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BANK LOANS DENOMINATED AND INDEXED TO FOREIGN CURRENCY – A POLISH, UKRAINIAN OR EUROPE-WIDE PROBLEM?

1. POPULARITY OF LOANS DENOMINATED IN AND INDEXED TO FOREIGN CURRENCY

The institution of a bank mortgage denominated/indexed to foreign currency (referred to generally and not very precisely as a "foreign currency loan" or a "loan adjusted to foreign currency") is an instrument commonly used by a broad group of citizens of European states for acquiring capital with a view to purchasing a housing unit. Until recently, such loans were popular not only in Poland and other countries belonging to the so-called "New Union" (those whose accession took place within the last decade or so: Czech Republic, Slovakia, Romania, Hungary and Croatia), Austria, Spain, Italy, Portugal, but also outside of the borders of the Union: in Russia, Serbia and Ukraine (however, one difference was the currency in which obligations were evaluated – whilst EU countries were dominated by the Swiss Franc, Ukrainian lendees more frequently relied upon loans "adjusted" to the U.S. dollar). Regardless of differences persisting in legislative regimes, peculiarities of national legal systems and local economic and social conditions, in all those countries doubts have arisen whether a drastic change in currency rate (which results in an obligation to pay off a loan on conditions much less attractive than beforehand) constitutes a legally relevant circumstance that could permit one to release oneself from having to perform one's contractual duties or, at least, facilitate granting some relief in fulfilling increasingly more onerous obligations towards banks. In other words, a doubt that cut across national borders was as follows: how far should a legal order[1] go in protecting lendees who entered with a bank into an agreement for a loan denominated or indexed to foreign currency

[1] In the literature it is rightly noted that the notion of a "legal order" is broader than that of a "legal system". Whilst a legal system is an "appropriately structured group of legal norms", by a legal order one should understand "a complex of authorities and institutions designated by the currently binding legal norms, procedures used to decide particular cases, and pre-determined

in a situation where – subsequent upon unpredicted changes in currency rates – the rate increased significantly?

A striking majority of Polish foreign currency lendees took out a loan denominated in the Swiss franc ("CHF lendees"). The policy of the Swiss National Bank was for this segment of the population of particular interest. On 15 January 2015 ("Black Thursday") the Bank decided to discontinue its policy of maintaining a minimal exchange rate of euros into francs (so-called "release of the franc rate"), which caused a steep appreciation of the franc as against other currencies. To put it simply: whilst daily currency rate changes normally do not exceed 2–3%, the franc rose by 20–30% on "Black Thursday"[2]. For Polish investors and consumers who repaid their loans in francs this meant that "the franc, which cost 3.54 PLN at the beginning of the day, skyrocketed to 5.19 PLN at the day's peak"[3]. Although the rate stabilized slightly (landing, after a few days, at the level of 4.2–4.3 PLN), lendees (it is estimated that around 500–700 thousand lendees were affected as well as their family members) still had to face the obligation to repay instalments much larger than they expected at the time when they signed their contracts (where the relation of PLN to CHF was attractive).

"Black Thursday" was a wake-up call for some lendees that currency fluctuations are not merely a dire warning written "on paper" or a hypothetical scenario contemplated merely by theoretical economists, but a real threat that looms over their heads every day. A radical change in a currency rate may not only bring about difficulties with performing one's obligations, but even ruin one's finances and take away a house so desired. Loans denominated in foreign currency, taken out to buy immovable property, normally had a multi-year term and were subject to a security, for instance a mortgage or an obligation to enter into a high LTV (loan-to-value) insurance contract where the lendee's own contribution was insignificant. Furthermore, case law suggests that it is very difficult for a lendee to release himself from the repayment obligation, and the necessity of repaying instalments often much higher than the ones originally negotiated sometimes becomes an unbearable burden for a lendee's household. The risk of other "Black Thursdays" occurring has risen exponentially due to the long-term nature of the foreign currency loan. Sociologists have noted that Poles, as a relatively less mobile society – who undertook a loan obligation for a number of years thinking the property bought will be "home till the end of life" – were unique among other Europeans[4].

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norms of behaviour of agents, considered in relation to the actions of other persons and institutions". See: S. Wronkowska, Z. Ziembiński, *Zarys teorii prawa*, Poznań 2001, p. 195.

[2] *Analitycy: uwolnienie kursu franka to ryzykowna decyzja*, https://www.pb.pl/analitycy-uwolnienie-kursu-franka-to-ryzykowna-decyzja-780454 (accessed 2 March 2017).

[3] *Dramatyczny wzrost kursu franka szwajcarskiego*, http://www.kalkulator.pl/dramatyczny-wzrost-kursu-franka-szwajcarskiego/ (accessed 3 March 2017).

[4] D. Kalinowska, *Portret polskich frankowiczów: Oszukani przez system bankowy, a może sami są sobie winni?*, http://serwisy.gazetaprawna.pl/finanse-osobiste/artykuly/848524,kredyty-we-frankach-kim-sa-polscy-frankowicze-czemu-brali-kredyty.html (accessed 6 March 2017).

In Poland, "rampant growth of foreign currency loans, specially denominated in the franc and indexed thereto, occurred between 2005–2008 due to the favourable economic situation that subsisted between 2004–2008, and an observed tendency of the Polish zloty to appreciate as well as a boom on the housing market. These phenomena generated optimism among lendees and analysts as to the prospects for development in the future, however they also resulted in underestimating the attendant risks, and therefore in an easing of the credit policy. During the credit boom between 2005–2008 there was a considerable gap between the interest rate applicable to loans in PLN and those in foreign currencies. As a consequence, lendees typically opted for the latter, thanks to which they could obtain larger amounts whilst keeping the handling costs low"[5]. In practice, this meant that repayment of foreign currency loans was more beneficial and less expensive for consumers, which is evinced in official documents of the Polish Financial Ombudsman: "an effect of the above was a difference in the instalment amount. A monthly instalment in case of a 300,000 PLN loan was around 2,100 PLN, whilst it stood at 1,400 PLN for a loan denominated in or indexed to Swiss francs"[6].

Furthermore, as displayed in the economic analyses available, despite negative adjustments of currency rates and popular calls proclaiming "fraud by the banking lobby" and "being ruined by the banking mafia"[7], CHF lendees' current situation is better than that of lendees who did not denominate their credits in a foreign currency ("PLN lendees"). A 2015 report on the situation of banks by the Financial Supervision Authority shows that foreign currency lendees do not

[5] Report by the Financial Ombudsman: *Analiza prawna wybranych postanowień umownych stosowanych przez banki w umowach kredytów indeksowanych do waluty obcej lub denominowanych w walucie obcej zawieranych z konsumentami* (English: *A legal analysis of selected contractual conditions used by banks in contracts for loans indexed to or denominated in foreign currency concluded with consumers*), Warszawa, June 2016, p. 3.

[6] *Ibidem*.

[7] To discuss the permissibility and legal aspects of foreign currency loan contracts is complicated not only from the juridical point of view, but is also of interest to society, politics and economics. Still, the problem attracts strong emotions, particularly among lendees who took out a foreign currency loan and now feel deceived due to a change of the currency rate. Many of them have lodged claims before the courts in an attempt to put pressure on politicians, formulate radical opinions and even resort to aggression towards other participants in the discussion on foreign currency loans, banks and their proxies, judges and other public authorities that insufficiently – according to that group of lendees – protect their rights. All this has given birth to such code words as "fraudulent loan", "bankgate" and "rule of banksters" and calls to "punish the banks", "taking fraudsters to task" and "administering justice to the guilty".

Moreover, the discussion has become a source of a societal conflict. Polling indicates that there is a rift between the lendees – PLN lendees cannot rely on any governmental assistance, whilst foreign currency lendees have, at least partially, themselves to blame. Active support on the part of the government could be interpreted as a policy for the benefit of a narrow group with its own particular interests, something impermissible and falling foul of the constitutional principles of the common good, equality before the law, as well as stability of the banking system and the interests of other bank clients.

fare badly in comparison with PLN lendees. In a simulation based upon a number of mutual conditions for foreign and domestic currency lendees[8]: not only was the first repayment instalment of a foreign currency lower than in the case of a domestic currency loan, but the projected overall cost of such a loan was considerably lower (from around 30% to as much as 200%). The lower cost results, clearly, from the risk of currency fluctuations, and its practical ramification was that "PLN lendees, guided by the security of their own families, decided to take out 'more expensive' loans in PLN, which caused many, especially less affluent families, to fulfil their housing needs to a lesser extent or at a lower level, through buying smaller and cheaper homes which would have been within their reach if they had opted for a loan in CHF"[9].

The circumstances discussed prompt a plethora of questions, both legal and ethical. For instance: is it justifiable to defend a group that – with a view to saving on the costs of a loan or selecting a more luxurious home – "took a risk" in a situation where PLN lendees were more prudent in their choices and now must bear the burden of their foresight by repaying larger instalments? This discussion is ongoing not only in Poland, but also abroad – the problem is Europe-wide as a debate as to the legal aspects of loans denominated in or indexed to foreign currencies is unfolding in, *inter alia*, Greece[10], Hungary, Croatia, Serbia, Romania, Spain, Austria (it is estimated that around 150,000 Austrian households are affected by foreign currency fluctuations)[11] and Russia (the rate of the ruble slumped due to such additional factors as: a long-term economic downturn, plummeting of oil prices in the second half of 2014, and economic sanctions imposed by Western Europe and the United States)[12].

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[8] The simulation was predicated upon the following assumptions: the amount of the loan: 300,000 PLN; identical terms of the loan (15, 20, 25, 30, 35 and 40 years' terms were considered); the loan was repaid in equal instalments in line with the original plan (omitting any excess paid, late payments, changes in the financing period etc.); the margin on all generations of loans in PLN and CHF was the same and stood at 2,00% (in reality, some lendees were subject to a lower or higher margin); for loans in CHF it was assumed that the loan was recounted into CHF at the so-called buying rate which was 3% lower than the average rate of the National Bank of Poland (NBP); repayment of the loan was made at the so-called selling rate which was 3% higher than the average rate of the NBP; for the sake of simplicity it was accepted that the loan was paid out in its entirety in one day.

[9] Report of the Financial Supervision Authority: *Raport o sytuacji banków w 2015 r.*, Warszawa 2016, p. 80.

[10] A. Skordas, *'Black Thursday' for 60,000 Greek Borrowers of Swiss Banks*, http://greece.greekreporter.com/2015/01/15/black-thursday-for-60000-greek-borrowers-of-swiss-banks/#st-hash.CXYfp1o1.dpuf (accessed 1 March 2017).

[11] J. Ramotowski, *Frank zaraża bilanse banków nie tylko w środkowej Europie*, https://www.obserwatorfinansowy.pl/tematyka/bankowosc/frank-zaraza-bilanse-bankow-nie-tylko-w-srodkowej-europie/ (accessed 3 March 2017).

[12] M. Domańska, *Rosyjski sektor bankowy: rok w kryzysie*, https://www.osw.waw.pl/pl/publikacje/komentarze-osw/2016-03-29/rosyjski-sektor-bankowy-rok-w-kryzysie (accessed 3 March 2017).

It should be noted that an analogous debate is in progress in Ukraine where it has been popular to denominate loans in US dollars (which experienced a radical currency rate swerve in 2008). Besides conceivable doubts of the economic and legal nature of denominated loans, they have prompted a constitutional controversy in the country, or perhaps even a constitutional precedent. For they were the subject of a conflict between central public authorities (opposition from the central bank and several ministers and support from the parliament), as a result of which a number of MPs ceased to support the relevant Act of Parliament a day after it was passed[13].

2. LEGAL-POLITICAL DEBATE: ARGUMENTS IN FAVOUR AND AGAINST

Is it sensible to consider the multi-faceted, both in legal and economic terms, problem of foreign currency loans detached from concrete, currently binding regulations? Even though the laws in the European states where the problem has manifested itself differ greatly, the key arguments present in the debate (and considerations pertaining to the juridical validity and effectiveness of contracts entered into with banks) are like, which is mostly a product of mutual intellectual roots of the European legal culture. Differences in domestic normative determinations notwithstanding (as well as differences in the scale of problems related to foreign currency loans, the social profile of lendees, varying contractual models, consequences for the economy etc.), the ongoing discussion in many a European state follows the familiar scenario: analogous principles, values and legal institutions are called upon.

In the centre of the conflict are questions fundamental from the point of view of the law, namely: on the one hand, private "liberty-driven" principles of contract law (freedom of contract, *pacta sunt servanda*, *volenti non fit iniuria*, and associated principles of sustainability of the contractual obligation, prohibition on excessive interference in the legal relation, *lex retro non agit*, certainty of the law and legal security, autonomy of the parties, market economy and the right to incorporate indexation into contracts), on the other, however, the necessity of protecting the weaker side of the contractual relation (provisions of the consumer and banking laws, ceasing to exist of the basis of the transaction). Although these topics do not exhaust the entire scope of the conflict around denominated/

[13] *Ukraiński parlament przewalutowuje kredyty walutowe. Ministerstwo finansów oburzone*, http://wyborcza.pl/1,155287,18294865,Ukrainski_parlament_przewalutowuje_kredyty_walutowe_.html (accessed 2 March 2017); *Poroshenko returns bill on restructuring currency credits to parliament*, http://en.interfax.com.ua/news/economic/312715.html (accessed 10 March 2017).

indexed loans (others include, *inter alia*, the permissibility of charging spread by the banks or the requirement for the lendee to insure his low own contribution), two basic positions are: (1) proving that "a contract binds the lendee as he himself agreed to it" and, *a contrario*, (2) that "indexed loans attack the legally protected interests of consumers therefore the strict application of the *pacta sunt servanda* principle may be warrantedly undermined".

Commentators who accept that lendees, whose economic interests suffered unreasonably due to currency rate fluctuations, deserve assistance, look for institutions and principles that justify interference with the content of a previously created legal relation. In doing so, they search beyond the solutions adopted in consumer laws, whose provisions are capable of rendering certain contractual clauses ineffective (so-called abusive clauses). A possibility and a rationale for modifying an established legal relation is embedded in the principle of *rebus sic stantibus*, which, operating independently of specific banking or consumer laws, allows for changing the content of a contractual obligation where an extraordinary change of circumstances arises. It is rightly noted by academic writers that the principle cannot be reduced to merely a concrete provision of contract law (in Poland, Article 357[1] of the Civil Code[14], pursuant to which "If, owing to an extraordinary change of circumstances, the performance of an obligation would entail excessive difficulties or would threaten one of the parties with a glaring loss, which the parties did not predict at the moment of the conclusion of the contract, a court of law may, having weighed the parties' interests, according to the principles of community coexistence, determine the manner of the obligation's performance, the amount of the obligation or it may even rule on termination of the contract. When terminating the contract, a court of law may, where necessary, rule on the settlements between the parties, bearing the principles set out in the preceding sentence in mind"), but should be understood more broadly, as any and all binding provisions and projected provisions. Radwański refers to *rebus sic stantibus* "whenever we have to do with a conception or determination that provides for modifying an obligation on account of an unexpected change of social relations"[15].

Without prejudice to Article 357[1] of the Civil Code, the *rebus sic stantibus* principle may manifest itself in a number of ways, also through the legislator's interference with the use of emergency measures enacted in connection with acts of war. These may be decisions of the courts (in particular in Germany and Austria, where in the past appropriate regulations were instituted)[16]. In other words, "the *rebus sic stantibus* clause is recognized and honoured both by international

[14] The Civil Code of 23 April 1964 (Polish Official Journal of Laws of 2017, item 459 as amended).

[15] Z. Radwański, *Zobowiązania – część ogólna*, Warszawa 1997, p. 233.

[16] M. Bieniak, *Klauzula rebus sic stantibus – możliwości jej aktualnego zastosowania (uwagi na tle art. 357[1] KC)*, "Monitor Prawniczy" 2009, issue 12, p. 639.

public law (Article 62 of the Vienna Convention on the Law of Treaties) and private law, in the form of the principles of good faith and fair dealing. The Civil Code adopts a general principle of the law that is positioned as an exception from *pacta sunt servanda* or its acceptable limitation and complementation. The extraordinary character of the circumstances is pertinent to both concepts. In law, *rebus sic stantibus* acts as a myriad of valorisation mechanisms whose shared goal is to restore a shaken balance of performances due between the parties. They differ, however, as to the scope, application requirements and ways of operation"[17].

Therefore, it is unsurprising that many European legislatures in states affected by the problem of foreign currency loans have resorted to normative intervention into the content of contractual relations[18] due to an extraordinary change of circumstances. Even so, in others, including Poland, drafts of laws going in the same direction have been proposed and discussed[19]. The economic and legal ramifications of such "hard" interventions varied – it was argued, one the one hand, that support for foreign currency lendees happened at the expense of other citizens, whilst still being unsatisfactory for the beneficiaries. On the other hand, in many cases it was, in fact, merely an extension and exacerbation of the conflict around the legality of foreign currency loans as well as legal permissibility of a legislative intervention into a legal relation. Recently, the Romanian Constitutional Court struck down as unconstitutional a law that permitted CHF lendees to denominate their loans at a rate from before the currency's appreciation[20].

3. A EUROPE-WIDE PROBLEM – CASE LAW OF THE CJEU

As shown above, regardless of what one's legal or political opinion is on the justifiability of lendees' claims, European consumers of all citizenships, functioning under local bank systems and specific procedures governing the pursuing of claims before the courts, bear the consequences of currency fluctuations on

[17] L. Bosek, B. Lackoroński, *Ustawowa waloryzacja zobowiązań. Uwagi na tle ustawy z dnia 5 sierpnia 2015 r. o pomocy tzw. frankowiczom*, "Forum Prawnicze" 2015, Vol. 6, issue 32, p. 27 *et seq.*

[18] Legislative provisions which interfered with the legal relations created by loans indexed to foreign currency were enacted in, *inter alia*, Hungary, Croatia, Serbia and Romania.

[19] By way of example: the draft bill of 5 August 2015 on the precise principles of restructuring of foreign currency mortgage loans in relation to the change of foreign currency rates as against the Polish currency and on amending numerous acts (Sejm paper No. 3660, VII term) or the draft bill on the principles governing the return of some receivables by virtue of credit and loan contracts (Sejm paper No. 811 of 1 August 2016).

[20] B. Wawryszuk, *Rumuński Trybunał zakwestionował ustawę dotyczącą kredytów we frankach*, http://www.money.pl/gospodarka/unia-europejska/wiadomosci/artykul/kredyty-w-chf-trybunal-konstytucyjny-rumunia,15,0,2258959.html (accessed 10 March 2017).

the global market. It is therefore unsurprising to see a growing interest in loans indexed to foreign currencies on the part of supranational and European institutions[21]. Conversely, the lendees themselves and their organizations often expect involvement, particularly from EU bodies, where, in their estimation, domestic authorities have failed or "succumbed to the banking lobby"[22]. Some Polish lendees have gone even further, by declaring willingness to put their claims before the European Court of Human Rights in the event that no legislative remedies are instituted and their domestic lawsuits are decided against them[23].

Having observed the course of events over the last several years, one may surmise that the low number of judgments in cases concerning denominated bank loans, and especially the sceptical approach of the Court of Justice, have generated a lot of disappointment. It must be said, however, that expectations of lendees and journalistic prognoses that all loan contracts will be "invalidated"[24] were unrealistic and legally baseless. The CJEU, adjudicating in the prejudicial mode (under Article 267 TFEU, which states: "The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union. Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against

[21] It is pertinent to recall comments by Jonathan Hill, the European Commissioner for Financial Stability, Financial Services and Capital Markets Union, on the negative consequences of a legislatively imposed "denomination" of loans or the European Parliament debate on 12 May 2016.

[22] See an article with a telling title: "*Afera frankowa: Kredyty we frankach to nie wewnętrzna sprawa Polski*, *lecz kwestia wiarygodności Unii Europejskiej!*" (English: *The francgate: franc loans is not an internal Polish problem*, *but a matter of trustworthiness of the European Union*). J. Bielewicz, *Afera frankowa: Kredyty we frankach to nie wewnętrzna sprawa Polski*, *lecz kwestia wiarygodności Unii Europejskiej!*, http://wgospodarce.pl/opinie/20115-afera-frankowa-kredyty-we-frankach-to-nie-wewnetrzna-sprawa-polski-lecz-kwestia-wiarygodnosci-unii-europejskiej (accessed 11 March 2017).

[23] Although not a common practice, there have been calls for lodging claims before the European Court of Human Rights (notably by the leader of one of the most active organizations of CHF lendees, whose claims were rejected by domestic courts at all instances). It is, however, difficult to treat such acts as a serious court strategy capable of changing the Polish legal system and the domestic case law on foreign currency loans. *Cf.* M. Bednarek, *Najbardziej znany polski "frankowicz" chce zaskarżyć Polskę do Trybunału w Strasburgu*, http://wyborcza.biz/biznes/1,100896,21173461,frankowicz-chce-zaskarzyc-polske-do-trybunalu-w-strasburgu.html (accessed 2 March 2017); A. Popiołek, *Frankowicze straszą prezydenta: Pójdziemy do Europejskiego Trybunału Praw Człowieka*, http://wyborcza.biz/biznes/1,147582,20691254,frankowicze-straszą-prezydenta-pojdziemy-do-europejskiego-trybunalu.html (accessed 3 March 2017).

[24] *Trybunał unieważni wszystkie kredyty frankowe?*, http://www.polskatimes.pl/strefa-biznesu/pieniadze/a/trybunal-uniewazni-wszystkie-kredyty-frankowe,10185536/ (accessed 2 March 2017).

whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court (…)"), does not scrutinize concrete contractual models utilized by the banks functioning in the territory of Poland, does not examine violations of the law as against Polish consumers nor the propriety of the domestic proceedings. Prejudicial questions do not serve to grant either individual or group protection, but they should conduce to ensuring coherence and development of the EU legal system[25]. The role of the CJEU is to cooperate with domestic courts "in a way that preserves the competences of both. The CJEU cannot assume jurisdiction in any case. Also, it is barred from imposing upon the domestic court the determination to be made and conducting an autonomous interpretation of the domestic law"[26]. Nor can it replace other public authorities of a Member State (e.g. the Office of Competition and Consumer Protection or the Financial Supervision Authority).

Second, the CJEU's assessment is not related to the construction of domestic law (in the case of Poland that would be provisions of the Civil Code[27], the Banking Law[28] and the Act of 16 February 2007 on Competition and Consumer Protection[29]), but merely to a few regulations of EU law that govern the relations between businesses and consumers – particularly Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts[30] (Directive 93/13) and Directive 2004/39/EC (Directive 2004/39) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC. Due to the legal status of directives their provisions are of a relatively general nature[31], and their implementation is left

[25] J. Michalska, *Pytania prejudycjalne sądów do TS UE*, (in:) M. Jabłoński, S. Jarosz-Żukowska (eds.), *Zasada pierwszeństwa prawa Unii Europejskiej w praktyce działania organów władzy publicznej RP*, Wrocław 2015, p. 253; I. Skomerska-Muchowska, *Pytania prejudycjalne sądów krajowych*, (in:) A. Wyrozumska (ed.), *System ochrony prawnej w Unii Europejskiej*, Warszawa 2010, p. V-306.

[26] M. Szpunar, *Komentarz do art. 267*, (in:) A. Wróbel (ed.), *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom. III*, Lex 2012.

[27] The Civil Code of 23 April 1964 (Polish Official Journal of Laws of 2017, item 459 as amended).

[28] Act of 29 August 1997 – Banking Law (Polish Official Journal of Laws of 2016, item 1988 as amended).

[29] *Ibidem*.

[30] Official Journal of the European Union, L 95, 21.4.1993, p. 29.

[31] By way of example, pursuant to Article 3(1) of Directive 93/13/EEC: "1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer", whilst under Article 5: "In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedures laid down in Article 7(2)".

to the member States[32]. As a consequence, the CJEU's determinations produce merely some basic guidelines as to the direction in which judgments in particular cases considered by domestic courts should go. In addition, the Court usually renders judgments in response to references (or prejudicial questions) from domestic courts by reference to the facts of the particular case. Therefore, one will not find in them answers to questions such as whether it is permissible for a bank X and a Polish trader Y to enter into a loan denominated in/indexed to foreign currency, or for a bank to use valorisation clauses in a contractual model Z, or to charge spread (the difference between the selling and buying rates of a currency – collected by banks when realizing loan contracts with consumers) in a strictly defined amount. A few pertinent judgments should be discussed in this connection.

First, I turn to *Árpád Kásler and Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt*. Mr and Mrs Kásler, Hungarian nationals, took out a foreign currency loan with a bank, as a result of which they obtained capital in the amount of 14.4 million forints. It was stipulated that the lent amount was to be denominated in the Swiss franc at the buying rate as of the day when the bank started financing under the contract. Mr and Mrs Kásler questioned before a Hungarian court – as unfair and in violation of their consumer rights – the condition that the amount of monthly instalments (expressed in forints) was calculated by reference to the selling rate of the Swiss franc as of the day preceding the maturity date of the instalment. Thus, in relation to repayments the mechanism adopted imposed a different rate than that applicable when the loan was granted. The Hungarian Supreme Court referred three questions to the CJEU:

– may the condition governing the exchange rates used for the purposes of repaying a loan denominated in a foreign currency be classified as the main object of the agreement or one that pertains to the relation between the quality and price of goods or services?

– may the questioned condition be considered as expressed in plain and intelligible language?

– is the domestic court empowered to amend or supplement a contractual condition held to be unfair, if the contract could not exist without it?

The Court held that: "the requirement that a contractual term must be drafted in plain intelligible language is to be understood as requiring not only that the relevant term should be grammatically intelligible to the consumer, but also that the contract should set out transparently the specific functioning of the mechanism of conversion for the foreign currency to which the relevant term refers and the relationship between that mechanism and that provided for by other contractual terms relating to the advance of the loan, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for

[32] This is how the provisions of Directive 93/13/EEC are transposed into the Polish legal system in Article 385[1] of the Civil Code.

him which derive from it (…) before concluding a contract, on the terms of the contract and the consequences of concluding it is of fundamental importance for a consumer. It is on the basis of that information in particular that he decides whether he wishes to be bound by the terms previously drawn up by the seller or supplier (…) The requirement of transparency of contractual terms laid down by Directive 93/13 cannot therefore be reduced merely to their being formally and grammatically intelligible (…) the system of protection introduced by Directive 93/13 being based on the idea that the consumer is in a position of weakness vis-à-vis the seller or supplier, in particular as regards his level of knowledge, the requirement of transparency must be understood in a broad sense (…) it is for the referring court to determine whether, having regard to all the relevant information, including the promotional material and information provided by the lender in the negotiation of the loan agreement, the average consumer, who is reasonably well informed and reasonably observant and circumspect, would not only be aware of the existence of the difference, generally observed on the securities market, between the selling rate of exchange and the buying rate of exchange of a foreign currency, but also be able to assess the potentially significant economic consequences for him resulting from the application of the selling rate of exchange for the calculation of the repayments for which he would ultimately be liable and, therefore, the total cost of the sum borrowed (…) If it were open to the national court to revise the content of unfair terms included in such contracts, such a power would be liable to compromise attainment of the long-term objective of Article 7 of Directive 93/13. That power would contribute to eliminating the dissuasive effect for sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be adjusted, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers (…) replacing an unfair term with such a provision which, as is clear from the thirteenth recital in the preamble to Directive 93/13, is presumed not to contain unfair terms, in that it leads to the result that the contract may continue in existence in spite of the fact that Clause III/2 has been deleted and continues to be binding for the parties, is fully justified in the light of the purpose of Directive 93/13 (…) The substitution of an unfair term for a supplementary provision of national law is consistent with the objective of Article 6(1) of Directive 93/13, since, according to settled case-law, that provision is intended to substitute for the formal balance established by the contract between the rights and obligations of the parties real balance re-establishing equality between them, not to annul all contracts containing unfair terms (…) if, in a situation such as that at issue in the main proceedings, it was not permissible to replace an unfair term with a supplementary provision, requiring the court to annul the contract in its entirety, the consumer might be exposed to particularly unfavourable conse-

quences, so that the dissuasive effect resulting from the annulment of the contract could well be jeopardised (…) In general, the consequence of an annulment is that the outstanding balance of the loan becomes due forthwith, which is likely to be in excess of the consumer's financial capacities and, as a result, tends to penalise the consumer rather than the lender who, as a consequence, might not be dissuaded from inserting such terms in its contracts. Having regard to all those considerations, the answer to the third question is that Article 6(1) of Directive 93/13 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a contract concluded between a seller or supplier and a consumer cannot continue in existence after an unfair term has been deleted, that provision does not preclude a rule of national law enabling the national court to cure the invalidity of that term by substituting for it a supplementary provision of national law"[33].

In summary, the CJEU, on the one hand, averred that whilst it is one of the requirements of European consumer protection law that lendees who take out loans in foreign currencies must be given an opportunity to estimate the economic consequences possibly stemming from the use by the bank of different exchange rates in respect of granting and repayment of the loan[34], but even so, the final determination of the nature of the contractual relation between the parties is left to the domestic court. It was the Hungarian court that was exclusively competent to adjudicate upon the propriety or defectiveness of the contract in dispute and potential sanctions (ineffectiveness or invalidity). At first sight it seems that this reasoning is attractive for foreign currency lendees, and the duty imposed upon businesses to ensure maximum transparency and clarity of the consumer's situation could signal that lendees' claims should be allowed. Nonetheless, the CJEU's statements are sufficiently general and are confined to the provisions of the relevant directives (hence they do not apply to the domestic law which is, in every case, the legal basis point of reference upon which the domestic court bases its determinations). In sum, it is hardly conceivable that domestic courts of the Member States begin to apply the EU legislation without reference to the relevant domestic regulations and the concrete facts of the case before them. In other words, a judgment of the CJEU does provide some interpretative guidelines that should be taken into account by domestic judges when adjudicating, however

[33] Judgment of the Court of Justice of the European Union of 30 April 2014 in Case C-26/13 *Árpád Kásler and Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt*., paras 70–85.

[34] D. Gajos-Kaniewska, *Konsumenci*, *którzy zaciągają kredyt w walucie obcej muszą mieć możliwość oszacowania konsekwencji ekonomicznych wynikających z zastosowania przez bank innego kursu waluty przy spłacie*, *a innego przy uruchomieniu kredytu*, http://www.rp.pl/artykul/1106343-Trybunal-Sprawiedliwosci-o-kredytach-walutowych--konsument-musi-byc-swiadom-ryzyka.html#ap-1 (accessed 2 March 2017).

it is not clear and precise enough to build upon it a new, unambiguous legal norm or judicial directive in complex cases involving denominated/indexed loans[35].

Also, one cannot overlook the CJEU's important remark concerning the legal consequences of holding a contractual clause to be impermissible (which, according to the Court, does not automatically result in the invalidity of the loan contract, i.e. nullification of the legal relation between the bank and the consumer). It was held that the place of abusive clauses is taken by domestic laws which in this way fill a "void" in the content of the legal relation and sustain the underlying obligation. The Court underscored the dangers associated with such a state of affairs, something perhaps not fully realized by lendees who might hope to get released from their duties as against their creditors. Where a contract were to be held invalid, those consumers who would be unable to immediately repay the funds in the full amount received from the bank would be the most vulnerable[36].

Árpád Kásler is merely one in a string of judgments where the Court mandated that domestic laws be taken into account where the permissibility of application of concrete contractual clauses between a business and a consumer is considered.

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[35] The problem is extraordinarily complex legally – bank loans are regulated by provisions scattered in a plethora of statutes (of both public and private law nature). Proper regulation requires balancing constitutional principles and values (for example, freedom of contract and consumer protection, group and individual interests, freedom and security), and within the confines of a court trial it necessitates examining many contractual conditions contained within various models used by banks. In addition, a violation of the law by the defendant in one case (e.g. an omission to perform one's information duties) does not automatically result in an implication that errors were made in all other cases. Differing personal statuses (intellectual, professional, financial) could also be a factor. As there was no one contractual model as regards foreign currency loans, there cannot be one uniform way of resolving disputes stemming therefrom.

[36] On a side note, the judgment in *Árpád Kásler*, *Hajnalka Káslerné Rábai przeciwko OTP Jelzálogbank Zrt* serves on occasion – as is the case of other important judgments concerning foreign currency loans – as a mechanism to extrapolate, oversimplify and draw far-reaching conclusions, many of which are unwarranted by reference to the judgment. In this vein is a comment supposing that apparently: "In the judgment in *Kasler* (C-26/13) the CJEU practically burdened banks with the entire risk associated with currency rate changes (…) where a conversion clause is abusive, the domestic court would be obliged to declare the invalidity of the entire contract, and this implies absolute invalidity (…) And if, domestically, exclusion from a contract of indexation clauses held to be impermissible does not result in invalidity of the entire contract, so that it can still subsist, then the whole amount of debt and particular instalments is not subject to indexation, and other conditions, including those governing interest (relatively low as for loans in francs or other currencies), remain intact. In short, where merely the conversion clause is found to be invalid, the franc loan would be denominated at the rate as of the day of granting the loan". R. Bujalski, *Wywiad z W. Gontarskim: Kredyty we frankach: prawo UE stoi po stronie kredytobiorców*, http://www.lex.pl/czytaj/-/artykul/kredyty-we-frankach-prawo-ue-stoi-po-stronie-kredytobiorcow (accessed 2 March 2017).

Bujalski appears to think that also *Banif Plus Bank* (C-312/14) is beneficial for lendees of foreign currency loans (*sic!*). W. Gontarski, *Frankowicze bez szans na sukces przed polskimi sądami. Jedyna ich nadzieja w ustawie*, http://www.lex.pl/czytaj/-/artykul/frankowicze-bez-szans-na-sukces-przed-polskimi-sadami-jedyna-ich-nadzieja-w-ustawie (accessed 2 March 2017).

In *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)* (Case C-415/11, 14 March 2013) the CJEU emphasized that "Article 3(1) of Directive 93/13 must be interpreted as meaning that the concept of 'significant imbalance' to the detriment of the consumer must be assessed in the light of an analysis of the rules of national law applicable in the absence of any agreement between the parties, in order to determine whether, and if so to what extent, the contract places the consumer in a less favourable legal situation than that provided for by the national law in force. To that end, an assessment of the legal situation of that consumer having regard to the means at his disposal, under national law, to prevent continued use of unfair terms, should also be carried out"[37].

To determine whether there has arisen a significant imbalance to the detriment of the consumer (which, pursuant to Article 3(1) of Directive 93/13, may beget holding terms which were not individually negotiated to be unfair) always necessitates an analysis of domestic laws which apply in case of a lack of agreement between the parties. The goal is to assess whether and, if so, to what extent the examined contractual terms put the consumer in a less favourable situation than the default one envisaged by the legislator. The CJEU is not, therefore, competent to replace the domestic court in this regard. Nonetheless, it does underscore the duty to consider domestic provisions, while confirming that it would be an overreach to issue a general, universal judgment, applicable to all consumers and businesses finding themselves in an analogous situation in all the Member States, which would hold a concrete contractual model, clause or term to be impermissible.

Large expectations were associated with the CJEU's judgment in *Banif Plus Bank Zrt. v Márton Lantos, Mártonné Lantos*[38] (Case C-312/14). The proceedings came down to determining the nature of foreign currency loans – do they constitute a financial instrument that must (in the light of the corrent laws) be subject to special protection for investors? The Court held that foreign currency loans are not to be classified as investment products, and that they are offered by banks does not make them an investment service within the meaning of Directive 2004/39. So as to avoid misunderstandings, I will quote from the judgment: "The question arises in the present case as to whether the transactions effected by a credit institution, consisting in converting amounts expressed in a foreign currency into the domestic currency for the purpose of calculating the amount of a loan and repayment instalments in accordance with clauses on exchange rates contained in a loan agreement, may be classified as 'investment services or activities' within the meaning of Article 4(1)(2) of Directive 2004/39 (…) Transactions such as this serve no other function than to be the manner of performing the fundamental pay-

[37] Judgment of the Court of Justice of the European Union of 14 March 2013 in Case C-415/11 *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)*, para 2.

[38] Judgment of the Court of Justice of the European Union of 3 December 2015 in Case C-312/14 *Banif Plus Bank Zrt. v Márton Lantos, Mártonné Lantos*.

ment obligations under the loan agreement, consisting in the lender's making the capital available and the borrower's repayment of the capital together with interest. Those transactions do not have as their purpose the completion of an investment, as the consumer is seeking only to secure funds with a view to purchasing a consumer good or a service, not, for example, to manage a foreign exchange risk or speculate on a currency's exchange rate (…) In fact, these types of foreign exchange transactions serve merely to secure the granting and repayment of the loan (…) The foreign exchange transactions at issue in the main proceedings are not linked to an investment service within the meaning of Article 4(1)(2) of Directive 2004/39, but rather to a transaction which itself does not constitute a financial instrument as defined in Article 4(1)(17) of that directive (…) cannot be regarded as investment services, with the result that that institution *inter alia* is not subject to any obligations to assess the suitability or appropriateness of the service to be provided as laid down in Article 19 of Directive 2004/39"[39]. Also, the Court indirectly greenlighted the permissibility of contractual terms that stipulate that "the value of the currencies to be taken into account for the calculation of the repayments is not fixed in advance because it is determined on the basis of the sale price of those currencies on the due date of each monthly instalment"[40].

Banif Plus Bank defied, at least to a certain extent, the view of lendees that it was the banks who exploited unaware consumers by offering them a complex and risky financial instrument, devised for professional investors, and was denounced as a "disappointment"[41], "another blow dealt against the lendees by the Court"[42]. This judicial position may feed the frustration of people affected by the consequences of foreign currency fluctuations and even disapproval of academic writers who would like the Court – in the name of coherence and factual effectiveness of Union law – to take on difficult consumer claims.

Marek Safjan has expressed regret that Polish courts, when considering abusive clauses and the legal effectiveness of foreign currency loans, are "passive" and choose not to direct references to the CJEU: "the case law of the CJEU is worthy of attention where a common feature is the need to determine the criteria based upon which the court seized of the matter may assess the existence of an abusive clause under Directive 93/13. Traditionally, the Court has refused to unreservedly classify a disputed clause in one way or another, leaving this matter to the domestic court even if the reasoning in the CJEU judgment clearly dictates the determination by the domestic judicial panel. One must wonder the

[39] *Ibidem*, paras 53, 57, 61, 67, 75.

[40] *Ibidem*, para 74.

[41] J. Czabański, *Kredyt frankowy nie jest instrumentem finansowym*, http://pomocfrankowiczom.pl/?p=392 (accessed 5 March 2017).

[42] M. Samcik, *Europejski Trybunał zadaje frankowiczom kolejny cios. Zamknięta droga do roszczeń?*, http://samcik.blox.pl/2015/12/Europejski-Trybunal-zadaje-frankowiczom-kolejny.html (accessed 5 March 2017).

extent to which references continue to constitute an indispensable condition of the construction of European law. It appears that the Łódź Appellate Court, in a captivating judgment, did not capitalize on the opportunity to receive relevant interpretative guidelines from the CJEU (judgment of the Łódź Appellate Court of 30 April 2014, ref. number I Aca 1209/13 and judgment of the same court of 30 April 2014, ref. number I AcZ 1414/13). The case concerned a loan denominated in Swiss francs (…) bearing in mind the restraint of Polish courts, it is worth noting that on the same day that the Łódź Appellate Court handed down its judgments, the CJEU rendered its own in the case of *Árpád Kásler and Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt*. Here, the Court defined the mentioned criteria in the light of the provisions of EU law. The case centered around a similar issue that arose against the background of the notion of transparency of a CHF loan contract's terms"[43]. Safjan appears to think that the CJEU is not paid enough deference by domestic courts which, at the same time, are reluctant to send references to the European Court in the first place.

Notwithstanding, it is warranted to risk saying that it will be long before EU authorities "fix" the complicated legal conundrum of bank loans indexed to foreign currencies. Currently, it goes beyond their competence, and to intervene would amount to a transgression onto the jurisdiction of domestic courts. One may not rule out the option that – on account of legal complexity and the differences in situations among lendees – it would not be advisable to render an unequivocal and authoritative judgment on the permissibility of denomination/indexation, legality of charging spread, or the consequences of potential abusiveness of contractual terms. To do so would create a precedent whereby various factual constellations would be "equated". This, in turn, could be read as a "political" statement by the Court, i.e. a determination that should be left to political decision makers and one that constitutes a divisive and controversial element of social discourse. A CJEU judgment would bring about a triumph of one side of the dispute, excessively generalize a complex legal problem and could brush aside a number of legally relevant circumstances considered on the facts of every case (such as, for instance, the principles of sanctity and freedom of contract, ignorance of the risk of currency rate fluctuations, prohibition on unwarranted interference with the contractual relation by the courts). Finally, the judgments of the CJEU handed down hitherto in the realm of foreign currency loans, where the standard of protection of consumer rights is higher than in domestic law, may not be justified.

[43] M. Safjan, *Pytania prejudycjalne polskich sądów powszechnych*, "Prawo w Działaniu" 2014, issue 20, p. 23.

BANK LOANS DENOMINATED AND INDEXED TO FOREIGN CURRENCY – A POLISH, UKRAINIAN OR EUROPE-WIDE PROBLEM?

Summary

The institution of a bank mortgage denominated/indexed to foreign currency (referred to generally and not very precisely as "foreign currency loan" or "loan adjusted to foreign currency") is an instrument commonly used by a broad group of citizens of European states for acquiring capital with a view to purchasing a housing unit. Until recently, such loans were popular not only in Poland and other countries belonging to the so-called "New Union" (those whose accession took place within the last decade or so: Czech Republic, Slovakia, Romania, Hungary and Croatia), Austria, Spain, Italy, Portugal, but also outside of the borders of the Union: in Russia, Serbia and Ukraine (however, one difference was the currency in which obligations were evaluated – whilst loans in EU countries were dominated by the Swiss Franc, Ukrainian lendees more frequently relied upon loans "adjusted" to the U.S. dollar). Regardless of differences persisting in legislative regimes, peculiarities of national legal systems and local economic and social conditions, in all those countries doubts have arisen whether a drastic change in currency rate (which results in an obligation to pay off a loan on conditions much less attractive than beforehand) constitutes a legally relevant circumstance that could permit one to release oneself from having to perform one's contractual duties or, at least, facilitate granting some relief in fulfilling increasingly more onerous obligations towards banks.

To discuss the permissibility and legal aspects of foreign currency loan contracts is complicated not only from the juridical point of view, but is also of interest to society, politics and economics. Still, the problem attracts strong emotions, particularly among lendees who took out a foreign currency loan and now feel deceived due to a change of the currency rate.

The lendees and their organizations often expect involvement, particularly from EU bodies, where, in their estimation, domestic authorities have failed or "succumbed to the banking lobby". Unfortunately, having observed the course of events over the last several years, one may surmise that the low number of judgments in cases concerning denominated bank loans, and especially the sceptical approach of the Court of Justice, have generated a lot of disappointment.

BIBLIOGRAPHY

Analitycy: uwolnienie kursu franka to ryzykowna decyzja, https://www.pb.pl/analitycy-uwolnienie-kursu-franka-to-ryzykowna-decyzja-780454 (accessed 2 March 2017)

Bednarek M., *Najbardziej znany polski "frankowicz" chce zaskarżyć Polskę do Trybunału w Strasburgu*, http://wyborcza.biz/biznes/1,100896,21173461,frankowicz-chce--zaskarzyc-polske-do-trybunalu-w-strasburgu.html (accessed 2 March 2017)

Bielewicz J., *Afera frankowa: Kredyty we frankach to nie wewnętrzna sprawa Polski, lecz kwestia wiarygodności Unii Europejskiej!*, http://wgospodarce.pl/opinie/20115-afera-frankowa-kredyty-we-frankach-to-nie-wewnetrzna-sprawa-polski-lecz-kwestia-wiarygodnosci-unii-europejskiej (accessed 11 March 2017)

Bieniak M., *Klauzula rebus sic stantibus – możliwości jej aktualnego zastosowania (uwagi na tle art. 357[1] KC)*, "Monitor Prawniczy" 2009, issue 12

Bosek L., Lackoroński B., *Ustawowa waloryzacja zobowiązań. Uwagi na tle ustawy z dnia 5 sierpnia 2015 r. o pomocy tzw. frankowiczom*, "Forum Prawnicze" 2015, Vol. 6, issue 32

Bujalski R., *Wywiad z W. Gontarskim: Kredyty we frankach: prawo UE stoi po stronie kredytobiorców*, http://www.lex.pl/czytaj/-/artykul/kredyty-we-frankach-prawo-ue-stoi-po-stronie-kredytobiorcow (accessed 2 March 2017)

Czabański J., *Kredyt frankowy nie jest instrumentem finansowym*, http://pomocfrankowiczom.pl/?p=392 (accessed 5 March 2017)

Domańska M., *Rosyjski sektor bankowy: rok w kryzysie*, https://www.osw.waw.pl/pl/publikacje/komentarze-osw/2016-03-29/rosyjski-sektor-bankowy-rok-w-kryzysie (accessed 3 March 2017)

Dramatyczny wzrost kursu franka szwajcarskiego, http://www.kalkulator.pl/dramatyczny-wzrost-kursu-franka-szwajcarskiego/ (accessed 3 March 2017)

Gajos-Kaniewska D., *Konsumenci, którzy zaciągają kredyt w walucie obcej muszą mieć możliwość oszacowania konsekwencji ekonomicznych wynikających z zastosowania przez bank innego kursu waluty przy spłacie, a innego przy uruchomieniu kredytu*, http://www.rp.pl/artykul/1106343-Trybunal-Sprawiedliwosci-o-kredytach-walutowych--konsument-musi-byc-swiadom-ryzyka.html#ap-1 (accessed 2 March 2017)

Gontarski W., *Frankowicze bez szans na sukces przed polskimi sądami. Jedyna ich nadzieja w ustawie*, http://www.lex.pl/czytaj/-/artykul/frankowicze-bez-szans-na-sukces-przed-polskimi-sadami-jedyna-ich-nadzieja-w-ustawie (accessed 2 March 2017)

Kalinowska D., *Portret polskich frankowiczów: Oszukani przez system bankowy, a może sami są sobie winni?*, http://serwisy.gazetaprawna.pl/finanse-osobiste/artykuly/84-8524,kredyty-we-frankach-kim-sa-polscy-frankowicze-czemu-brali-kredyty.html (accessed 6 March 2017)

Michalska J., *Pytania prejudycjalne sądów do TS UE*, (in:) M. Jabłoński, S. Jarosz-Żukowska (eds.), *Zasada pierwszeństwa prawa Unii Europejskiej w praktyce działania organów władzy publicznej RP*, Wrocław 2015

Popiołek A., *Frankowicze straszą prezydenta: Pójdziemy do Europejskiego Trybunału Praw Człowieka*, http://wyborcza.biz/biznes/1,147582,20691254,frankowicze-straszа-prezydenta-pojdziemy-do-europejskiego-trybunalu.html (accessed 3 March 2017)

Poroshenko returns bill on restructuring currency credits to parliament, http://en.interfax.com.ua/news/economic/312715.html (accessed 10 March 2017)

Radwański R., *Zobowiązania – część ogólna*, Warszawa 1997

Ramotowski J., *Frank zaraża bilanse banków nie tylko w środkowej Europie*, https://www.obserwatorfinansowy.pl/tematyka/bankowosc/frank-zaraza-bilanse-bankow-nie-tylko-w-srodkowej-europie/ (accessed 3 March 2017)

Report by the Financial Ombudsman: *Analiza prawna wybranych postanowień umownych stosowanych przez banki w umowach kredytów indeksowanych do waluty obcej lub denominowanych w walucie obcej zawieranych z konsumentami* (English: *A legal analysis of selected contractual conditions used by banks in contracts for loans indexed to or denominated in foreign currency concluded with consumers*), Warszawa, June 2016

Report of the Financial Supervision Authority: *Raport o sytuacji banków w 2015 r.*, Warszawa 2016

Safjan M., *Pytania prejudycjalne polskich sądów powszechnych*, "Prawo w Działaniu" 2014, issue 20

Samcik M., *Europejski Trybunał zadaje frankowiczom kolejny cios. Zamknięta droga do roszczeń?*, http://samcik.blox.pl/2015/12/Europejski-Trybunal-zadaje-frankowiczom-kolejny.html (accessed 5 March 2017)

Skomerska-Muchowska I., *Pytania prejudycjalne sądów krajowych*, (in:) A. Wyrozumska (ed.), *System ochrony prawnej w Unii Europejskiej*, Warszawa 2010

Skordas A., *'Black Thursday' for 60,000 Greek Borrowers of Swiss Banks*, http://greece.greekreporter.com/2015/01/15/black-thursday-for-60000-greek-borrowers-of-swiss-banks/#sthash.CXYfp1o1.dpuf (accessed 1 March 2017)

Szpunar M., *Komentarz do art. 267*, (in:) A. Wróbel (ed.), *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom. III*, Lex 2012

Trybunał unieważni wszystkie kredyty frankowe?, http://www.polskatimes.pl/strefa-biznesu/pieniadze/a/trybunal-uniewazni-wszystkie-kredyty-frankowe,10185536/ (accessed 2 March 2017)

Ukraiński parlament przewalutowuje kredyty walutowe. Ministerstwo finansów oburzone, http://wyborcza.pl/1,155287,18294865,Ukrainski_parlament_przewalutowuje_kredyty_walutowe_.html (accessed 2 March 2017)

Wawryszuk B., *Rumuński Trybunał zakwestionował ustawę dotyczącą kredytów we frankach*, http://www.money.pl/gospodarka/unia-europejska/wiadomosci/artykul/kredyty-w-chf-trybunal-konstytucyjny-rumunia,15,0,2258959.html (accessed 10 March 2017)

Wronkowska S., Ziembiński Z., *Zarys teorii prawa*, Poznań 2001

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SŁOWA KLUCZOWE

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