Anexă

Notă de argumentare

a respingerii demersului Universității de Stat din Moldova cu privire la confirmarea titlului științific de doctor în drept domnului GROZAVU Mircea, conferit la 26 mai 2023 în urma susţinerii tezei „Clauzele abuzive în contractul de credit bancar"

Respingerea demersului este determinată de faptul că că două din trei articole în reviste științifice care stau la baza tezei de doctorat, conțin auplagiat ca, după cum se observă în tabelul de mai jos:

Analiza articolelor

- THE EUROPEAN COURT OF JUSTICE JURISPRUDENCE IN ÁRPÁD KÁSLER VS. OTP CASE AND ITS INTERPRETATION IN THE JURISPRUDENCE OF NATIONAL COURTS (2016, Is. 1, pp. 61-67)
- CONSIDERATIONS ON THE NATIONAL CASE LAW REGARDING THE CONTROL OF ABUSIVE CLAUSES IN THE MATTER OF CREDIT LOAN REPAYMENT (2016, Is. 2, pp. 18-26)

publicate în revista „European Journal of Law and Public Administration", 2016

	THE EUROPEAN COURT OF JUSTICE JURISPRUDENCE IN ÁRPÁD KÁSLER VS. OTP CASE AND ITS INTERPRETATION IN THE JURISPRUDENCE OF NATIONAL COURTS (2016, Is. 1, pp. 61-67)	**CONSIDERATIONS ON THE NATIONAL CASE LAW REGARDING THE CONTROL OF ABUSIVE CLAUSES IN THE MATTER OF CREDIT LOAN REPAYMENT ((2016, Is. 2, pp. 18-26)**
	Abstract The issue of abusive clauses referring to the repayment in the currency of the long term bank loan, on the grounds of the obligation of the parties to fulfil exactly the undertaken obligations, created a case-law that is rich in contradictions. This state of affairs brings up the selected subject as one with a significant potential for scientific research. The present article replies with a summarized study on the main court rulings that created the existing contradictions at the Romanian and European Union level of case-law concerning the protection of the consumer's rights. The analysis of the mentioned rulings will be realized from the standpoint of the existing normative regulations and also form the standpoints of the law and economics doctrine, with the main purpose to bring clarity in a field that is mainly speculative in the present time.	**Abstract** The issue of abusive clauses referring to the repayment in the currency of the long term bank loan, on the grounds of the obligation of the parties to fulfill exactly the undertaken obligations, created a case-law that is rich in contradictions. This state of affairs brings up the selected subject as one with a significant potential for scientific research. The present article replies with a summarized study on the main court rulings that created the existing contradictions at the Romanian and European Union level of case-law concerning the protection of the consumer's rights. The analysis of the mentioned rulings will be realized from the standpoint of the existing normative regulations and also form the standpoints of the law and economics doctrine, with the main purpose to bring clarity in a field that is mainly speculative in the present time.
	INTRODUCTION **p.62**	**INTRODUCTION** **p.20**
	During the period of 2006-2009, after a period of general economic growth, a phenomenon of massive indebtedness with bank loans for consumer purpose of individuals was recorded. A significant part of bank loans was taken in national currency and another more significant	During the period between 2006 and 2009, after a period of general economic growth, a massive indebtedness of individuals with bank loans was recorded, with credits accessed for consumption purposes. Some of the loans from banks were

	part of bank loans was taken in foreign currency, like euro, dollar or Swiss franc. Statistically, according to the data provided by the National Bank of Romania's Risk Central of the Credit, a total of more than 75,000 individuals have loans in Swiss francs, and 360,000 people were bank loans in euro2 . The total approximate number of individuals that took bank loans in foreign currency during the stated period reached 435,000. Because the individuals that took bank loans have mainly the quality of consumers and the bank institutions that have provided the bank loans acted from the position of professionals, the legal binding loan contract signed by these two parties is being ruled by Directive 93/13/EEC and Law no. 193/2000 regarding the protection of consumer's rights.	taken in Romanian currency (lei), and another significant amount of bank loans was taken in foreign currency, such as the euro, dollars or Swiss francs. Statistically, according to data issued by the Credit Risk Center of the National Bank of Romania, more than 75,000 individuals have loans in Swiss francs (the responses of the NBR specialized departments, the answer to question 6) and 360,000 persons have bank loans in euro (NBR Financial Stability Report for 2011). In total, the approximate number of individuals indebted in foreign currency loans in the period reached reaches the threshold of 435,000. Due to the quality of the consumers, of the persons who have benefited from the loans granted by the banks, as well as of the professional quality of the banking institutions that have made the bank loans available to the population, the legal relations established between these parties fall under the legislation on the protection of consumer's rights: Law 193/2000 and Directive 93/13 / EEC
	p. 63	p.20
	A new element in the substance of the cases regarding prohibited contractual mistreatments between banks and consumers that faced judicial control are the contractual clauses concerning the currency in which the return of bank credit was effectuated that brought a new aim for the consumers that filed the law suits, which consisted in the "stabilization" of the value of foreign currency in which bank credit was requested at the exchange rate of the date of credit. Compared to the time of the conclusion of credit agreements, respectively for 2006-2009, the legal relations have emerged in the Civil Code of 1864, which represents the law applicable to these cases.	A novelty in the litigation of bank-to-consumer relations, deducted from judicial control, is the contractual clauses regarding the currency in which the bank loan is to be repaid, the aim pursued by the applicants is to "stabilize" the value of the foreign currency in which Bank credit was requested at the exchange rate on the date the credit was granted. Compared to the date of the conclusion of the credit agreements, respectively 2006-2009, legal relations were born under the Civil Code of 1864, which is the law applicable in these cases
	p.63	p. 21
	The precise execution of the obligations consented on the grounds of a legally valid contract is a main principle of Romanian Civil Code (art. 969 Civil Code 1864) known as mandatory binding force	The exact execution of the obligations assumed under a valid contract concluded in accordance with the term of execution, the quality and quantity of the agreed benefit is a principal legal

	of the contract and it means that the binding effects of the contract implies first of all compliance with time, quality and quantity agreed by the parties of the contract.	principle in the field of execution of civil benefits. It derives from the civil law principle of binding force of the effects of the contract between the contracting parties ("pacta sunt servanda"), provided by the art. 969 of the Romanian Civil Code of 1864.
	The particular problems noticed in judicial practice regarding how the principle of the mandatory binding force of the contract and exact execution of the contractual commitments will continue to subsist after a judicial control for unfair terms of the contractual clauses that state the currency in which the repayment of the bank loan will be effectuated4 .	Problems encountered in judicial practice concern how the principle of binding force of the contract and the execution of the contractual obligations assumed will continue to subsist after the abusive control of the contractual clause relating to the currency in which the repayment obligation is to be performed in form of a monthly installment
	The starting point of the reasoning on which is based the filed request of judicial stabilization of the exchange rate of the credit currency at the historical value of that currency from the day of consumer loan contract conclusion is considered **the ruling in Case C26/13 Árpád Kásler, Hajnalka Káslerné Rabaul c. OTP Jelzálogbank Zrt, where the Court of Justice of the European Union had the task of answering three questions formulated by a Hungarian court.**	By judgment in Case C-26/13 Árpád Kásler, Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt, the European Union Court of Justice had the task of answering three preliminary questions from a Hungarian court.
	p.64	p.21
	In examining the prejudicial matter C.J.E.U. held that Jelzálogbank, as defendant before the Hungarian court has given borrowers a loan of 14.4 million Hungarian forints (HUF), equivalent of 94 240,84 Swiss francs (CHF) . Article III/2 of the bank loan contract was stating that the determination of the amount of the loan in the currency of the loan will be realized according to the purchase exchange rate applied by the creditor bank reported in the day when the bank loan was granted. Also besides the amount of loan, the interest earned by the bank and administration expenses and penalties on overdue payments and other expenses were determined in national currency by reference to the exchange rate for the purchase of Swiss francs (CHF) applied Jelzálogbank at the due date of these sums.	In examining the matter in advance, the European Union Court of Justice argued that Jelzálogbank, as a defendant before the Hungarian court, granted a loan to the borrowers in the amount of 14 400 000 Hungarian HUF, stating that "the determination of the foreign currency value of the loan is made At the currency exchange rate applied by the bank in force at the date of unblocking the funds". Subsequent to the unblocking of the funds, the amount of the loan, the associated interests and the administration expenses, as well as the interest and other expenses, were determined in foreign currency, by reference to the exchange rate of Swiss francs (CHF) applied by Jelzálogbank to unblocking the funds, the amount of the loan being CHF 94,240.84
	p.64	p. 22

	On the one hand, most courts take the view that banks can't be compelled by a third party to guarantee consumers against currency risk, even more such a requirement is not mentioned in the contract and repayment of the loan is made in the currency of the loan or, the equivalent in lei of settlement, rejecting as unfounded the complaints by which it was sought to stabilize the exchange rate of the currency.5	On the one hand, most national courts consider that banks can't be compelled by a third party to guarantee consumers against monetary risk, provided that such an obligation is not mentioned in the contract, and that the loan is repaid in the currency of the loan or, In the equivalent in lei from the date of payment, rejecting as unfounded the demand for money that required the stabilization of the exchange rate of the currency (Pascariu)
	p. 65	p.23
	2. A solution diametrically opposite in a similar case was ruled in Decision No. 230/R/ 2014 Galati Court. The court retained that in 2008 and prior to the time of signing the contract, the exchange rate of the Swiss franc was stable for a long period of time, this causing otherwise the lender to enter into a loan agreement in that currency. Exchange rate stability was reflected in the relatively small amount of interest for this type of loan, which made the loan more attractive to customers	A diametrically opposed solution in a similar case was given in Decision no. 230 / R / 2014 of the Galaţi Tribunal, in which the court considered that in 2008 and prior to the signing of the contract, the exchange rate of the Swiss franc was for a long time a stable one, which would otherwise have led the borrower to conclude a loan agreement In this currency. The exchange rate stability was also reflected in the relatively low interest rate for this type of loan, which made lending to customers even more attractive
	On the background of contractual terms agreed between the parties, the bank had the right but not the obligation to convert the loan balance in Swiss francs into Romanian lei, where there will be a decrease or an appreciation of the exchange rate of the Swiss franc with more 10 percentage points. Such an increase in the Swiss franc exchange rate held on 02.10.2008.	Against the backdrop of the contractual clauses established between the parties to the convention, the bank had the right but not the obligation to convert the credit balance from Swiss francs into Romanian leu, if there would be a decrease or appreciation of the exchange rate of the Swiss franc with more Of 10 percentage points. Such an increase in the Swiss franc exchange rate took place on 02.10.2008.
	I consider questionable the legal interpretations of contract terms, performed Galati Court because the national court's interpretation of Court of Justice of the European Union decision in Case C-26/13 and Hajnalka Kaslerne Raba Arpad Kasler v. Jelzalogbank OTP Rt. is one contrary to its logic.	We consider the judicial interpretation of the contractual clauses made by the Galaţi Tribunal as questionable because the interpretation given by that national court to the CJEU ruling in Case C-26/13 Arpad Kasler and Hajnalka Kaslerne Rabai v OTP Jelzalogbank Zrt. is contrary to it's spirit.
		p. 23-24
	I believe that the vision of European Court has no bearing on the case rule by Galaţi Court because the facts adopted by the European judges is radically different from the present case, as opposed to the conduct of the Hungarian	We believe that the European Union Court of Justice's view is not prejudiced in the case of inferior judgment that the factual situation retâined by the European Union Court of Justice is radically different from the one in the

	credit institution, the Romanian defendant bank had provided to the borrowers Swiss franc loans and loan repayment were made accordingly in Swiss francs. Related to the facts, the decision of the Court of Justice of the European Union gave priority to the principle of mandatory binding force of the contract6 .	present case because, unlike the conduct of the Hungarian bank, the national credit institution which made available to the debtors Credit in Swiss francs and repayment of the loan was to be made in Swiss francs. In relation to the facts, the decision of the European Union Court of Justice only gives priority to the principle of enforcement in the nature of the obligations, which has not been upheld by the Cour.
	p. 66	p. 24
	On the other hand, the solution of the national court mentioned contravenes the provisions of art. 1578, par. (1) C. Civ. 1864 that states that if of a loan obligation that money is always the same numerical amount shown in the contract.	On the other hand, this solution also contravenes the provisions of art. 1578 par. (1) of Civil Code 1864, the obligation arising from a loan in money is always for the same numerical amount shown in the contract
	And if before the due date of the obligation repayment an increase or a decrease in the price of currency benefit occurs, the borrower will repay the amount in the currency numerical benefit, according to art. 1578 parag. (2) C. Civ. 1864.	If, prior to the maturity of the payment obligation, an increase or decrease in the price of the currency of the benefit occurs, the debtor is to return the numerical amount expressed in the currency of the benefit, according to art. 1578 par. (2) of Civil Code 1864.
	From a similar point of view that is based on art. 1578, par. (1) and (2) C. Civ. 1864, Professor Corneliu Bîrsan argues that the reimbursement was to be determined by reference to the amount actually borrowed in the currency the bank loan was granted 7	In a similar opinion, judging by the provisions of art. 1578 par. (1) and (2) of the Civil Code 1864, it can be argued that the amount to be repaid was to be determined in relation to the amount actually borrowed.
	In other words, the amount to be repaid regards the exact number and quality of units, because, in fact, it recalls the recalled rule that can be easily deduced by the civil legislation following the logic of matters of any other obligations8 , and moreover, the second paragraph of art. 1578 Civ. Code from 1864 refers to the nominal value of the debt, regardless of the occurrence of changes in currency value.	In other words, the amount of units sent to be repaid expressly formulated considered, moreover, a truism based on the nature of the obligation, because in reality, the text recalled recalls a rule that can be deduced easily by following the logic set by civil law in matters of obligations as the above, and the second paragraph of art. 1578 Civil Code 1864 refers to the face value of the claim regardless of the intervention of changes in the value of the currency. And moreover, the second paragraph of art. 1578 Civil Code 1864 refers to the face value of the claim regardless of any change in the value of the currency
	CONCLUSION, p. 66-67	**CONCLUSION, p.24-25**
	However, the existing views of national courts, **contrary to the research conclusions of this work are found**	Nevertheless, the opinions of the national courts, **contrary to the conclusions of the present paper,**

	non-unitary in matters of credit made available in Swiss francs. Given the non-unitary practice existing in the field, participants in the meeting of the representatives of Superior Council of Magistracy of Romania with the presidents of sections specialized in commercial disputes with professionals and insolvency the courts of appeal passed a motion of proposal to General Prosecutor's Office to promote a request for a point of view on this subject from the Supreme Court of Romania, and on related matters concerning the interpretation and application of article 4 of law no. 193/2000 on prohibition of unfair clauses on the conversion to be performed, interpretation and application of art. 1271 Civ. code. We appreciate that in event of filing the request of a point of view on these legal issues mentioned in the previous paragraph the solution of the Supreme Court of Romania will be predictable considering the legal provision of the Civil Code of 1864 and Civil Code of 2009, concerning the applicability in time of civil law and the fact that the vast majority of bank loans in foreign currency were contracted during the period of the Civil Code of 1864, which removes the applicability of legal provisions on contractual unpredictability, as defined by art. 1271 Civil Code 2009 and the prohibition of any judicial intervention by means of editing the content of credit agreements controlled for unfair clauses.	**reveal the existence of a non-unitary practice in the matter of credits made available in Swiss francs.** Taking into consideration the non-unitary practice in the field, the participants in the meeting of the representatives of the Superior Council of Magistracy of Romania with the chairs of the sections specialized in commercial materials at the level of the courts of appeal, in the matter of professional disputes and insolvency, where the decision to submit a proposal to the General Prosecutor's Office attached to the High Court of Cassation and Justice, for the promotion of an appeal in the interest of the law, on matters concerning the interpretation and application of the provisions of Art. 4 of the Law no. 193/2000 regarding the abusive nature of the clause on the exchange rate at which the conversion, the interpretation and the application of art. 1271 C. civ., the application of the contractual unprediction theory in the case of credit agreements concluded prior to the entry into force of the new Civil Code and the admissibility of requests for legal settlement of the interest rate and / or the conversion of credit from a foreign currency into the national currency. We consider that in the event of the promotion of the procedures for deciding on an appeal in the interest of the law having as its object the issues set out in the previous paragraph, the solution of the Supreme Court of Romania seems foreseeable if we consider the legal provisions of the 1864 Civil Code and the Civil Code 2009 on the timely applicability of civil law, and the absolute majority of bank loans contracted in foreign currency date back to the 1864 Civil Code period, as well as the possibility of judicial intervention in the content of credit agreements subjected to the control of abusiveness.