C/2026/5878

16.11.2026

Request for a preliminary ruling from the Sąd Rejonowy w Rzeszowie (Poland) lodged on 27 May 2026 – K. v B.

(Case C-548/26, Leniwicz [1])

(C/2026/5878)

Language of the case: Polish

Referring court

Sąd Rejonowy w Rzeszowie

Parties to the main proceedings

Applicant: K.

Defendant: B.

Questions referred

In the context of a mortgage loan agreement being declared invalid in its entirety on the grounds that it cannot continue in existence after the unfair terms have been removed, must Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [2], having regard to the principles of effectiveness and proportionality, be interpreted as meaning that:

1. they preclude national case-law according to which, where a term of a loan agreement deemed unfair renders that agreement invalid, [as part of the settlement of obligations arising from] the invalid loan agreement, where the applicant is a consumer and where a duly informed consumer requests reimbursement of the difference between the sum total of the amounts paid to the bank and the nominal amount of the principal disbursed by the bank (settlement based on the balance theory) and only in the alternative requests the award of the sum of all amounts paid to the bank under the invalid loan agreement (settlement based on the two claims theory), the court should award the sum of all payments made by the borrower, irrespective of the amount made available to the consumer by the bank in performance of that agreement and irrespective of the consumer's wishes expressed during the proceedings;

2. the national court should inform the consumer of the possibility of settling undue payments on the basis of two different theories (the balance theory and the two claims theory) and allow the consumer to choose the method of settlement, while also allowing for an appropriate amendment to the action, setting a reasonable time limit from the date on which the consumer is duly informed;

3. they do not preclude national case-law according to which the balance theory applies to all repayments made by the borrower, and thus also to the portion covering interest and the portion covering any other outstanding amounts, rather than only to the portion covering the principal disbursed;

4. they do not preclude an interpretation of national law [according to which] where a loan agreement has been concluded by two consumers, and only one consumer is the applicant in the proceedings, the national court is not required to obtain a statement from the other consumer regarding the invalidity of the terms [of the agreement], nor is it required to notify the other consumer (not acting as an applicant in the proceedings) of the possibility of joining the case as an independent third-party intervener;

5. they do not preclude national case-law which holds that in a situation where a borrower (consumer) claims from the bank (seller or supplier) the difference between the sum total of the amounts paid and the amount of the loan disbursed (the balance theory), the consumer may claim default interest on the amount (of payments made in performance of the invalid loan agreement) exceeding the difference sought by the consumer;

[1] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.
[2] OJ 1993 L 95, p. 29.

6. they do not preclude an interpretation of national law, in particular Article 747 of the Kodeks Postępowania Cywilnego (Code of Civil Procedure), according to which a consumer pursuing a claim for payment in civil proceedings cannot obtain security for the claim in the form of regulating rights and obligations for the duration of the proceedings by way of ordering the suspension of payments under an agreement which, in principle, suffers from an incurable defect resulting in its invalidity?