

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Request for an opinion submitted by the European Commission pursuant to Article 218(11) TFEU**

(Opinion 1/13)

(2013/C 226/02)

*Language of the case: all the official languages***Applicant**

European Commission (represented by: F. Castillo de la Torre, A.-M. Rouchaud-Joët, acting as Agents)

**Question submitted to the Court**

Does the acceptance of the accession of a third country to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction fall within the exclusive competence of the Union?

**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 8 March 2013 — A v B and Others**

(Case C-112/13)

(2013/C 226/03)

*Language of the case: German***Referring court**

Oberster Gerichtshof

**Parties to the main proceedings***Defendant and appellant on a point of law: A**Applicants and respondents in the appeal on a point of law: B and Others***Questions referred**

1. In the case of rules of procedural law under which the ordinary courts called upon to decide on the substance of

cases are also required to examine whether legislation is unconstitutional but are not empowered to repeal legislation generally, this being reserved for a specially organised constitutional court, does the 'principle of equivalence' in the implementation of European Union law mean that, where legislation infringes Article 47 of the Charter of Fundamental Rights of the European Union (the CFR), the ordinary courts are also required, in the course of the proceedings, to request the constitutional court to set aside the legislation generally, and cannot simply refrain from applying that legislation in the particular case concerned?

2. Is Article 47 of the CFR to be interpreted as precluding a procedural rule under which a court which does not have international jurisdiction appoints a representative *in absentia* for a party whose place of domicile cannot be established and that representative can then, by 'entering an appearance', confer binding international jurisdiction on that court?
3. Is Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>(1)</sup> to be interpreted as meaning that 'a defendant enters an appearance', within the meaning of that provision, only where that procedural act was carried out by the defendant himself or by a legal representative authorised by him, or does the foregoing obtain without restriction also in the case of a representative *in absentia* appointed under the law of the Member State in question?

<sup>(1)</sup> OJ 2001 L 12, p. 1.

**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 21 May 2013 — Elcogás, S.A. v Administración del Estado and Iberdrola, S.A.**

(Case C-275/13)

(2013/C 226/04)

*Language of the case: Spanish***Referring court**

Tribunal Supremo, Spain

## Parties to the main proceedings

*Applicant:* Elcogás, S.A.

*Defendants:* Administración del Estado, Iberdrola, S.A.

## Question referred

Does the interpretation of Article 107(1) of the Treaty on the Functioning of the European Union, and of the case-law of the Court of Justice of the European Union concerning that article (in particular, the judgments in Cases C-379/98<sup>(1)</sup> and C-206/06<sup>(2)</sup>), mean that the annual sums allocated to Elcogás in its capacity as the owner of a particular electricity generating facility, as provided for in the extraordinary viability plans approved for Elcogás by the Council of Ministers, are to be regarded as 'aid granted by a Member State or through State resources', where those sums are collected under the general category of 'permanent costs of the electricity system', which are paid by all users and are transferred to undertakings in the electricity sector by means of subsequent settlements made by the Comisión Nacional de Energía (National Energy Commission) in accordance with predetermined statutory criteria, for which purpose that Commission has no margin of discretion?

<sup>(1)</sup> 2001, ECR I-2099.

<sup>(2)</sup> 2008, ECR I-5497.

## Request for a preliminary ruling from the Juzgado de Primera Instancia de Palma de Mallorca (Spain) lodged on 22 May 2013 — Barclays Bank, S.A. v Sara Sánchez García and Alejandro Chacón Barrera

(Case C-280/13)

(2013/C 226/05)

*Language of the case:* Spanish

## Referring court

Juzgado de Primera Instancia de Palma de Mallorca

## Parties to the main proceedings

*Applicant:* Barclays Bank, S.A.

*Defendants:* Sara Sánchez García and Alejandro Chacón Barrera

## Questions referred

1. Must Council Directive 93/13/EEC<sup>(1)</sup> of 5 April 1993 on unfair terms in consumer contracts, and the principles of Community law concerning consumer protection and a balance in the parties' contractual rights and obligations, be interpreted as meaning that they preclude Spanish legislation on mortgages which, although it provides that the mortgagee may request an increase of the security where the valuation of a mortgaged property decreases by 20 %, does not provide, in the context of mortgage enforcement proceedings, that the consumer/debtor/party against whom enforcement is sought may request, following a valuation involving the parties concerned, revision of the sum at which the property was valued, at least for the purposes stipulated in Article 671 LEC,<sup>(2)</sup> where that valuation has

increased by an equal or higher percentage during the period between the creation of the mortgage and the enforcement thereof?

2. Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the principles of Community law concerning consumer protection and a balance in the parties' contractual rights and obligations, be interpreted as meaning that they preclude the Spanish procedural rules on mortgage enforcement which provide that the creditor seeking enforcement may be awarded the mortgaged property at 50 % (now 60 %) of the sum at which the property was valued, which entails an unjustified penalty for the consumer/debtor/party against whom enforcement is sought equivalent to 50 % (now 40 %) of that valuation?
3. Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the principles of Community law concerning consumer protection and a balance in the parties' contractual rights and obligations, be interpreted as meaning that there is abuse of rights and unjust enrichment where, after being awarded the mortgaged property at 50 % (now 60 %) of the sum at which the property was valued, the creditor/party seeking enforcement applies for enforcement in respect of the outstanding amount in order to make up the total amount of the debt, despite the fact that the sum at which the property awarded was valued and/or the actual value of the property awarded is higher than the total amount owed, even though such action is permitted under national procedural law?
4. Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the principles of Community law concerning consumer protection and a balance in the parties' contractual rights and obligations, be interpreted as meaning that, upon the award of the mortgaged property with a valuation and/or actual value which is higher than the total amount of the mortgage loan, Article 570 LEC is applicable and supplants Articles 579 and 671 LEC, and that, accordingly, the creditor seeking enforcement must be considered to have been repaid in full?

<sup>(1)</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

<sup>(2)</sup> Ley de Enjuiciamiento Civil (Law on Civil Procedure).

## Appeal brought on 22 May 2013 by Lord Inglewood and Others against the judgment of the General Court (Fourth Chamber) delivered on 13 March 2013 in Joined Cases T-229/11 and T-276/11 Inglewood and Others v Parliament

(Case C-281/13 P)

(2013/C 226/06)

*Language of the case:* French

## Parties

*Appellants:* Lord Inglewood and Others (represented by: S. Orlandi, J.-N. Louis, D. Abreu Caldas, lawyers)