9 May 2013 (judgment in plenary session of the Court on the «floor terms» in mortgage credits). This paper examines with criticism the Spanish Supreme Court’s case law between 2010 and 2013, marked by ambiguity and contradictions. The essay then gives the context of the relevance of the new solution offered by the STS 9 May 2013 and goes beyond with the analysis of some issues that neither the CJUE nor the TS have solved to date (what are «core terms» for this rule, under which parameters they might be controlled, what is the relationship between these judgments and other recent ones in the field of unfair terms).

**Nota general****Asuntos relacionados**

No hay resultados disponibles