

DO THE SUPREME COURTS PROTECT THE CONSUMER BORROWERS?

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NEW CONSUMER CREDIT STATUTES IN RUSSIA AND UKRAINE

- Russia (2013) and Ukraine (2016) have recently adopted complex statutes on consumer credit. Ukraine, unlike Russia, declared the aim of the new act, inter alia, harmonization of the legislation with international and EU standards. Prior to enactment, both countries had a fragmentary regulation of few aspects of consumer credit in general consumer protection laws. I consider peculiarities of the elimination of the contract disproportion of debtor and creditor rights in contracts on consumer credit under new Russian and Ukrainian regulations from a comparative perspective. EU law does not regulate some important issues covered by Russian and Ukrainian legislations, e.g. priority of payments.

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On the contrary, some useful concepts, which are applicable to consumer loans under EU law, like “linked credits,” “open-end agreements” are absent in both Russian and Ukrainian laws. While comparing new Russian and Ukrainian consumer credit statutes, it is clear that in some aspects the Ukrainian one is pro-consumer, and in some other aspects the Russian one is more pro-consumer. Some provisions of both Russian and Ukrainian consumer credit statutes are very controversial and unclear; in some instances they could lead to debt slavery, so they must be corrected in the future.

IMPACT OF THE CONSTITUTIONAL COURT CASE LAW

The Constitutional Court of Ukraine underlines the importance of protection of the rights of citizens who take consumer credits in terms of such phases as contract conclusion and contract execution.

Legal Opinion under A.N.Stepanenko petition, No. 15-rp/2011, 10 November 2011, available at

<http://zakon.rada.gov.ua/laws/show/v015p710-11>.

IMPACT OF THE CONSTITUTIONAL COURT CASE LAW

Earlier according to the both Russian and Ukrainian Civil Codes the courts had a discretion to reduce a fine for delay if they found it extremely high. The problem was that the court used their power arbitrarily. In 2013 the Constitutional Court of Ukraine examined on merit the claim against the possibility of charging of extreme fines in consumer credits, and ruled that imposing of ceilings for the fines for violation of the civil contracts is the parliamentary discretion, moreover, the courts have the power to reduce them on a case-by-case basis. Constitutional Court of Ukraine, Legal Opinion under D.O. Kozlov petition, No. 7-rp/2013, 11 July 2013, available at <http://zakon.rada.gov.ua/laws/show/v007p710-13>.

The problem was the extreme distribution in opinions of different local judges about the fair level of fine for delay in consumer credits. Unfortunately, the Constitutional Court refused to solve it in 2013. It has been partly solved by the Parliament in 2016 for new consumer credits issues since 10 June 2017, but remains unsolved for the older consumer credits.

MANDATORY INSURANCE AS A CONDITION TO GRANT THE CONSUMER CREDIT

- Packages “consumer credit+ insurance” are legal in both Russia and Ukraine.
- The Supreme Court of Russia in the “Observation of Court Practice on Civil Cases related with the resolving of disputes Arising Out of the Performance of Credit Obligations” of 22 May 2013 states (4.2), that the creditors requirement addressed to a borrower about prescription of the particular insurance company is not based on the law.

Consumer credits in foreign currencies

Consumer credits in foreign currencies are prohibited according to the Ukrainian law. This prohibition is not absolutely new as it was introduced earlier, after the crisis of 2008. However, the Supreme Court of Ukraine interpreted this ban restrictively, authorizing some consumer credits in foreign currencies. The authors of the law clearly planned to fully remove the currency risks for the consumer. However, the ban's legislative technical flaws have led to the Supreme Court's finding that it is legitimate to express the consumer's obligations in the equivalent of foreign currency, if he or she repays in the Ukrainian national currency. So it is actually prohibited to use only foreign currency as a means of payment. Supreme Court of Ukraine, *X v. Kasa narodnoi dopomogi LTD*, No. 6-2864tss16, 1 November 2017, available at http://search.ligazakon.ua/l_doc2.nsf/link1/vs170732.html; Supreme Court of Ukraine, *Porsche Mobility LTD v. X*, No. 6-2024tss16, 18 October 2017], available at <https://oda.court.gov.ua/sud1590/pravovipoziciivsu/6-2024cs16>. Unlike Russia, the Supreme Court of Ukraine as usual does not disclose the surnames of natural persons who participated in its solved disputes.

Maximum interest ceiling

Unfortunately, the Ukrainian order of payments, as the Russian one, does not prevent new debts of consumer expansion even if it can actually be achieved. Also, a maximum interest ceiling matters. Indeed, in Ancient Rome, the law of which is often noted by scholars, interest could be paid before the principal amount, but there was a legislative threshold for interest rate (4–12% in different times and for different sorts of creditors). In the case of 6% or 8% interest per annum, I can accept a payment of interest before principal amount, but it's absolutely unacceptable for real Ukrainian and Russian markets where consumer credit interest is sometimes like 50%, 100% and even more per annum. If so, the improper payment order, prescribed by the Parliament, leads to debtor slavery which could be avoided by the correction of the legislation.

Maximum interest ceiling

- Supreme Court of Russia fluctuates on the issue how better to protect consumers from extreme interest rates. sometimes it acknowledges restriction of payments in the form of “coeficients” described above, therefore not interfering with interest rates. Sometimes the Supreme Court interferes with an interest rate by reducing it based on such considerations. since high-interest rates under payday loans is explained by the short-term character of loans, they can be applied only to the very short period of time. so in the LLC “*Dostupno Dengi*” v. D.V. Klygin case the Court ruled that as the consumer credit was issued at 730% per annum for 15 days, this extreme interest rate can be applied only for 15 days period regardless of the fact of delay. if charging of interests is permitted for the period of several months, as the creditor demanded, then there is no such attribute as the “short term.”

Maximum interest ceiling cont.

So for the following period starting from the 16th day from issuing the credit (it was actually the first day of delay), the supreme Court cut interest rate to 17.53% per annum, based on the market average interest rates of banks under similar loans. (Supreme Court of the Russian Federation *LLC "Dostupno Dengi" v. D.V. Klygin*, No. 7-kG17-4, 22 August 2017). However, that was not an obstacle for the Supreme Court to ground his ruling on this Law and apply the not prescribed by law correction of loan issued by the distinctive creditor Ms. Smirnova (Supreme Court of the Russian Federation, *MFO "Alex Invest" v. E.A. Smirnova*, No. 37-kG17-6, 6 June 2017).

THANK YOU!

Full text of my research in open access see

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