



## PRESS RELEASE No 83/25

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Judgment of the Court in Case C-582/23 | [Wiszkier] <sup>1</sup>

### **Bankrupt consumer: the bankruptcy court must be able to examine *ex officio* whether contractual terms are unfair**

*That examination may be carried out irrespective of the fact that the list of claims has been approved and is binding*

In Poland, an individual was declared bankrupt. The majority of the claims against him, appearing on a list drawn up by a trustee in bankruptcy, originate in a mortgage loan agreement indexed to the Swiss franc that the bankrupt had concluded 12 years previously, as a consumer. He acknowledged all those claims, the list of which was also approved by the supervisory judge.

On the basis of that list, the bankruptcy court must now either draw up a plan for the repayment of the claims or make a finding that the available assets are sufficient to honour all the debts, thereby making the plan redundant. At that advanced stage of the proceedings, the bankruptcy court considers that the loan agreement contains unfair terms capable of rendering it null and void. If that were the case, the amounts owed to the bank would be lower than those on the list and may not even exist at all. However, until now, the potential unfairness of the terms of that agreement has not been examined.

According to Polish law, the list of claims is binding on the bankruptcy court, which has no power to examine contractual terms. It can only put the matter before the supervisory judge for the latter to carry out that examination and, if necessary, to amend the list of claims. Furthermore, the rules of procedure do not allow for interim measures to be taken to regulate the situation of the bankrupt consumer pending the outcome of that examination.

The bankruptcy court has referred questions to the Court of Justice in order to ascertain whether the national legislation on insolvency proceedings relating to natural persons effectively protects the rights conferred on consumers by EU law. <sup>2</sup>

#### **The Court's answer is in the negative.**

In the absence of a prior examination of the unfairness of the terms in question, **EU law requires the bankruptcy court to carry out that assessment *ex officio* and to draw the necessary conclusions.** A need to put the matter before the supervisory judge would be likely to prolong the bankruptcy proceedings and, therefore, the precarious financial situation of the bankrupt consumer. As a result, the bankrupt consumer might be discouraged from exercising his or her rights deriving from EU law, which would make the application of that law excessively difficult.

The fact that the list of claims has become *res judicata* **does not necessarily preclude such an examination.** The foregoing is justified by the public interest in consumers being protected, as such protection is guaranteed by EU law.

**The bankruptcy court must also be able to apply interim measures to ensure that consumer protection is**

**fully effective.** In the light of the circumstances of the case in the main proceedings, it will be for that court to assess whether a measure to reduce the amounts withheld from the salary of the bankrupt consumer, pending a decision on the unfairness of the clauses of the contract in question, is necessary for that purpose.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract of the judgment](#) is published on the CURIA website on the day of delivery.

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<sup>1</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

<sup>2</sup> Council [Directive 93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.