

Anonymised version

Translation

C-495/19 — 1

Case C-495/19

Request for a preliminary ruling

Date lodged:

26 June 2019

Referring court:

Sąd Okręgowy w Poznaniu (Poland)

Date of the decision to refer:

14 May 2019

Appellant:

Kancelaria Medius SA, established in Kraków

Respondent:

RN

DECISION

[...]

The Sąd Okręgowy w Poznaniu (Regional Court in Poznań, Poland), 15th Civil Appeals Division,

...

having examined on 14 May 2019 ...

the case brought by Kancelaria Medius SA, established in Kraków,

against RN

concerning payment

arising from an appeal lodged by the appellant

against the judgment of the Sąd Rejonowy w Trzciance (District Court in Trzcianka, Poland)

of 30 October 2018

...

decides:

to refer the following question to the Court of Justice of the European Union for a preliminary ruling:

Should Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29; ‘Council Directive 93/13/EEC’) be interpreted as precluding procedural rules under which a court may issue a default judgment on the basis merely of an applicant’s statements contained in the application, and which the court is obliged to accept as true, in a case where the defendant (a consumer), who has been duly notified of the date of the hearing, does not appear when summoned and does not mount a defence?

...

Grounds

I. Facts and procedure in the main proceedings.

1. The appellant, Kancelaria Medius SA, established in Kraków, brought an action for payment of PLN 1 231 together with interest from the respondent RN. In support of its action, the appellant stated that the amount claimed resulted from the loan agreement concluded by the respondent with the appellant’s legal predecessor, Kreditech Polska Spółka z ograniczoną odpowiedzialnością [Kreditech Polska limited liability company], established in Warsaw.
2. With the statement of claim, the appellant enclosed documents confirming the conclusion of an agreement on assignment of claims with its legal predecessor [Or. 2] and a copy of a framework agreement without the respondent’s signature.
3. The court of first instance dismissed the action, holding that ‘the documents submitted to the case file by the applicant cannot in any way lead to the conclusion that its claim has been substantiated. It is impossible to accept that the documents submitted: a power of attorney *ad litem* together with documents confirming the correctness of the power of attorney granted, a photocopy of the claim assignment agreement, an extract from Appendix 1 to the claim assignment agreement, a request for payment dated 2 November 2016 and a notice of claim assignment dated 2 November 2016, without proof that they had been delivered to the defendant, and a photocopy of framework loan agreement No 83043008033, could be used to prove the claim pursued. These are private documents which ...

merely prove that the person who signed them made the representation contained therein. However, they do not confirm in any way that a loan agreement was concluded between the defendant and the applicant's legal predecessor and that the amount of PLN 770 was transferred to the defendant'. As the respondent failed to mount a defence, the court of first instance issued a default judgment but dismissed the action.

4. The appellant brought an appeal against the judgment, alleging that the court of first instance had breached, inter alia, Article 339(2) of the Kodeks postępowania cywilnego (Polish Code of Civil Procedure) by failing to apply it and failing to base its judgment solely on the appellant's assertions contained in the statement of claim. In support of its appeal, the appellant set out to demonstrate, inter alia, that the court of first instance should have relied primarily on the assertions contained in the statement of claim and only where these had been 'negatively assessed' should it have conducted an evidentiary hearing. In this respect, it submitted, the court of first instance breached the rules of procedure by failing to issue an evidentiary ruling with respect to the documents on which it based its findings and which became direct grounds for dismissing the action (the Sąd Rejonowy held that the appellant had failed to substantiate its claim). As a consequence, the appellant requested that the contested judgment be amended and that the claim be upheld in full.
5. In support of its position, the appellant enclosed a number of court judgments confirming its position. In these judgments, the courts presented the view that where a defendant fails to mount a defence, the court should issue a default judgment solely on the basis of the assertions made by the applicant in the statement of claim. [Or. 3]

II. Provisions of national and EU law which may be applicable to the case.

6. Provisions of national law [passages cited from the Code of Civil Procedure]

FIRST PART

EXAMINATION OF CIVIL LAW CASES

TITLE VI PROCEEDINGS

SECTION III. EVIDENCE

CHAPTER 1. Subject Matter and Assessment of Evidence

Article 227. The subject matter of evidence consists of facts which are of vital importance for the adjudication of a case.

Article 228 § 1. Facts which are commonly known do not need to be proved.

§ 2. The same relates to facts which are known to the court *ex officio*, however, the court should indicate such facts to the parties in the course of the proceedings.

Article 229. Facts which are admitted by the opposite party in the course of proceedings do not need to be proved either, provided that such admission does not raise doubts.

Article 230. If a party does not comment on the facts alleged by the opposite party, the court, bearing in mind the outcome of the entire proceedings, may consider such facts to have been admitted.

Article 231. The court may consider as established facts which are of vital importance for the adjudication of a case, if such conclusion may be drawn from other established facts (presumption of fact).

Article 232. Parties shall be obliged to present evidence in order to establish facts from which they derive legal consequences. The court may admit evidence which has not been presented by a party.

Article 233 § 1. The court shall assess the reliability and validity of evidence at its discretion, following comprehensive deliberations of the available material.

§ 2. The court shall assess on the same basis the significance of a party's refusal to present evidence or a party's interference with the taking of evidence despite the court decision.

Article 234. Legally established presumptions (presumptions of law) shall be binding on the court; however, these may be rebutted whenever legislation does not exclude such a possibility.

CHAPTER 2. Evidentiary Hearing

SUBCHAPTER 1. General Provisions

Article 235 § 1. An evidentiary hearing shall be held before the adjudicating court, unless where precluded by the nature of the evidence, or by major inconveniences or disproportionately high costs in relation to the matter at issue. If this is the case, the adjudicating court [**Or. 4**] shall delegate the taking of evidence to one of its members (delegated judge) or to another court (delegated court).

SECTION IV RULINGS

CHAPTER 1. Judgment

Subchapter 1. Issue of a Judgment

Article 316 § 1. Having closed proceedings, the court shall issue a judgment on the basis of the actual state of affairs at the time of the closing of the proceedings;

in particular the fact that a claim becomes due while a case is pending shall not be an obstacle to the awarding of such claim.

Subchapter 3. Default Judgments

Article 339 § 1. If a defendant does not appear for a scheduled hearing or appears for but does not participate in the proceedings, the court shall issue a default judgment.

§ 2. In such case, the applicant's assertions of facts referred to in the complaint or pleadings served on the defendant prior to the proceedings shall be considered true, unless they raise reasonable doubts or were referred to for the purpose of circumventing the law.

7. EU legislation

Article 6 of Council Directive 93/13/EEC

1. Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

Article 7 of Council Directive 93/13/EEC

1. Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organisations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for [Or. 5] general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.

3. With due regard for national laws, the legal remedies referred to in paragraph 2 may be directed separately or jointly against a number of sellers or suppliers from the same economic sector or their associations which use or recommend the use of the same general contractual terms or similar terms.

Article 267 TFEU [cited in full]

...

III. Legal doubts of the national court and their significance for the resolution of the legal question.

8. Polish civil procedure provides for the possibility of a default judgment being issued ‘if a defendant does not appear for a scheduled hearing or appears for but does not participate in the proceedings’ (Article 339(1) of the Code of Civil Procedure), which constitutes a departure from the *inter partes* procedure (this procedure being stipulated, in particular, by Article 316(1) of the Code of Civil Procedure and by Article 227 et seq. of the Code of Civil Procedure). **[Or. 6]**
9. A default judgment may also be issued in cases brought by sellers or suppliers against consumers.
10. Grounds for issuing a default judgment exist in particular where, as in the present case, the defendant (consumer) fails to mount a defence after he has been duly served with a copy of the statement of claim. It should be borne in mind that Polish procedure acknowledges notional service where a party fails to collect a court writ served on it despite the fact that it was enabled to do so in accordance with detailed regulations (substituted service; see Article 139 of the Code of Civil Procedure). Consequently, situations similar to that in the present case are relatively frequent: a seller or supplier brings an action for payment and the defendant, who is a consumer, fails to mount a defence.
11. In this procedural situation, crucial importance attaches to the wording of Article 339(2) of the Code of Civil Procedure, according to which, when issuing a default judgment, ‘the applicant’s assertions of facts referred to in the complaint or pleadings served on the defendant prior to the proceedings shall be considered true, unless they raise reasonable doubts or were referred to for the purpose of circumventing the law’. From that provision, it follows that the factual grounds for issuing a default judgment are unilateral and therefore based on the facts as presented by the applicant as the active party to the proceedings. Therefore, the factual basis for the default judgment consists of the applicant’s contentions, unless these raise ‘reasonable doubts’ on the part of the court or unless the court finds that these contentions are made ‘for the purpose of circumventing the law’ (Article 339(2) of the Code of Civil Procedure).
12. It should be stated that Article 339(2) of the Code of Civil Procedure does not explicitly indicate whether the circumstances precluding its application set forth therein (‘reasonable doubts’, ‘circumventing the law’) must arise on the basis of an analysis of an applicant’s statements or in a broader context, and thus also, in particular, on the basis of an analysis of the ‘pleadings’ or other documents enclosed with the application.
13. [brief presentation of the positions indicated in legal doctrine]
14. ... **[Or. 7]**
15. ...

16. ... The wording of Article 339(2) of the Code of Civil Procedure fails to dispel doubts as to whether the rule in question, which allows for a default judgment to be issued against a consumer on the basis of the mere assertions made by an applicant (seller or supplier), unless these raise 'reasonable doubts' or unless the court finds that the assertions were made 'for the purpose of circumventing the law', respects the standard of consumer protection required, in particular, by Directive 93/13/EEC, taking into account the court's obligation to examine whether 'terms of the contract concluded with the consumer are unfair', as stipulated in the case-law of the Court of Justice (see, in particular, the judgment in *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 41).
17. In a case such as the present, that is, where an action is brought by a seller or supplier against a consumer who fails to mount a defence, the Sąd Okręgowy has doubts arising from the fact that the circumstances precluding the application of Article 339(2) of the Code of Civil Procedure do not impose a uniform standard of protection, because, while both 'reasonable doubts' and claims made 'for the purpose of circumventing the law' lend themselves to flexible interpretation, it is certainly not a mechanism which would guarantee equal protection for consumers in identical procedural situations, as in each individual case the level of consumer protection will largely depend on the level of detail of the claims made by the applicant.
18. Moreover, after analysing the provision in question it may be concluded that the more laconic an applicant's assertions, the less likely it is that the court will have 'reasonable doubts' or conclude that the assertions were made 'for the purpose [Or. 8] of circumventing the law', and thus the greater will be an applicant's chances of obtaining a default judgment in its favour without the court conducting an in-depth analysis of the grounds for that applicant's claims.
19. In particular, it should be noted that, while incorrect in the light of Article 339(2) of the Code of Civil Procedure, the steps taken by the court of first instance made it possible to conclude that there were grounds for dismissing the action. In the circumstances of the present case, if it had acted on the basis of the correct interpretation of the provision in question, the Sąd Rejonowy would have been obliged to grant the present appellant's claim.
20. However, the court is obliged to ensure an effective protection of the rights which the consumer derives from Directive 93/13/EEC (judgment in *Aqua Med*, C-266/18, EU:C:2019:282, paragraph 4[3]). In its settled case-law, the Court of Justice has placed emphasis on the nature and significance of the public interest constituted by the protection of consumers, who are in a position of weakness vis-à-vis sellers or suppliers (judgment in *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 40 and the case-law there cited).
21. The Court of Justice also stresses that, in principle, EU law does not harmonise the procedures applicable to examining whether a contractual term is unfair and that those procedures accordingly come under the domestic legal system of the

Member States, on condition, however, that they are not less favourable than those governing similar situations subject to domestic law (principle of equivalence; *Profi Credit Polska*, C-176/17, paragraph 57, and *Aqua Med*, C-266/18, paragraph 47).

22. The provisions of national law must also provide for a right to an effective remedy, as required by Article 47 of the Charter of Fundamental Rights of the European Union (*Profi Credit Polska*, C-176/17, paragraph 57, and *Aqua Med*, C-266/18, paragraph 47).
23. The assessment of the aforementioned facts of the case and of the legal context does not indicate that, where a court issues a ruling pursuant to Article 339(2) of the Code of Civil Procedure, the principle of equivalence might be breached, since this provision applies uniformly to all civil cases brought before the Polish courts, irrespective of whether the defendant is a consumer or another party to legal transactions.
24. At the same time, however, it should be pointed out that, if the court applies Article 339(2) of the Code of Civil Procedure in the circumstances of the present case, it will have no grounds for reviewing the terms of the contract concluded between the parties, even potentially abusive terms. As a consequence, defendants who are consumers will be deprived of protection [Or. 9], one element of which is a review by the court, of its own motion, of the contract on which the claim brought before that court is based.
25. As a result, the Sąd Okręgowy w Poznaniu takes the view that there is a need for the Court of Justice of the European Union, pursuant to Article 267 TFEU, to resolve the matter set out in the question featuring in the operative part of this decision.

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