

Polish laws on banking enforcement titles ruled unconstitutional

On 14 April 2015, the Polish Constitutional Tribunal issued a judgment in which it held that banking legislation on banking enforcement titles (Art. 96 sec. 1 and Art. 97 sec. 1 of the Banking Act of 29 August 1997 (consolidated text: Journal of Laws of 2015, item 128, as amended) (the "Challenged Laws")), are contrary to the Constitution of the Republic of Poland. The Challenged Laws will be repealed as of 1 August 2016.

The Challenged Laws play a very important role in banking practice. In accordance with these laws banks in Poland may issue banking enforcement titles on the basis of the records of banks or other documents connected with the performance of banking activities. A banking enforcement title can form the basis for enforcement once an enforcement clause is appended by a court, if a debtor issues a written statement of submission to enforcement, and other statutory prerequisites have been satisfied.

In comparison with other creditors, banks to which the Challenged Laws apply are in a privileged position in terms of carrying out enforcement. This is due to the fact that other creditors may as a rule conduct enforcement proceedings against debtors on the basis of final court judgments or other enforcement titles. This means that in a typical situation, a creditor, in order to pursue monetary claims, must take court action by bringing a suit for payment, and only after the court proceedings for examination of cases are concluded (which frequently entails also proceedings before a court of appeal), does the creditor obtain a final judgment against the debtor. Only such a final judgment constitutes an enforcement title.

Meanwhile, banks applying the Challenged Laws can issue banking enforcement titles on the basis of the records of banks or other documents connected with the performance of banking activities, if a bank's debtor issues a written statement of submission to enforcement, and other statutory prerequisites have been satisfied. Therefore, banks do not have to take court action and bring a suit for payment (i.e. initiate and conduct court proceedings for

examination of cases) in order to obtain an enforcement title necessary to pursue monetary claims.

Both banking enforcement titles and other enforcement titles (such as, for example, final court judgments) constitute the basis for enforcement once an enforcement clause is appended. In court proceedings in which an enforcement clause is appended, the court does not evaluate the merits of the case, but only evaluates the documents from a formal point of view.

The Polish Constitutional Tribunal has said that one of the reasons why the Challenged Laws are unconstitutional is that a bank's debtor has limited possibilities to defend its rights with respect to the bank, since the debtor cannot conduct a defence in the court examination proceedings. The Polish Constitutional Tribunal noted that although a debtor may conduct a defence against a banking enforcement title by initiating counter-enforcement proceedings, such defence is generally possible only after the enforcement has been commenced and only to the extent permitted by law. Moreover, the Polish Constitutional Tribunal noted that in comparison to banks to which the Challenged Laws apply, other creditors may have less chance of satisfying their claims since in typical situations they must take court action against their debtors.

This judgment of the Polish Constitutional Tribunal will probably have a material impact on the further practice of banks, which will still be interested in the easiest possible ways of satisfying their claims. It can be assumed that to a greater extent than at present, banks will consider the

possibility of obtaining promissory notes from customers as a basis for issuing orders for payment in simplified court proceedings for examination of cases (so-called "proceedings by writ of payment"). It can also be assumed that in many commercial transactions, and possibly in many transactions involving consumers, banks will require customers to issue a statement on voluntary submission to enforcement in the form of a notarial deed.

It seems that when issuing the judgment described above the Polish Constitutional Tribunal did not emphasize the fact that banks to which the Challenged Laws apply are in a privileged position also with respect to certain foreign banks which are not able to make use of the remedies under the Challenged Laws. In this regard the judgment eliminates the difference between the legal position of banks to which the Challenged Laws apply and foreign banks to which the Challenged Laws do not apply.

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