



Reports of Cases

ORDER OF THE PRESIDENT OF THE COURT

5 June 2014*

((Expedited procedure))

In Case C-169/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Provincial de Castellón (Spain), made by decision of 2 April 2014, received at the Court on 7 April 2014, in the proceedings

Juan Carlos Sánchez Morcillo,

María del Carmen Abril García

v

Banco Bilbao Vizcaya Argentaria SA,

THE PRESIDENT OF THE COURT,

having regard to the proposal of E. Levits, Judge-Rapporteur,

after hearing the Advocate General, N. Wahl,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and Article 47 of the Charter of Fundamental Rights of the European Union.
- 2 The request has been made in proceedings between, on the one hand, Mr Sánchez Morcillo and Ms Abril García and, on the other, Banco Bilbao Vizcaya Argentaria SA concerning their objection to the mortgage enforcement in respect of their property.
- 3 It is apparent from the order for reference that, on 9 June 2013, the applicants in the main proceedings signed a notarial act with Banco Bilbao Vizcaya Argentaria, recording a loan agreement secured by a mortgage relating to their dwelling. Owing to their failure to fulfil their obligation to pay the monthly repayments of that loan, the bank, on 15 April 2011, demanded payment of the entirety of the loan, together with ordinary and default interest, as well as the sale of the mortgaged property at public auction.

* Language of the case: Spanish.

- 4 Following initiation of the mortgage enforcement proceedings, the applicants in the main proceedings raised an objection, which was dismissed by decision of the Juzgado de Primera Instancia No 3 de Castellón of 19 June 2013. The applicants in the main proceedings then appealed against that decision. Since their appeal was declared admissible, it was remitted for a decision before the Audiencia Provincial de Castellón.
- 5 The referring court states that, although Spanish civil procedure allows appeals to be made against the decision which, while upholding the objection raised by a debtor, brings the enforcement proceedings to an end, it does not, however, allow the debtor whose objection was dismissed to appeal against the decision at first instance ordering the continuation of the enforcement proceedings. The referring court expresses doubts as to the compatibility of that national legislation with the objective of consumer protection pursued by Directive 93/13 and with the right to an effective remedy as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. The referring court also notes that allowing the debtors to appeal could prove so decisive that some of the terms of the loan contract at issue in the main proceedings could be considered ‘abusive’ within the meaning of Article 3(1) of Directive 93/13.
- 6 That court requested that the Court of Justice adjudicate in this case under an accelerated procedure, pursuant to Article 105(1) of the Court’s Rules of Procedure.
- 7 In support of its request, the referring court observes that the answer provided by the Court could have significant consequences for litigation in Spain given that, in the light of the economic crisis experienced by that Member State, a large number of natural persons are subject to mortgage enforcement measures in respect of their dwellings.
- 8 The referring court points out that the proceedings that may be affected by the Court’s answer also concern the main dwelling of debtors. Since the objection they raised does not have suspensive effect under Spanish procedural law pursuant to Article 698(1) of the Code of Civil Procedure, such dwellings would be liable to be sold at auction before the Court even handed down its ruling.
- 9 Under Article 105(1) of the Court’s Rules of Procedure, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.
- 10 It is true, according to settled case-law of the Court, that the large number of persons or legal situations potentially affected by the decision the referring court or tribunal has to deliver after bringing a matter before the Court for a preliminary ruling does not, in itself, constitute an exceptional circumstance that would justify the use of the expedited procedure (see, inter alia, orders of the President of the Court in *KÖGÄZ and Others*, C-283/16 and C-312/06, EU:C:2006:602, paragraph 9; *Plantanol*, C-201/08, EU:C:2008:385, paragraph 10; and *Abdullahi*, C-394/12, EU:C:2012:623, paragraph 11).
- 11 However, in the present case, beyond the number of affected debtors reported by the referring court, the risk, for the owner, of losing his main dwelling puts him and his family in a particularly fragile situation.
- 12 That circumstance is exacerbated by the fact that, according to the referring court, if it were found that the enforcement proceedings were based on a loan contract containing abusive terms which is deemed null and void by the national court, the annulment of the enforcement proceedings related to that loan contract provide the debtor with protection of a purely compensatory nature and does not enable the earlier situation, in which he was the owner of his dwelling, to be restored.

- 13 Since an answer from the Court within the shortest possible time may significantly limit the risk of the main dwelling of the persons concerned being lost, the request of the referring court seeking to submit Case C-169/14 to the expedited procedure should be granted.

On those grounds, the President of the Court hereby orders:

The request of the Audiencia Provincial de Castellón (Spain), that Case C-169/14 be adjudicated under the expedited procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and in Article 105(1) of the Rules of Procedure of the Court, is granted.

[Signatures]