

Conclusions of the summary report on the courts' case-law on the rejection of the statement of claims

The jurisprudence-analysing working group examined the case files of 1 700 finally-disposed-of cases, and the working group's most important conclusions, findings of principle and proposals for the implementation of good judicial practice can be summarised as follows:

Procedural legal provisions should always be applied in accordance with the specificities of the individual case at hand, hence, the courts are expected to take the substantive legal rules governing the handling of a particular type of case into due account when applying the relevant procedural norms.

Having regard to the uncertainties of judicial practice, it became necessary, in a number of cases, to determine the appropriate legal grounds for the rejection of the statement of claims.

The most common ground for the rejection of the statement of claims was that the latter had failed to comply with the formal and material requirements set forth by the relevant procedural code [section 176, subsection (1), point j) of the Code of Civil Procedure]. In this context, the case-law of the courts showed that they had typically sought to implement the requirement for legal representatives to litigate in a professional manner (such requirement had been imposed by the explanatory memorandum relating to the draft version of the Code of Civil Procedure), which had been applied not only in respect of the substantive elements of the statement of claims, but also in respect of each and every part – including the introductory and closing elements – thereof.

With the aim of promoting the efficiency of the preparatory phase of proceedings, the courts put a strong focus on the comprehensive examination of statements of claims. This has the effect, in many cases, that the courts attach an excessive importance to compliance with the obligation to indicate the mandatory elements of the statement of claims and that they admit only those statements of claims in which the plaintiffs put forward each and every content element of their claims in as much detail as possible.

The working group's investigation has shown that no general guidance can be given in respect of the content of calls for the remedy of deficiencies, since the extent of such calls is to be determined on a case-by-case basis in order to make them comprehensive and to make them understandable and executable even for parties acting without a legal representative.

It could be established that the majority of the courts' decisions rejecting statements of claims following a call for the remedy of deficiencies had complied with both the substantive and formal requirements of the applicable piece of legislation.

It is common experience that the plaintiffs generally acknowledge the first instance rejecting decisions and they rather seek to resubmit their statement of claims in a regular manner. It is therefore of particular importance that the rejecting decisions be understandable and comprehensive as regards their reasoning, which then enables the parties to satisfy the requirements governing the submission of statements of claims. It is also a fact that in the overwhelming majority of the cases examined the statements of claims have been rejected because of the plaintiffs' complete failure to comply with the calls for the remedy of deficiencies.

Concerning the courts' second instance proceedings in this field – on the assumption that appeals against a first instance decision rejecting a statement of claims always aim at requesting the second instance court to establish the admissibility of the statement of claims –, the working group took the view that the second instance court may be entitled to uphold the first instance decision even on the basis of a ground for rejection not referred to by the first instance court (*id est* based on a different or supplemented reasoning).

As a result of the findings of the jurisprudence-analysis, a number of model decisions have been drafted and attached to the working group's summary report. The use of these model decisions is suggested only after their customisation in each and every case.

The summary report of the jurisprudence-analysing working group was approved unanimously at the 24 February 2020 meeting of the Curia's Civil Department.