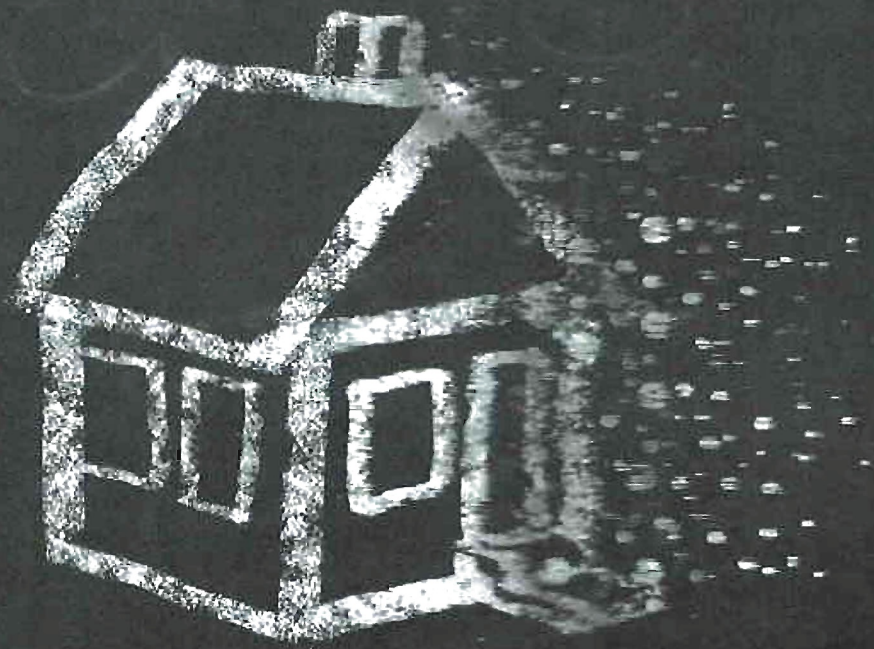


DEVIZAHITEL?

TANULMÁNYOK, ESSZÉK, VITAÍRATOK
A „SPECIÁLIS BANKI TERMÉK”-RŐL



2018

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Szerkesztette:

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Preface

Through the studies included in this book the reader may get an insight in that “special banking product” which is labelled “foreign currency lending” and receive some information on the history of “foreign currency borrowing”, on its domestic and international practice, legal background, and the relating changes as well. Our Hungarian and international authors include judges (between them two former judges of the Slovenian Constitutional Court, one former judge of the European Court of Human Rights, and one member of the the Venice Commission); many barristers; economists, financial experts, university professors, lecturers and researchers; even a journalist, a political scientist, a sociologist, and several committed representatives of civil organisations.

We do sincerely hope that the different approaches, perspectives and viewpoints of the authors further enrich and clarify the contradictory image which was established in Hungary on a “financial product” sold as “foreign currency lending”/ “foreign currency /CHF/ *denominated* lending”, taken as “foreign currency borrowing”/“foreign currency /CHF/ *denominated* borrowing” - and later on turned into a source of serious financial and existential troubles for hundreds of thousands in Hungary.

Our publication is a result of large-scale domestic and international cooperation. Our objective is to assist in shaping a more sophisticated and nuanced picture related to “foreign currency borrowing”; the real and objective social orientation; to generate a discussion forum for calm and deliberate dialogues and constructive social and professional debates, and for the consensus-based quest for common solutions.

Our initiative is unique in its kind as the studies in this book may also be regarded as preparatory studies focusing on certain research fields, and may serve as a starting point for a large-scale, empirical comparative cross-national sociological research program which would examine and analyse the establishment, practice, social consequences, and potential prospective social impacts of “foreign currency *denominated* lending” both in Hungary and abroad.

the editor

Social, Legal and Economic Aspects of FX Loans – the Bulgarian Experience

Dessislava Dimitrova – Anna Georgieva

1. “An avalanche of lawsuits” – in 2011 no one believed it could happen.

In 2011, the Bulgarian court delivered the first judgments in consumers' favor and the loan agreement clauses allowing banks to increase the interest rate at their sole discretion were declared unfair and void. The above violation was common practice, but consumer awareness was heightening and borrowers began questioning the legal basis for their increased debt burden, so we predicted that if banks did not drop this abusive policy, an avalanche of lawsuits would inevitably ensue. The banking community, however, faced this warning with little more than irony.

2012 saw us taking the first legal actions against FX lenders and loan-holders were surprisingly determined to fight for their rights. Ever since the SNB dropped the cap on the Swiss franc in January 2015, the number of people seeking legal aid has increased dramatically. We found ourselves in the middle of a mass hysteria with borrowers more eager than ever to take a legal stand against banks. For most bank customers it was a shock wake-up call to stand for their consumer rights. And indeed, over the course of the past 6 years thousands of lawsuits were filed against banks, the courts are clogged up with consumer disputes and the borrowers are still relentless in their efforts.

2. Attitude of the authorities and society.

Apart from court, consumers have also appealed to the Bulgarian National Bank, the Consumers Protection Commission, to Parliament and, through the media, to the general public as well to find a reasonable and fair solution to the FX loans problem.

2.1. In court, the general “consumers lose” rule is occasionally broken by “consumers win”.

Basically, Bulgarian courts were uncertain on how to apply consumer law and whether they should protect consumers' rights if it meant working to the detriment of banks. Only in 2016 was this ambivalence partially overcome with a series of binding rulings by the Court of Cassation. In those judgments, different loan contract clauses allowing banks to arbitrarily increase the interest rates were declared unfair and void. As a result, more often than not, consumers, including FX-borrowers, do obtain due legal protection of their rights.

That is not the case, however, with the clauses providing for loan repayment in Swiss francs and transferring the currency risk to the consumer. So far, finding these particular clauses to be unfair and void has rather been the exception. What's more, the large majority of judgments fail to offer clear and comprehensive reasoning or any in-depth assessment of the unfairness of the FX contractual term. The courts usually hold that the terms are not unfair because there is no general, explicit legal prohibition on FX lending, conveniently dismissing consumers'

arguments that the contract term meets the criteria for unfairness under Directive 93/2013/ECC and the Consumers Protection Act.

To this day, despite all the consumers' requests and the difficulties courts meet in applying consumer law, a reference for a preliminary ruling was never made. The Bulgarian court is dead bent on never referring to the European Court of Justice for preliminary ruling regarding neither FX loans, nor any other issues.

There is a case³⁸¹ before the Court of Cassation pending since 2015. Its outcome will determine if a credit agreement clause is unfair whereby the currency risk and all costs caused by currency fluctuations are borne solely by the consumer. Being binding upon all lower courts, this judgment will promote consistency in Bulgarian case law on FX loans.

2.2. The Bulgarian National Bank steers clear of the FX loans issue.

Since 2012, many consumers have appealed to the Bulgarian National Bank /BNB/ as a supervisory authority over the banking sector to address the FX loans issue. Numerous complaints were filed explaining the situation and the devastating effect these inflated loans have on borrowers' households.

BNB never intervened and insisted that they can't, in their supervisory capacity, be expected to settle consumer disputes with banks and that the latter are to be referred to the competent court.

Although BNB refrained from taking a position, already in late 2005 they discussed FX loans and the expected surge in the Swiss franc exchange rate with the banking society. Through the Association of Banks in Bulgaria, it was the Governor of the BNB himself who warned banks: *"Marketing 20 – 25-year loans in a currency other than leva and euro bears huge risks for borrowers, especially for those who do not have the knowledge and experience with insuring against currency risk."*³⁸² A few days later, the Governor of the BNB stated before the International Monetary Fund: *"Recently, a large bank launched a seemingly lucrative product on the market – a CHF-denominated loan, but at the same time it should be clearly explained to the consumers that when it comes to loans in currencies other than leva and euro as a reserve currency, the currency risk sometimes could be significant. In only two years, for instance, the Swiss franc lost 9,2% of its value against the euro."*

The above gives clear indication that all through the FX loans campaign banks were well informed that the Swiss franc was at an all-time low and would soon go on the rise. Most of the Bulgarian banks did stay on the safe side and kept their loan portfolios clear of exotics. A few banks, however, seized and squeezed every ounce of benefit the opportunity had to offer, resorting to aggressive manipulation and peddling selective information to borrowers.

2.3. The Consumer Protection Commission betrayed consumers' rights.

The first attempt to engage the Consumer Protection Commission /CPC/ with the FX loans issue in 2012 came to no avail. It was only the second wave of consumer discontent in the aftermath of the 2015 forex rate appreciation shock that brought awareness to the matter. After a careful study of FX loan contracts, CPC declared unfair those terms whereby the consumer is to repay the loan in Swiss francs and the bank can arbitrarily increase the interest rate. Within the inspection, the

³⁸¹ Court case No. 3539/2015, Court of Cassation, I Commercial division, J.J. (consumer) vs Eurobank

³⁸² Link: http://www.bnb.bg/PressOffice/POStatements/POADate/ISKROV-SPEECH-ATB-2005_BG

Commission found that the amount of the sums borrowed was not stipulated in Swiss francs, that the banks did not actually provide Swiss francs to the consumers and that the contract transfers the whole currency risk onto the borrower.

In an extensive and thorough report in May 2015³⁸³ the CPC laid out their reasons for declaring the FX clauses unfair.

The Commission officially recommended that the banks remove and cease applying all terms and conditions declared unfair. Banks disregarded the recommendation.

Albeit not binding for the court, the statement was hailed by the consumers as a huge step forward – it was the first time that a state institution had recognized their problem and acknowledged their consumer rights. Furthermore, the official statement of CPC was a prelude to the most crucial and promising initiative for consumer rights protection ever undertaken in Bulgaria – a class action.

Class actions are not common in Bulgaria and a class action against a bank had never been initiated until March 2016 when CPC filed a statement of claim on behalf of FX-borrowers.³⁸⁴

Several months later, however, before the proceedings had even started on the merits, the CPC unexpectedly filed a withdrawal of the statement of claim. Although the withdrawal's legitimacy was widely questioned and officially objected by a host of consumers, the court terminated the proceedings on the grounds of the withdrawal.

Why was the case terminated? How come the Commission decided unilaterally to strip consumers of their legal rights? Why was it done in total secrecy, without being discussed with the consumers and without their consent? These questions remained unanswered. All the while, the media remained silent. And not for lack of multiple alerts, to be sure. In a pathetic attempt to deflect outrage, the Commission gave a concise press release full of elusive answers and ridiculous half-truths, claiming, among other things, that the agreement they'd reached with the bank did not preclude consumers from individually pursuing their rights in court. In fact, the class action was terminated by virtue of the CPC's withdrawal request and not, as per statute, by virtue of a binding in-court settlement, duly approved by the court upon consideration whether consumer rights are thereby fully protected.

A copy of the agreement between CPC and the bank leaked in the social media.³⁸⁵ It does not contain any specific terms and conditions, loan converting mechanisms or any clarity about the replacement contract terms applicable. What the agreement really does is actually grant the bank the opportunity to offer consumers "special converting programs". Their specifics, however, are generously left unto the bank's sole discretion. Of course, the bank kept offering the consumers exceedingly unfavorable loan conversion plans and pushing the interest rate up to new dizzy heights.

CPC's sorry failure to protect consumers while successfully absolving the bank of all liability for FX loans was the epitome of institutional impotence to implement and apply common EU values of legitimacy and justice. This absurd showed consumers they could not and should not trust their own government institutions, since they are unwilling and incapable of ensuring effective consumer rights protection.

³⁸³ Link: https://drive.google.com/file/d/0BxbVzEX_GLSIM3R4dGNuZHd3V1U/view

³⁸⁴ Class action case No. 3389/2016, Sofia City Court, Civil division I-13, CPC vs. Eurobank

³⁸⁵ Link: https://drive.google.com/file/d/0BxbVzEX_GLSIbHRRtNl3NW14LXc/view

2.4. The “FX loans” amendment in the Consumers Protection Act.

After persistent demands by consumers for political action, in 2015 the Parliament finally paid attention to the FX loans issue. With some political will, a new law could have easily provided a clear and effective solution, but as EU regulations and the case law of the European Court of Justice have direct effect, the Parliament didn't go any further than adjusting the EU framework into an amendment to the Consumer Protection Act. A new example was added in Art. 143, transposing Art. 3, para 1 and the Annexe of the Directive 93/2013/EEC where the definition and examples of unfair clauses can be found. The new example provides that *“an unfair clause is one... that does not allow the consumer to assess the economic consequences of the contract.”*³⁸⁶

Instead of adopting a complete legislative solution to the FX loans issue, the Parliament decided to refer the issue to the court. The amendment was intended to explicitly provide that foreign currency obligations completely satisfy the criteria for determining whether a term is unfair as per the general clause of Art. 3, para 1 of the Directive. It had to prevent any misinterpretations of the general definition of unfair clauses as well as any inadequacies in applying consumer law in FX loans court disputes. The simple wording of the new example of an unfair clause reveals the requirement for transparency as a criteria for assessing the unfair clauses as per the Decision of April 30, 2014, handed down by the Court of Justice of the European Union in Case C-26/13.

Despite the new amendment in the Consumers Protection Act, the national courts do not review the cases in the light of the transparency principle and still disregard it as a criteria for assessment of unfairness. The Parliament erroneously considered this amendment to be efficient when, in effect, it was anything but. Ultimately, consumers faced their Parliament's denial to resolve the FX loans issue.

2.5. Media and society.

Despite their continuing efforts, FX borrowers just can't seem to get equal, fair and accurate media coverage. For one, the media strictly and systematically avoid any coverage and reporting if it may be interpreted as directed against the interests of banks. And two, the FX loans issue is too complicated to be explained in a comprehensible way to a non-expert audience and to draw its attention. Thus, the FX loans issue coverage remains far from adequate and largely on the scant side.

The most common public sentiments towards resolving the FX loans problem are negative. For the most part, people do not understand the issue itself and its dimensions, nor are they interested in getting to the bottom of it. What's more, with banks' penchant for indiscriminately trampling consumer rights, non-FX-borrowers fail to understand why their FX peers insist on getting special treatment and a differentiated approach to their problem. In general, FX-loan-holders are being pilloried by the public and are considered to be gamblers who should pay their debts.

³⁸⁶ Amendment to the Consumer Protection Act, State Gazette issue No. 57/28.07.2015

3. Courts' attitude.

Consumers are, as a rule, not welcome in court. With authorities refusing to handle FX loans, the courts were flooded with consumer disputes.

Bulgarian courts tend to be reluctant to apply consumer legislation. Under the consumer law, the assessment of the unfairness of a contract term is based on relatively abstract concepts like good faith, equality of treatment, characteristics of the average consumer, consumers' legitimate rights and expectations, etc. This type of legislation was new for the Bulgarian court and its application proved challenging.

Furthermore, with piles of consumer disputes on their hands, the courts are incapable of delivering prompt justice – delivery of final judgments takes years. While slow justice helps banks postpone consumer reimbursement, payment of increased monthly installments during the lengthy pending proceedings is a real challenge for consumers. This and the protection from enforcement provided by Directive 93/2013/ECC and the case law of the European Court of Justice³⁸⁷ encourage consumers to consider suspending payment of monthly installments until completion of the case.

3.1. To protect the banks!

Apparently, the courts are single-minded in their sacred aim to protect the banking system at all costs, even at the customers' expense. Consumers with unfair terms claims are treated as if they are trying to misuse the law to their benefit and release themselves from debt.

In most FX-loan cases, courts ascertain that the bank has lent the loan amount exclusively in euros or Bulgarian leva and has practically never lent Swiss francs as such; that the loan and the monthly installment amounts in Swiss francs were not agreed upon and expressly pointed out in the contract, and that, being spared material information, the consumer was not able to understand and gauge the risk they're taking in that their monthly installments could increase dramatically in euros and Bulgarian leva, hence, the consumer was not well-positioned to take an informed transactional decision. Currency clauses, however, are routinely held to be a fair example of good faith, which goes against all basic principles of consumer protection and fails to acknowledge consumers as the disadvantaged party with limited information and expertise at their disposal.

Certainly, consumers can't be expected to have known how many FX loans would be issued on the continent within the course of two years and that their number alone would be enough to knock the Swiss franc out of its 10-year slumber. The same slumber, actually, that banks made sure to emphasize in their sales pitch during the FX loans campaign. For what it's worth, to this day, the number of FX loans in Bulgaria particularly remains the object of speculation – no one knows how many FX loans were ceded to the banks' non-financial subsidiaries, nor does anybody care to ask.

³⁸⁷ Case C-415/11, European Court of Justice, Mohamed Aziz vs. Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)

Instead of protection, consumers often receive judgments with inadequate, if not outright arrogant statements of reasons. The following excerpt, reiterated time and again in judgments with slight variations, gives a flavor of how the court makes an example of FX loan-holders and mocks their imprudent entry into such contract without having the necessary information, expertise and knowledge about the currency risk involved: *“Undoubtedly, the claimant has entered into a disadvantageous agreement in violation of an important economic principle – to borrow in the currency in which they receive their remuneration or other income – Bulgarian lev or euro. Upon conclusion of a contract denominated in Swiss francs, an unreasonable currency risk was undertaken which seems to be unjustified as the Swiss franc increased its value later. [...] It is correct, however, that the bank has information from a long-term perspective and its experts know what the long-term and short-term movements of the Swiss franc rate will be. Being aware of financial and currency markets is not illegal or immoral but recommendable. If the claimant did not have information, nor the necessary knowledge, he should have consulted competent specialists about the currency risk or simply refused to enter into an agreement with variables. A deal with currency risk is definitely a risky and speculative one with equally likely gains and losses. In spite of the Claimant’s desire, consumer law is not a panacea for ill-advised agreements which were insufficiently deliberated and were to determine the consumer’s life for many years to come, nor could it prevail over the principle of pacta sunt servanda.”*³⁸⁸

3.2. Breaking the status quo.

If the occasional consumer does emerge victorious in court, it is not because of any particular facts, different features of the cases or some elaborate procedural gimmicks on the claimants’ part. The credit is more likely due to the judges themselves with their interpretation of law and their willingness and inner freedom to form their own view of the case by impartially weighing and thoroughly deliberating all the facts, arguments and pieces of evidence.

Judgments in consumers’ favour are a manifest of revolutionary and independent thinking, which is at odds with the workings of rigid court conservatism. These judges stand out among other magistrates for their strong sense of social justice and active civic positions. Consumers embrace their acts as a powerful expression of democracy, putting European values and consumer protection into action and making meaningful contribution to social development. What their acts do is essentially break a status quo that has, so far, been biased in favour of the economically (and, more often than not, politically) powerful party.

³⁸⁸ Judgments of Sofia City Court, Civil Second instance division:

Court case No 20108/2014, G.M. (consumer) vs Eurobank,

link: <http://legalacts.justice.bg/Search/GetActContentByActId?actId=wGuo7lOqoko%3D>

Court case No 20464/2014, M.P. (consumer) vs Eurobank,

link: <http://legalacts.justice.bg/Search/GetActContentByActId?actId=yUSnMtjPbLA%3D>

Court case No 15349/2016, T.N. (consumer) vs Eurobank.

link: <http://legalacts.justice.bg/Search/GetActContentByActId?actId=XYv5rDo4nAo%3D> Court case No 67/2017, H.B. (consumer) vs Eurobank,

Link: <http://legalacts.justice.bg/Search/GetActContentByActId?actId=sDre8gDdYNU%3D>

The following quotations illustrate full application of consumer protection law by the Bulgarian court:

"The difference between the (relevant) forex rates at the time of drawing the loan and at the time of repaying each installment is a positive quantity; it is formed after the obligatory conversion at the bank commercial rate and constitutes a profit for the bank over and above the contractual interest. This difference is not a subject of the contract nor is it a price for any financial service provided (see p.59 of Judgment C-26/13 of CEC) It is a profit for the bank made at the borrowers' expense because they pay it as part of the converted installment. As a result, the consumer who is not a trader bears a significant currency risk and the balance between the rights and obligations of the trader /bank/ and the consumer /borrower/ is significantly breached to the detriment of the latter which, as per art. 143 of the Consumer Protection Act, is an unfair term...There is no counter-mechanism for the consumer to limit the constantly increasing currency risk... The consumer could be considered duly informed and the bank – acting in good faith only if all circumstances regarding the conclusion of the contract are clear and transparent for the consumer..."³⁸⁹

"The Court finds that the contractual provisions relating to the CHF/EUR conversion of the loan, its repayment in euro and recalculation in Swiss francs as per the bank's commercial rate as well as the provisions shifting the consequences of every economic disadvantage over to the borrower, are unfair... These clauses rely upon the limited economic and legal knowledge of the weaker party in the contractual relationship, i.e. they do not meet the criteria for acting in good faith and they burden the consumers with obligations which only guarantee unjustified profit for the bank..."³⁹⁰

Regrettably, as long as the Bulgarian legal system is not based on judicial precedent, the above encouraging firsts have little binding influence beyond their particular cases and future consumer disputes won't necessarily reflect and draw upon these insights.

4. Consumers' attitude. Social and phsychological aspect.

The relatively low number of FX loan-holders in Bulgaria compared to other EU countries implies certain peculiarities of their struggle.

For starters, in Bulgaria, unlike most EU countries, resolving the FX loans problem in consumers' favor will definitely not shake the banking system and jeopardize its stability. That's why consumers have every reason to be hopeful.

But then again, being a relatively small group, Bulgarian FX loan-holders are not able to exert social pressure on the authorities to adopt appropriate measures to remedy the problem as it happened in other EU countries.

Even if scattered throughout the country and abroad, however, Bulgarian FX-borrowers proved to be particularly proactive in fighting for their rights. For years

³⁸⁹ Judgments of Sofia City Court, Civil Second instance division:

Court case No. 11564/2015, M.M. (consumer) vs. Eurobank, link:

<http://legalacts.justice.bg/Search/GetActContentByActId?actId=a4jnJtUhkVU%3D>

Court case No. 15332/2016, M.D. (consumer) vs. Eurobank, link:

<http://legalacts.justice.bg/Search/GetActContentByActId?actId=payums39GwM=>

Court case No. 338/2016, Rousse District Court, Commercial Second instance division, M.A. (consumer) vs. Eurobank,

link: <http://legalacts.justice.bg/Search/GetActContentByActId?actId=TRs4lpUPsEk%3D>

³⁹⁰ Court case No. 5189/2016, Sofia City Court, Civil Second instance division, D.K. vs. Eurobank, link: <http://legalacts.justice.bg/Search/GetActContentByActId?actId=OVpKCTqghGI%3D>

now, they have been communicating and exchanging information, which helps them be stronger and act in coordination.

4.1. The FX loan trap - an absurd economic situation with grave social implications.

In truth, borrowers never received and utilized Swiss francs. FX loan-holders should pay but not repay Swiss francs at a higher exchange rate, which was expected and even intended by banks. Since banks had pumped the market with euro and domestic currency loans, Swiss francs never entered the local monetary turnover and were never available in ample supply. Increased Swiss franc-denominated debt, however, sent the demand soaring, naturally and predictably boosting its value. To make matters worse, banks did not hesitate to increase the interest of FX loans as well. In consequence, consumers faced excessive monthly installments and a growing gap between swelling principals and plunging property prices, only to find in the end they owed the bank twice the market price of their mortgaged home, or more.

The difference in economic status between FX and non-FX-borrowers is quite indicative. One way or another, most bank loan-holders have their consumer rights abused, but, financially, no other group has it worse than FX-borrowers. What sets FX loan-holders apart from other struggling borrowers is that their financial plight is not the result of financial indiscretion, personal hardship or some global financial crisis like the one we saw in the US in 2007-2008. The FX loan financial trap was concealed in the contract itself as well as in its intricate economic implications far beyond the average consumer's grasp. This can, in part, explain why FX loan-holders are the most active, vocal and radical fighters for their rights.

As for the social aspect, we've heard first-hand accounts from consumers and we can confirm that the financial deadlock inevitably affects all aspects of consumers' life – state of health, family situation, psychological wellbeing, self-esteem, social behavior, standard of living and so on and so forth. We've seen death and grave illness, broken and prematurely aborted families, disfathered and disinherited children, tension and discord between spouses, rash decisions and emigration, meek depression and frantic worry, couples postponing having children or giving up having more.

4.2. Despite the discouraging results consumers are persistent in filing lawsuits.

It's a bit of a paradox that, in spite of the discouraging case law on FX loans and the minute chances of winning a case, consumers do keep bringing legal proceedings, but in fact, this is the only chance for FX loan-holders to restore decent quality of life while repaying their debts. Unlikely as success may be, seeking solution in court remains the only legitimate option for a way out of the deadlock.

4.3. Consumer crusade for monetary compensation - but for justice as well.

Consumers are deeply confident they're right when disputing repayment in Swiss francs and they demand justice in court. Justice as a fundamental ethics category is

about proportionality of interests in social relations assessed through the prism of balance, equity and fairness.

A common sense assessment of facts regarding FX loans discloses the absence of due equality and equivalence and consumers cannot be convinced in the opposite by the twisted legal reasoning in judgments where the core issues about the unfairness of FX loan contract terms are circumvented by crafty legal claptrap and ornate linguistic juggle. That the FX clauses are unjust cannot be contradicted with arguments that consumers shall be held responsible for falling prey to banks while assuming and reasonably expecting the latter to act in good faith. Adopting this stance would essentially impair public trust in the banking system and the legal order as a whole.

Nonetheless, trust in the rule of reason, court integrity and in the legal order itself lead consumers to believe case law will eventually tip in their favor.

4.4. Lack of justice harms consumers' confidence in the legal order and discourages them from observing it.

Every individual relates to the notion of personal dignity. Consumers appreciate their status as EU citizens and are well aware of the consumer rights and obligations that go along with it. They adhere to their obligations and demand the fair treatment and justice they're entitled to. Rights and obligations are actually the two sides of the same coin. The ability to exercise your rights and obligations, including paying debts, is a matter of personal dignity. The conviction that there is a way to obtain justice even if it means pressuring the authorities is fundamental for the rule of law.

When consumers are wronged but their efforts to obtain justice are left unrewarded, they begin questioning their status as EU citizens, the legal order and the rule of law. Denial of fairness is deeply harmful to personal dignity and breeds contempt for the legal order and society. Frustrated consumers lose confidence that fairness is fundamental to law and worthy of protection but, more importantly, they lose their motivation to keep their part of the social contract and fulfill their obligations.

We have seen this transformation of consumers' attitudes towards the creditor and the state, towards self and society.

4.5. Consumers seek other coping alternatives.

With all legal options exhausted, financially pressured consumers find themselves forced to take things into their own hands and deal with banks on their own. Borrowers suspend payment of their loans, conceding the potential loss of the mortgaged property through enforcement. Reasons for this decision vary.

Some borrowers simply can't afford to pay twice the initially contracted monthly installments in national currency. After all, at the time of contracting the loan consumers were not duly forewarn about the currency risk and they gauged their financial abilities for repaying the installments in their original amounts. Furthermore, facing the inevitable perspective of loan acceleration, consumers would rather stop paying and prepare financially to defend themselves in the enforcements proceedings and to meet their household needs after the enforcement sale of the mortgaged property.

For other borrowers, on the other hand, the installments are affordable, but economically unjustified. They are in the position to pay an unreasonably high price for the mortgaged property – often a few times higher than its market price.

Consumers realize that the current sum payable for their property can buy them a much more valuable asset and/or a much better living standard for their families. Like a consumer said, *“With a monthly installment, I can afford bed and breakfast hotel accommodation for a month and I prefer it to living in my small apartment, paying all my income to the bank for the next 30 years.”*

Finally, there's the borderline group of borrowers, whose income covers little else beside the mortgage. Faced with an easy if somewhat unsavory choice, they go grey market and stop paying their taxes in order to keep the roof over their heads.

Thus, and worst of all, consumers simply lose their social motivation to observe their obligations imposed by a deeply unfair and unjust legal order, which has rejected their human and consumer rights to equal treatment and personal dignity. They find themselves in a survival situation worlds apart from EU values and legislation.

And mind you, the above is not just abstract speculation about consumers' behavior but real social processes we observe in the course of our interaction with real consumers.

5. Are the banks able to hold their position?

Banks are commonly believed to have the power and entitlement to dispose with the consumer's destiny. This may be the case with a single consumer, but the power of a big group of struggling consumers is considerably underestimated.

5.1. Ratio of non-performing loans increases, exposing banking system to risk.

Although not officially confirmed, the share of non-performing FX loans is far higher than with other bank loans.

Soon after being drawn, banks transferred most of the FX loans over to other non-financial companies under their control. The assignees became formal holders of the loans receivable only, while banks kept servicing them. Thus, the special reporting requirements for banks were evaded and most of the FX loans are not included in the official data published by the Bulgarian National Bank about the level of non-performing loans. Therefore, we have no accurate official statistics on non-performing FX loans.

Our statistics, however, based only on the consumers we communicate with, shows that currently 95,2% of FX loans are non-performing loans versus 4,8% of consumers paying their installments on a regular basis.

5.2. Enforcement of FX loans as a last resort is inefficient and does more harm than good.

Enforcement proceedings put consumers in a position where they have to survive by all means possible and observation of legal order and fundamental principles of modern society cease to be a priority for the debtor.

Although the creditor has many legal means to collect a debt, in a situation where they have to collect a significantly increased FX mortgage loan, these legal means remain only theoretically available.

Entrapped and seeing no legitimate way out, debtors suspend payment and transfer their valuable assets (if any) in order to prevent enforcement.

In most cases, the debtor's only property is the mortgaged one. On the one hand, the sufficiency of the property to guarantee the loan was assessed by the bank on the basis of the granted loan amount in euro.

Upon increase of the debt due to its denomination in Swiss francs, the property value can no longer satisfy the creditor. On the other hand, the property itself has depreciated due to objective factors such as market prices drops and natural wear and tear. Being in a tough and insecure financial situation, consumers are unable or unwilling to keep their mortgaged property in good repair. They don't feel emotionally attached to it and blame it for their current financial disaster. That's why most mortgaged properties tend to be unkempt and, upon enforcement sale, certain debtors damage their property even further - in revenge for the unjust treatment as well as because they believe all improvements belong to them. This scorched earth tactics on the debtors' part is not an exception. Having nothing to lose, they refuse to observe what's essentially a compromised legal order. What's more, at enforcement sales, properties usually sell much cheaper than on the free market. Thus, what the creditor does is basically enforce against property, whose initial value has not only long been outgrown by the inflated debt, but has depreciated even further. Ultimately, in the case of Swiss franc denominated loans, full enforcement is impossible through enforcement of mortgaged property - for the most part, the creditor can't even collect the granted amount in euro or in national currency.

Enforcement discourages debtors from working and earning beyond the inaccessible income, if the surplus is meant to satisfy the creditor. In order to escape enforcement, debtors decrease their income, leaving the remainder of the creditor's claim unsatisfied. This change in debtors' labor status goes on to inflict GDP losses as well – finding themselves expelled from the labor market, debtors resort to informal employment, robbing the budget of taxes and social security payments.

Some FX loan-holders, usually highly educated and/or qualified, are keen and capable of meeting the requirements of modern economy and employment market without being held hostage in the FX loan trap. They find a way out and restart their lives abroad where banks cannot proceed to enforcement under national law and have to content themselves with what little they get from selling the mortgaged property. These are active people who have proved their worth for society and letting them leave has a material adverse effect on the national economy and budget. These people are basically chased away by their creditors and by authority negligence. Within the last few years, roughly one third of our FX loan-holding clients have moved abroad.

And last but not least, as with most legal proceedings, enforcement proceedings are expensive and slow. Proportional fees, payable in advance by the creditor, are calculated on the basis of the increased debt. Said fees should be borne by the debtor, but when his or her assets prove insufficient the fees remain for the account of the creditor.

The bottom line truth is FX loan enforcement has proved totally ineffective.

5.3. Solutions on a case-by-case basis.

Being well aware of the above and despite having the upper hand in court, under economic pressure from consumers banks find themselves compelled to go for fair out-of-court settlement agreements with them. In fact, banks offer and agree on concessions, which completely compensate and release the consumers from the adverse financial consequences of their FX loans.

On occasion, these agreements have even been more beneficial for the consumer than winning a case in court. In return, the consumer undertakes to discontinue any court proceedings and to properly and regularly perform his or her loan obligations in compliance with the newly agreed conditions. Albeit not a real court victory, it is definitely a good way out.

Reasonable amicable solutions, however, are only offered to consumers who have gone all the way fighting for their rights and have proven they mean business by all means possible, including by instituting court proceedings against the bank and suspending payment.

Contrary to common sense, the more loyal consumers are, the more unfavourable their position is. Diligent consumers remain subject to unfair terms and banks won't bother to develop any programs whereby their financial situation may be eased.

Based on banks' attitude toward the FX loans issue, two important conclusions can be made.

For one, if banks themselves offer this option to consumers, they're obviously prepared to surrender their extra profit from FX loans. Hence, such a solution for all consumers could be considered reasonable and appropriate.

And second, EU and national institutions cannot and should not rely on banks' good will to resolve the FX loans issue - banks can't be expected to put their interests before those of the state, EU and society. With their dismissive attitude, banks drive consumers to foster radical approaches and discourage them from being correct borrowers. Though understandable from the banks' stand point, the current situation promotes a sense of total chaos and lack of predictability, pushing consumers to behave chaotically in turn. And as far as mob law remains the only proven option for solution, that's where the real threat lies for banks' stability and the rule of law.

6. Our perspective on how the authorities could effectively protect the banking system.

Undoubtedly, when debating possible solutions to the FX loans problem in Europe, stability of the banking system should be considered with priority.

Because banks never actually paid the loans in Swiss francs, consumers refuse to pay the exchange differences resulting from what's essentially a fictional denomination. Consumers do not dispute repayment of the full loan amount plus the agreed interest. What they oppose is providing their banks with significant extra profit through the exchange rate of a currency they never used. What FX-borrowers pursue is fairness and not any privileged treatment at the banks' expense. That's why consumers can never understand nor accept authorities' refrains that protecting consumer rights by depriving some banks of their extra profit may cause difficulties to the latter and put them at risk. After all, it was banks who stirred the problem in the first place and consumers can't be reasonably expected to bear the brunt.

Consumers are not inclined to observe unfair rules to their disadvantage just because the EU banking system may face financial challenges if deprived of its extra profit. Consumers scorn the letter of the law, which is obviously not clear enough and its current application contradicts the spirit of consumer law. If the law is incomplete or unfair, it is up to the decision-makers to amend it to the needs of the market and the public, who require transparent, fair laws to be adopted without delay.

The numb response of authorities and the attitude of the courts towards the FX loans pandemic in Europe suggest that institutions, in all probability, expect consumers to eventually oblige and bear the consequences, so that the banking system remains intact. They couldn't be more wrong.

With or without justice, consumers will not just resign and foot the bill for the FX loans fraud. When consumers' rights are not respected, many of them can't and won't be able to withstand the excesses of the forex market. Others are not willing to accept this situation as the norm because they clearly understand how unfair and unjust it is.

National and European institutions widely underestimate the substantial negative consequences for the banking system and society resulting from negligence and lack of justice. Humans' inner sense of right and wrong demands that an injustice be corrected. It's what holds people within the bounds of human decency. The impossibility to obtain justice denounces the notion of social stability and predictability and compromises the legal order. Lack of justice and loss of social status breed anger and frustration, they marginalize and thereby radicalize major groups of consumers. Being aware of this ongoing profound social and psychological transformation, we can no longer count on consumers' sense of responsibility and fear of the law to pay their debts, nor can we reasonably expect consumers who are denied justice to behave lawfully and in good faith abide by unfair contracts. Persistence in applying FX clauses detracts consumers from their ability and willingness to observe the loan agreements at all, thus putting banks at risk of losing not only their extra forex profit but the granted loan amount and the legitimate interest as well.

Turning a blind eye to the rapidly growing FX loans problem is a particularly dangerous trend. In order to function well, the banking system largely depends on customers performing their customers' duties regularly. Therefore, the failure of the institutions to address the FX loans problem, intended to provide certain banks with "stability-preserving" extraprofit, in fact endangers both these banks and the entire banking system. Banks' arbitrariness, when overlooked by authorities and endorsed by court, yields arbitrariness on the consumers' part in response. At this stage, banks are facing guerrilla warfare with their customers. The fight for FX-borrowers' consumer rights is turning into a war, which banks are highly unlikely to win. We are about to be sucked into a downward spiral where the banking system is the most vulnerable party and will be the first victim. If this trend is not reversed, and fast, we're all bound to end up on the losing side – banks, consumers, states, the EU and society alike.

In order to prevent this, national and EU institutions should act wisely and should quickly ensure fairness, equality and proportionality between banks' and consumers' legitimate interests. It is high time it was understood that the effective protection of the banking system lies in curbing banks' illegal practices, releasing consumers of the extra forex burden and enabling them to repay their loans. Only by providing and applying fair rules can consumers be made a safe, stable and predictable partner rather than a threat to the stability of the banking system.

Szerzőink

Dr. Boós Tibor - közíró jogász, volt bíró és ügyvéd. A nemtartozunk.hu alapítója és szerkesztője. „A Hibrid – a szintetikus tőke fogságában” című, a deviza alapú hitelezést és pénzügyi kutatókat feldolgozó könyv társszerzője.

Demeter Tamás - Programozó, ellátási lánc menedzsment tanácsadó és üzleti elemző, független deviza és CFD kockázatkezelő tréner, közíró.

A nemtartozunk.hu alapítója és szerkesztője. A „Hibrid – a szintetikus tőke fogságában” című, a deviza alapú hitelezést és pénzügyi kutatókat feldolgozó könyv társszerzője.

Dr. Ravasz László - jogász, politológus, ny. cégbíró

1988-tól 1993-ig városi, 1993-tól 2016 végéig törvényszéki bíróként dolgozott, 2013-tól címzetes táblabíró volt, 2011-ig többek között a JATE KTK-n társasági jogi óraadó oktató. A bírósági közéletben az 1990-es évek eleje óta vett részt, 1998 után az OIT-rendszer, 2014-től az eltorzult bírósági centralizáció és a fokozódó anomáliák kimeríthetetlen jogállamiság-hívó közéleti és tudományos kritikusa az egyéni bírói függetlenség védelmében - 2016 közepétől már Egyéni Bírói Függetlenség és Felelősség Fórum és Mozgalom alapító tagjaként is. Az Alkotmánybíróság 2014-ben megsemmisítette a bírósági mutyielit bírálatáért kiszabott 2012. évi fegyelmi elbocsátását. 2017-ben a Nők elleni erőszakkal szembeni küzdelemben tanúsított teljesítményéért Fehér Szalagot vehetett át Halász Pálmától.

Dr. Szepesházi Péter - kerületi bíró, diplomás jogász, PhD hallgató

2003-tól kerületi bíró, 2004-től 2013 végéig családjogi, 2011 szeptemberétől vagyoni jogi polgári bíró, számos a gyermektartásdíj nemzetközi vonatkozásait boncolgató jogtudományi írás szerzője, 1999 és 2004 között EJEB-határozatokat fordított magyar nyelvre. A kapcsolati erőszak elleni küzdelem területén végzős mintatár, jogegységi határozattervezet, a mediáció, az egyéni bírói függetlenség és felelősség védelme, Ilonczai Zsolt és az ifjútörök 1990-es évek elejei reformbírák emlékének ápolása, a bírósági dolgozói érdekvédelem, a bírósági korrupció elleni fellépés kérdéseiben rövidebb írások, közlemények, interjúk, hazai és nemzetközi konferencia-előadások, panasz, közérdekű bejelentés, Strasbourg-i kérelem, egyesületi akciók, végül a pénzügyi fogyasztóvédelmi jog tárgyában előzetes döntéshozatali kezdeményezések fűződnek a nevéhez.

2017-ben a Nők elleni erőszakkal szembenálló szakmai-közéleti tevékenységéért Fehér Szalagot vehetett át Halász Pálmától.

Szabó József - okleveles gépészmérnök, a Hiteles Mozgalom egyik alapítója, jelenleg ügyvezetője, az Arany Liliom Alapítvány kurátora.

Több, mint hat éve foglalkozik a devizahitelezéssel és az ehhez kapcsolódó problémahalmazzal. Több devizahiteles tájékoztató és felvilágosító film készítője. Négy könyve jelent meg magánkiadásban a devizahitelezéssel kapcsolatban.

- Devizahitel – Hol az (i)gazság (2014. november - ISBN 978-963-12-1009-5)
- Devizahitel – Tisztelt Ügyészség (2016. szeptember - ISBN 978-963-12-6442-5)
- Devizahitel – A Kúria valótlan állításai (2017. február - ISBN 978-963-12-8045-6)
- Devizahitel – Kézikönyv képviselőknek (2017. augusztus - ISBN 978-963-12-9362-3)

Dr. Madari Tibor - jogász, ügyvéd

a PSZLF pénzügyi fogyasztóvédelmi egyesület alapító tagja és elnöke, egyesületével 2009 óta tesz kísérleteket a deviza elszámolású kölcsönök problematikájának a megoldására (a PSZLF nevét a PSZÁF-tól kölcsönözte, a lakosság szempontjait szerette volna ezzel is kifejezésre juttatni a pénzügyi rendszer működésének értékelése és alakítása terén). A PSZLF elkötelezett a lakosság pénzügyi tudatosságának növelésében, ennek érdekében 2015-ben előadássorozatot tartott az MNB Pénzügyi Fogyasztóvédelmi Központja pályázati támogatásának segítségével. Elnökségi tagja a Morális Hitel Egyesületnek, mely egyesület az etikus, társadalmi szerepének megfelelő, társadalmi felelősségvállalással működő banki tevékenység magyarországi elterjedésének elősegítését tűzte ki – többek között- célul. Gyakorló ügyvédként 2009 óta deviza elszámolású perekben is ellát jogi képviseletet.

Bukovszky László - villamosmérnök, a Hiteles Magyarok Fóruma Érdekvédelmi Egyesület alapító tagja és elnöke.

2012-ben hívta életre a deviza alapú kölcsönrel rendelkezők információcseréjét megkönnyíteni hivatott online fórumot a hitelesmagyar.com weboldalon, melynek jelenleg is rendszergazdája. A fórumból kinőtt Hiteles Magyarok Fóruma Érdekvédelmi Egyesület alapító tagja és elnöke. A témával kapcsolatos jogi ismereteit több év kitartó munkájával, autodidakta módon szerezte. A szerző és az egyesület tagjainak legfőbb céljai közé tartozik, az adósoknak nyújtott tanácsadás mellett, a bankok által kínált „deviza alapú kölcsön”-konstrukció jogszabályi előírásoknak való megfelelésének a vizsgálata.

Bertha Szilvia - vállalkozás és emberi erőforrás szakirányú közgazdász és szakpolitikus, A Munka Becsületéért Alapítvány elnöke

2010 előtt vállalkozó, azóta A Munka Becsületéért Alapítvány foglalkoztatáspolitikai szakmai vezetője és ügyvivő elnöke.

2010-2014 között országgyűlési képviselő, ezen időszakban számos javaslatot, törvénytervezetet nyújtott be a „deviza alapú kölcsönök” miatt kialakult válsághelyzet rendezésére.

Menyhért Péter - szolgálati nyugdíjas tűzoltó, a Deviza Alapú Csalás Áldozatai civil szervezet (az un. DAC-csoport) vezetője.

Tanulmányait a Madách Imre Gimnáziumban, OKJ-s és felsőfokú szakképző intézetekben, valamint a Szent István Egyetemen folytatta. 2000. évi nyugdíjba vonulása óta nonprofit menedzserként dolgozik különböző szakmai nem-kormányzati (non-governmental, NGO) szervezetnél. Írásaiban az általa felfedett és objektív bizonyítékokkal alátámasztott, deviza alapú csalás bűncselekmény jogi és történeti összefüggéseit vizsgálja, melyet a XXI. század eddigi legsúlyosabb, „hungarikumnak” tekinthető, szervezett, maffia jellegű bűncselekményének tart, amely vélemény szerint egyben a globális pénzvilág pusztító túlhatalmát is megtestesíti. Vitairatában felhívja a figyelmet arra a tényre, hogy a magyar jogban 2010-ig sohasem létezett „deviza alapú” vagy „deviza nyilvántartású” kettős pénznemű jogügylet; ez egy országos, csaló banki konstrukció volt 2001-2010 között, amely napjainkig is egyes források szerint több mint 4.000 magyar polgár halálát, százezres nagyságrendű magyar polgár törvénysértő bírósági végrehajtását/kifosztását; jogállamiságunk felrúgását okozta, és megítélése szerint Magyarországból rendszerszinten korrump, bankármaffia államot hozott létre.

Baglyosi Leóna - Deviza Alapú Csalás Áldozatai civil szervezet (az un. DAC-csoport) tagja; a Menyhért Péterrel közös írásművük irodalmi és nyelvi felelőse és lektora

Dr. Marczingós László - jogász, ügyvéd

Soltész Sándor - mérnök-közgazdász

Külkereskedelmi-, könyvelői-, és közigazgatási szakképesítéssel és gyakorlati tapasztalatokkal rendelkező, független magánszakértő. A deviza alapú kölcsönökhöz szükséges „Helyes kölcsönszámítás” módszertanának kidolgozója, azok alapján a Pénzügyi Békéltető Testület előtti eljárásokhoz és a bíróságokon zajló jogvitákhoz kapcsolódó elszámolások elkészítője és elvégzője.

Dr. Evan Jones (Australia) - retired political economist, Associate Professor of the School of Economics and Political Science, University of Sydney.

He taught at Sydney University from 1973-2006. He has been writing on bank malpractice against small business and the family farmer since 2000.

Prof. Dr. Boštjan M. Zupančič, LL.M., S.J.D. (Harv.), Professor of Law (the U.S. and Slovenia), former Judge of the Constitutional Court of Slovenia, former Justice of the European Court of Human Rights (1998 – 2016). His latest book entitled “*The European Court of Human Rights: An Insider’s Retrospective (1998– 2016)*” is forthcoming.

Prof. Dr. Ciril Ribičič, professor of constitutional Law, former judge of the Constitutional Court, member of the Venice Commission

Sigrún Davíðsdóttir (Iceland) - journalist and writer

Patricia Suárez Ramírez (Spain) - President of the ASUFIN (Association of Spanish Association of Financial Users) / Presidenta de Asufin

Patrona de Finsalud, Miembro del Comité Europeo para la Defensa de los Consumidores Financieros

Dr. Efpraxia (Evi) Avlogiari (Greece) - Attorney at Law, Mediator and mediation trainer.

She holds a master degree in Bioethics from the Medical School of Aristotle University of Thessaloniki and an MBA. She was appointed Honorary Consul of the Republic of Estonia in Northern Greece. She is also founder of the “Alternative Dispute Resolution (ADR) Hellenic Center”. She has published many articles and reports related to banking law and mediation.

Dr. Magdalini (Magda) Glavina (Greece) - Attorney at Law and Mediator.

Regularly, she advises on all aspects of commercial law and has worked as a legal counsel for Greek and international clients. Magda has studied law at the Aristotle University of Thessaloniki and holds an LL.M degree in Civil law from the National and Kapodistrian University of Athens.

Dr. Dessislava Dimitrova (Bulgaria) - Attorney at Law with rich experience in the field of banking law and consumers' rights protection. She is the first Bulgarian lawyer bringing proceedings of FX borrowers into the court; external counsel to the Consumer Protection Commission in Bulgaria for preparation of a class actions against banks, founding member of the European Legal Committee for Consumer Rights. (Bulgária)

Dr. Anna Georgieva (Bulgaria)- Attorney at Law, specializing in banking law, consumers' rights protection and litigation. She has worked as legal advisor to foreign investors on business investments in Bulgaria and to individuals on cross-border related matters, founding member of the European Legal Committee for Consumer Rights.

Lydia Palova (Bulgaria) - FX loan-holder and an active supporter of finding a reasonable solution for all FX borrowers.

Dr. Katherine Alexander Theodotou (United Kingdom, Cyprus) - President of the European Legal Committee for Consumer Rights. Founder of the European Institute in Nicosia, and chair of the Anglo-Hellenic and Cypriot Law Association. Elected twice by a group of lawyers to be the Global Human Rights Lawyer.

Mgr. Chudý Horecsnyík Melinda (Szlovákia) - közgazdász, az Asociácia F. Hendikepovanych (Szlovákiai Pénzügyi Károsultak Szervezete) vezető képviselője. Jelenleg a Relax 2000 Kft. alkalmazottja, vevői kapcsolatfelelős pozícióban. Ezen, kiterjedt nemzetközi kapcsolatokkal rendelkező, árnyékolástechnikai eszközöket forgalmazó és gyártó cég munkatársaként és pályázatiíróként széleskörű ismereteket és rálátást szerzett a pénzügyi piac különféle részterületeire. Közgazdászként a Felvidék banki és nem-banki hitelkonstrukcióinak összehasonlító elemzése nyomán jutott arra a dokumentumokkal is alátámasztott következtetésre, hogy a banki kölcsönök kihelyezése során jogsértések történtek, s mihamarabb szükség lenne Szlovákiában is egy olyan átlátható tanácsadói rendszerre, mely nemcsak az adott állam un. "államnyelvén" tud eljárni, de szükség esetén magyarul is fel tudja vállalni akár regionálisan, akár helyileg a magyar ajkú kisebbséghez tartozó banki károsultak érdekeinek védelmét. (Szlovákia)

Dr. Madaras Szilárd (Románia) - egyetemi adjunktus, Sapientia Erdélyi Magyar Tudományegyetem, Csíkszeredai Kar, Üzleti Tudományok Tanszék. Közgazdaságtudományi PhD fokozatát a Kolozsvári Babeş-Bolyai Tudományegyetemen szerezte meg, 2010-ben. Kutatási területei: regionális gazdaságtan, regionális foglalkoztatás, regionális munkanélküliség, idősorelemzés és ökonometriai modellek. 2011-től tanít a Sapientia Erdélyi Magyar Tudományegyetemen. Több magyarországi és romániai tudományos egyesület tagja.

Dr. Bíró Biborka Eszter (Románia) - egyetemi adjunktus, Sapientia Erdélyi Magyar Tudományegyetem, Csíkszeredai Kar, Üzleti Tudományok Tanszék. Végzettségét tekintve jogász és közgazdász. Közgazdaságtudományi PhD fokozatát a kolozsvári Babeş-Bolyai Tudományegyetemen szerezte.

Kutatási területei: regionális gazdaságtan, üzleti jog, vállalati és közösségi pénzügyek, tőkepiacok. 2008 és 2015 között a kolozsvári Babeş-Bolyai Tudományegyetem társult oktatója volt és gyakorló jogászként tevékenykedett. 2015-től a Sapientia Erdélyi Magyar Tudományegyetem adjunktusa. Több magyarországi és romániai tudományos szervezet tagja. (Románia)

Prof. Dr. Kiss Zoltán László - szociológus, üzemmérnök

A szociológia tudomány doktora (Ph.D.) (ELTE Szociológiai, Szociálpolitikai Intézet és Továbbképző Központ, Budapest). Több, mint másfélszáz magyar és angol nyelvű tudományos publikáció (könyvek, tanulmányok, stb.) szerzője. Több tucat empirikus szociológiai vizsgálat kutatásvezetője ill. résztvevő kutatója.