



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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FIFTH SECTION

Application no. 9810/25
Juan Carlos MOLINOS MOLINOS
against Spain
lodged on 24 March 2025
communicated on 22 September 2026

STATEMENT OF FACTS

The application concerns the domestic courts' decision not to award the litigation costs to the applicant, even though his complaint against a commercial bank concerning the unfairness of a contractual term had been upheld.

The applicant signed a mortgage contract for his house with a commercial bank, which contained a clause for the early termination of the contract in case of late payment. On 20 November 2014, the bank lodged a foreclosure lawsuit, which was upheld on 27 November 2014 by the First instance court no. 5 of Jaén, on account of the late payment of seven monthly mortgage instalments.

On 10 October 2019, the applicant lodged a complaint with the First instance court no. 5 of Jaén, seeking that the contractual clause providing for early termination of the mortgage contract be declared unfair and therefore void. The complaint was dismissed on 16 October 2019 for having been lodged out of time and confirmed on appeal on 7 November 2019.

Next, the applicant lodged an *amparo* appeal seeking an assessment of the unfairness of the contractual term. On 10 May 2021, the Constitutional Court upheld the appeal and referred the proceedings back to the First instance court.

On 22 September 2021, the First instance court no. 5 of Jaén found that the contractual term was unfair and void, as the delay that could trigger the early termination was much shorter than the one foreseen in domestic regulations. Although the foreclosure was overturned, the court did not order the bank to pay the applicant’s legal fees on the grounds that “the declaration [that the clause is null and void] had preceded the [applicant’s] objection [to the execution]”. The applicant estimates that the legal costs payable to the legal professionals who assisted him will amount to EUR 59.831,67.

The applicant lodged an appeal with the *Audiencia Provincial* seeking that the opposing party be ordered to pay the court costs. On 11 May 2022, the court dismissed the request to award the litigation costs on account of the legal uncertainty of the case which had allowed to make an exception to the “loser pays” rule. In particular, the court emphasised that the annulment of the contractual clause had been ordered based on case law that had developed after the filing of the mortgage enforcement claim, thereby raising serious doubts as to the law. In addition, the court ordered the applicant to pay the costs of that appeal and forfeited the deposit of EUR 50 lodged in connection with those proceedings.

The applicant then lodged an appeal on points of law (*casación*) with the Supreme Court, which was dismissed on 29 May 2024 on the grounds that the decision by the *Audiencia Provincial* issued at second instance could not be appealed against. As laid down in Section 477 § 1 of the Civil Procedure Act, the appeal on points of law is limited to judgments —while excluding decisions— handed down at second instance by the *Audiencia Provincial*.

The applicant lodged an *amparo* appeal with the Constitutional Court, but it was dismissed on 16 December 2024 due to the lack of constitutional significance of the case.

Relying on Article 6 § 1, the applicant complains of an undue restriction of his right of access to a court caused by the domestic courts’ failure to apply the established case law of the Court of Justice of the European Union concerning the award of court costs.

QUESTION TO THE PARTIES

Did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, was the applicant’s right of access to court unduly restricted because he had to bear the costs of his legal representation, even though his complaint about the unfair nature of a contractual clause was accepted and the lower courts’ decision which the applicant challenged quashed? If so, did

the restriction pursue a legitimate aim of ensuring the proper administration of justice and protecting the rights of others? If so, was the restriction proportionate to the legitimate aim pursued? (*Černius and Rinkevičius v. Lithuania*, nos. 73579/17 and 14620/18, §§ 68-74, 18 February 2020; *Zustović v. Croatia*, no. 27903/15, §§ 102-106, 22 April 2021; *Dragan Kovačević v. Croatia*, no. 49281/15, § 83, 12 May 2022).