

ChF/Euro/ChF

Denominated Loans

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⌘ It is obvious that in ChF / € denominated loans (mortgages) there could have been **no honest reason to safeguard the € value of the loan.**

Bad faith of the banks (*mala fides*)

- ⌘ Fixed interest rate loans are loans in which the interest rate charged on the loan, will remain fixed for that loan's entire term, **no matter what market interest rates do.**
- ⌘ This will result in your payments being the **same over the entire term.**
- ⌘ Whether a fixed-rate loan is better for you will depend on the interest rate environment when the loan is taken out and on the duration of the loan.

A. Fixed interest rate loans

- ⌘ ... loans that have an **interest** rate that will **fluctuate** over time in line with **prevailing interest rates**.
- ⌘ They generally have **lower starting interest rates** than fixed rate loans, but the interest rate and payment amounts **can change over time**.
- ⌘ There are risks associated with these types of mortgages and the borrower must be prepared to accept an increase in the value of their debt if there are adverse movements in the currency markets.

B. Variable rate loans

- ⌘ The borrower should have foreign currency funds source...
 - ⌘ This was the situation in West Austria's Swiss guest workers -- gaining their income in ChF.
 - ⌘ Acceptable!

Bank of China

Code Napoleon (1804), art. 1964:

- ⌘ Le contrat aléatoire est une convention réciproque dont les effets, quant aux avantages et aux pertes, soit pour toutes les parties, soit pour l'une ou plusieurs d'entre elles, dépendent d'un événement **incertain**.
- ⌘ Dans aucun cas le perdant ne peut répéter ce qu'il a volontairement payé, à moins qu'il n'y ait eu, de la part du gagnant, **dol, supercherie ou escroquerie**. (Art. 1967)
 - ⌘ **Supercherie: fraude faite avec une certaine finesse et constituant souvent une substitution du faux au vrai;**
- ⌘ le tribunal peut rejeter la demande quand la **somme lui paraît excessive**. (Art. 1965)

Aleatory Contract

“alea”, lat.: dice

- ⌘ A bona fide aleatory contract (variable rate loan or mortgage) presupposes:
 - ⌘ Ignorance of **both parties** as to the probability of ChF rising vis-a-vis €;
 - ⌘ Banks were **much better informed** as to this probability (they knew, were not ignorant);
 - ⌘ Banks are guilty of **dol, supercherie ou escroquerie** (**dolus, fraud**)
 - ⌘ The Courts must declare these contracts at least partially invalid because of
 - ⌘ **dol, supercherie ou escroquerie** (**dolus, fraud**)

The Banks knew of € / ChF

- ⌘ The banks used an extremely complex mathematical **algorithm**!
- ⌘ The algorithm **simulated** the consequences of the ChF / € (**Libor & Eurobor**) volatility!
 - ⌘ Only the **top management** had (has) access to this.
 - ⌘ Lower management was forced to sell a **toxic** product.
 - ⌘ They most often did not even understand that it was toxic.
- ⌘ Even now this simulation programme is not available

Pseudo-Aleatory Contract

- ⌘ For domestic civil courts in European Countries (Austria, Spain, Slovenia, Croatia, Poland, etc.) the **civil code** provisions should be sufficient to declare ChF/€/ChF loan contracts:
 - ⌘ simply because **the banks had the algorithm and the borrowers did not;**
 - ⌘ **null and void** (invalid); or at least
 - ⌘ **prevent the excessive profits** for the banks!

Legal Sanctions for ChF/€/ChF bank loan contracts

⌘ The Constitutional Court in Croatia has sided with the borrowers:

⌘ See:

<http://hrvatska-danas.com/2017/04/07/ustavni-sud-odbio-banke-konverzija-chf-je-zakonita-izjednaceni-su-s-ostalim-kreditima/>

⌘ If the civil courts do not apply civil law as it stands, the appeal should be made to the domestic Constitutional Court

⌘ Constitutional complaint, Amparo, Verfassung Beschwerde

Constitutional Courts

- ⌘ ECtHR did not yet deal with such a case
 - ⌘ according to **Protocol I, Art. 1, para. 1**
- ⌘ Borrowers in all countries should
 - ⌘ **exhaust** constitutional court appeals;
 - ⌘ then **within 6 months** appeal to ECtHr;
- ⌘ Among others on the basis of disproportionality!

European Court of Human Rights (Strasbourg) (ECtHR)

- ⌘ We are currently working on such an appeal to ECtHR.
- ⌘ All countries are welcome to join!

In Slovenia & Elsewhere