

Case law

Case Details

National ID: III SZP 2/15

Member State: Poland

Common Name: link

Decision type: Supreme court decision

Decision date: 09/09/2015

Court: Supreme Court

Subject:

Plaintiff: U. Towarzystwa Ubezpieczeń

Defendant: President of the Office of Competition and Consumer Protection

Keywords: administrative authority, consumer, insurance contract, transposition

Directive Articles

Consumer Rights Directive, [Chapter 1, Article 2, \(1\)](#)

Headnote

(1) The injured party, a natural person who does not conduct any business activity and who is claiming under the insurer's strict liability resulting from the compulsory insurance of civil liability of vehicle owners, is not a consumer in the meaning of Article 24 in conjunction with. 4(12) of the Act on Competition and Consumer Protection of 16 February 2007 in conjunction with Article 22/1 of the Civil Code.

Facts

The Court of Appeal referred a question to the Supreme Court in appeal proceedings concerning a decision of the President of the Office of Competition and Consumer Protection (OCCP). The decision imposed a penalty on an insurance company for infringing collective consumer interests. In the opinion of the President of the OCCP, in limiting its liability towards consumers pursuing claims under the insurer's strict liability resulting from the compulsory insurance of civil liability of the owners of the vehicle, the insurance company violated the Act on Competition and Consumer Protection. According to the President of the OCCP, the essence of the violation was the fact that the insurer did not recognize a lack of possibility to use of the damaged vehicle as a material damage. Moreover, the injured party had to prove the circumstances justifying the lease of a replacement car in order to obtain compensation for that lease.

In the appeal proceedings, court had to face with serious doubts concerning the status of the injured party of occurrences covered by the insurance of civil liability. In particular, court wanted to know whether the injured party may be considered as a consumer.

Legal issue

The court took a resolution concerning the legal status of the injured party in the light of consumer protection law. The court stated that the injured party does not acquire an insurance offered by the insurer. Injured party does not consume goods or services as well. That is why the court did not find a basis qualify a injured party claiming from the insurer under the actio directa as a consumer within the meaning of the term adopted in the doctrine of competition law.

According to Article 22/1 of the Civil Code, a consumer is a natural person who carries out a juridical act with a business entity that is not directly related to his /her economic or professional activity. This definition is applied when assessing whether a specific practice infringes collective consumer interests.

The court found no grounds for a pro-EU interpretation of Article 22/1 of the Civil Code, although the doctrine relating to this matter indicates that the interpretation of the notion of "the consumer" in a particular case cannot ignore EU law.

The court indicated that there is no basis for making a pro-EU interpretation of the definition of "consumer" on the basis of Article 2 of Directive 2011/83/EU. Contrary to arguments of the Insurance Ombudsman, the definition of "consumer" expressed in Article 2(1) of Directive 2011/83 only covers persons who take action "in the contracts covered by this Directive." The court agreed with the view that this definition does not directly use the concept of "legal action". Its scope is much narrower than the definition of "consumer" expressed in Article 22/1 of the Civil Code, because it only relates to contracts which are "covered" by Directive 2011/83. Furthermore, Article 1 of Directive 2011/83 narrows its scope to contracts concluded between consumers and business entities.

The court declared that the meaning of consumer adopted by the President of the OCCP in the contested decision, and then developed in the course of the proceedings, cannot be accepted, because it aimed to deprive the importance of this element of the legal definition of Article 22/1 of the Civil Code which refers to "to make legal action".

Decision

(1) Can an insurer that reduces the scope of its liability towards an injured party who is a natural person that does not conduct any business activity be found guilty of infringing collective consumer interests? Ipso fact can the injured party be considered as a consumer? The source of the insurer's strict liability in this case is the compulsory civil liability insurance contract of the vehicle owners.

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Result

The Supreme Court took a resolution in the matter raised by the Court of Appeal.