

Statue of limitations for the banks' claims

Statue of limitations for the banks' claims after Supreme Court's resolution of April 25, 2024 regarding Swiss franc borrowers

CLARIFICATION NEEDS TO BE PRESENTED

The Supreme Court's resolution of April 25, 2024 regarding Swiss franc borrowers stirred the pot in the Polish legal market. Oftentimes counsel for the borrowers misinterpret the ruling, therefore their position requires a reply and a clarification.

MECHANISM OF UNFAIR TERMS

In point 4 of the resolution, the Supreme Court indicated that the statute of limitations for the bank for the return of amounts paid under the loan (principal amount) generally begins on the day following the day on which the borrower challenged their commitment to the provisions of the loan agreement towards the bank. Thus, the Supreme Court unequivocally questioned the theses appearing in Swiss franc circles that the statute of limitations for the bank's claims runs from the date of loan disbursement. The Supreme Court rightly noted that since the consumer has the right to maintain the agreement in force, until the borrower expresses his opinion on this issue, the bank may not unilaterally declare the agreement invalid (ineffective) and demand that the consumer return the undue payment (unjust enrichment).

It has been argued that the Supreme Court's position will not close the discussion, as it seems to be contrary to the CJEU jurisprudence on the automaticity of sanctions for the use of prohibited contractual terms. Such a statement cannot be accepted. The sanction for the application of prohibited terms under Directive 93/13 is that the consumer is not bound by such a provision. The directive does not regulate the issue of restitution of mutual performance of the parties to the contract, and even less so the issue of their limitation (statute of limitation). The above-mentioned issues are subject to national law. EU law in this area sets only two requirements. Firstly, the obligation to maintain the deterrent effect of the Directive, and secondly, the principle of proportionality.

The automatic nature of the sanctions is ensured by the recognition in the prevailing case law that the provisions concerning exchange rate conversions were not binding on consumers from the very beginning, which leads to the invalidity (ineffectiveness) of the agreement. In the light of this jurisprudence, as well as the resolution of the Supreme Court in question, this results in borrowers obtaining a free loan in practice. They are obliged to return to the bank only the non-valorised capital. The deterrent effect is therefore undoubtedly already achieved, and more than that.

THE PRINCIPLE OF PROPORTIONALITY

As far as the principle of proportionality is concerned, it is highly doubtful whether the effects on the claims of the parties to the loan agreement, which the prevailing line of jurisprudence derives from the abusiveness of conversion clauses, do not violate this principle. It should be recalled that the purpose of Directive 93/13 was to restore the balance of the parties to the contract. The extremely exorbitant financial benefits currently granted to Swiss franc borrowers in the form of a de facto free loan are not proportional to the alleged violations contained in their contracts. The spreads applied by banks to the average NBP exchange rate led to a difference of several thousand zlotys on one contract, while the borrower's benefits resulting from the current line of jurisprudence reach several dozen or even more than 100,000 zlotys.

The interpretation promoted by some of the borrowers' attorneys providing for the calculation of the limitation period for the bank's claims on the loan disbursement would lead to a totally absurd violation of the principle of proportionality. It would change the sanctions of a de facto free loan into the sanctions of "housing for free". In view of the statute of limitations for the bank's claims, the borrower would not have to return to the bank even the nominal amount of the loan (loan principal).

In this situation, the insufficiency of some attorneys of Swiss franc borrowers may therefore only result from their unjustified expectations as to what benefits their clients can obtain as part of the settlement with the bank.

THE SO CALLED "ABSOLUTE" INVALIDITY DOES NOT APPLY

The Supreme Court correctly noted that the invalidity (ineffectiveness) of an agreement as a result of the inclusion of unfair terms in it is significantly different from the so-called absolute invalidity under Article 58 of the Civil Code. The situation is different in the case of unfair terms. As the Supreme Court aptly emphasized in the commented resolution, following the case law of the CJEU, in this case the consumer is provided with the right to unilaterally cause the contract to be valid. Since the consumer has such a right, the entrepreneur cannot unilaterally declare the contract invalid before the consumer challenges the contract. Therefore, it cannot call on the consumer to return the undue performance before that date, which results in the fact that the limitation period does not start to run. Therefore, this is a situation fundamentally opposed to the invalidity under Article 58 of the Civil Code, in which case each party may demand the return of the performance immediately after its fulfillment.

The above considerations confirm the correctness of the Supreme Court's position on the statute of limitations. Contrary views are based on the concept that the effects of EU law and its interpretation made by the CJEU should be taken into account only when it is beneficial to borrowers, and ignored when the effects of this law prevent the maximization of their already excessive financial benefits. And such a position is unfounded.

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