

# Consumer axiology in Polish case-law: relevance – circumstances – barriers

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# The sources

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- ACTIONES & Re-Jus project
- Empirical research carried out in the Institute of Justice (*Instytut Wymiaru Sprawiedliwości*): consumer sales, consumer credit, para-credit agreements (lend contracts) – additionally: commercial agency and leasing (B2B with imbalance)
- Data from consumer/professional organisations

# The findings (1)

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- Very low proliferation of EU law in consumer case-law
  - Incidental references to EU law (beyond the “ornament” function)
  - Almost non-existent dialogue with CJEU (references)
  - Limited substantial conclusions drawn upon the EU law
  - Non-observance of consumer law or faulty (dis)application
  - Limited applicability of remedies
- Low degree of “disputability” in consumer cases
  - typically: no *ex parte* hearing
  - no reaction of consumers
  - limited institutional support in individual cases (consumer organisations, consumer ombudsmen)

# The findings (2)

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- Problems with consumer axiology:
  - lack of practical impact of Article 76 of the Polish Constitution (the State's obligation to protect consumer)
  - almost inexistent references to the “triad” of principles regarding remedies (effectiveness, dissuasiveness, proportionality), but:
    - airline passengers rights (resolution of SC of 7 February 2014 r., III CZP 113/13)
    - *erga omnes* effect of declaration of unfairness (resolution of 7 judges of SC of 20 November 2015, III CZP 17/15)
  - almost inexistent references to Article 47 CFREU

# The findings (3)

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- The change of azimuth:
  - since 1970s till 1990s: development of the concept of consumer protection
  - the “embryonic” forms of the current consumer concepts (e.g. disclosure duties, particular standards of care and diligence on the side of the professional, general recognition of the disadvantageous position of a consumer)
  - since approx. 2000: transposition of EU law: expanded consumer law with relatively high standard of protection
  - the effect of the “occupied spot” – denial of protection of a weaker party beyond the consumer

# The justification

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- lack of knowledge
- domestic system focus
- underdeveloped consumer self-empowerness
- limited institutional support
- the diminishing level of trust amongst the market actors and vis-à-vis courts

# III CZP 17/15

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- the pre-*Biuro Podróży Partner* resolution of the extended panel of 7 judges of the Supreme Court (20 November 2015)
- recognition of a tension between effectiveness of remedies in the meaning of 93/13/EC Directive and the right to be heard (Article 47 CFREU)
- proportionality as a key factor
- limited extended efficacy of declaration of unfairness

# C-176/17 (*Profi-Credit*)

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- preliminary question of the Regional Court in Siemianowice Śląskie of 17 February 2017
- bill of exchange as a security in consumer contract
- order of payment (simplified way of adjudicating, no
- the principal issue: bill of exchange vs. *ex officio* duties in clauses review
- underlying matter: right to effective judicial remedy vs. procedural autonomy