

Usury in the history of Hungarian law

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Abstract

The subject of our research theme aims legislative developments on legal operation called "usury". This paper focuses on presenting features and law succession that transformed this operation of one accepted by law in one prohibited by this. Legislators concern about this area was due to the negative consequences which usury caused to financial situation of the borrowed party. The result of this concern has resulted in the punishment of usury, both in terms of private law and public law, where this operation is regarded as a crime against the fundamental right to property.

Keywords: *usury, law succession, punishment of usury, crime against the fundamental right to property*

Rezumat

Subiectul temei noastre de cercetare vizează evoluția legislativă cu privire la operațiunea juridică numită „camătă”. Această lucrare se axează pe prezentarea elementelor și a succesiunii legislative care au transformat această operațiune dintr-una acceptată de lege într-una prohibită de aceasta. Preocuparea legislatorilor cu privire la acest domeniu a fost determinată de consecințele negative pe care camăta le cauzează patrimoniului celui împrumutat. Rezultatul acestei preocupări s-a concretizat în sancționarea cametei, atât din punct de vedere al dreptului privat, cât și din cel al dreptului public, unde, această operațiune este privită ca o infracțiune împotriva dreptului fundamental la proprietate.

Cuvinte-cheie: *camătă, succesiune legislativă, sancționarea cametei, infracțiune împotriva dreptului fundamental la proprietate*

In the time of economic crises we could talk a lot about poor people who are getting into ever hopeless situations, whose livelihood was not an everyday

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problem before the crises because – maybe with hard work but – they were able to bring up their financial sources for all day. There are lots of topics on online forums about the economic crises, its mechanism, effects, about people who got to the periphery of society and the edge of misery, about disintegrating families, about fights for the daily existence. All of these are a good basis and substrate for usury as a criminalized phenomenon, these are its life-giving energies whose roots go back a long time in history. In the Hungarian legal regulation we can first read about the question of usury in the 15th century when the Act LXV of 1492 condemned the usurer on the manner that he or she had to give back money which was the basis of pawn without any payment of the other party and the amount of money which is equal to the value of pawn in the following way:

1. § *In order to control the viciousness of usurers and to ensure the payment of damages to poor we ordered: if such usurer, who was ordered by the court lawfully upon the motion of the opponent party, wanted to collect money at any time or did not want to hand out or give back the goods that was given as security after the money was given back and wanted to take the case to a court of octave, then this case must be concluded at the first session of the court of octave and the judgment must be the following: the real estate (land) must be given back and the judge shall register it back to the real owner.*

2. § *Furhtermore, such usurer must be obliged to pay a fine to the opponent party, which fine equals the sum of money that was given for the secured goods¹.*

The Act II of 1514 punished the usurers beside the debtors due to the illegal pawning of royal incomes:

1. § *The peers and noblemen who pledge the royal revenue for themselves shall loose in fact all of their money.*

2. § *Moreover, the usurer shall be fined according to the assessment of damage to such revenue or royal town².*

The Act XXII of 1608 was about usuries who gave loans for the stocks of treasure-house due to acquisitive. It punished them with the loss of the loan and the payment of the assessed value of the incomes:

1. § *...such usurers must be sentenced not only to lose their money which they lent for real estate (land) of the Hungarian royalty with the profit in mind but to lose their assessed income³.*

After that Act XLVI of 1622 proclaimed that the country's laws prohibit interest picking, then the Act LI of 1715 disciplined bigger than 6 percent interest of loans and the informer was also interested in uncovering the crime:

¹ <http://www.1000ev.hu/index.php?a=3¶m=1020>

² <http://www.1000ev.hu/index.php?a=3¶m=1299>

³ <http://www.1000ev.hu/index.php?a=3¶m=3126>

1. § *With a view to the viciousness and miserliness of the usurers, it has been found with the good approval of His Majesty that: from now on nobody can lend money at an interest of more than six percent to anybody and nobody can charge the already lent money at a larger interest.*

2. § *Hereafter, nobody can receive or extort money, food or other goods from the debtor under any pretext whatsoever or as a gift that exceeds the statutory interest.*

3. § *The persons regardless of their class, status and nationality, who violate these rules, shall be sentenced – upon the motion of the royal prosecutor – to lose such interest or gift by the judge, who is entitled to recover assets after the truth has been found out. The two third of such interest or gift are due to the royal treasury and one third of such interest or gift is due to the plaintiff⁴.*

The Act CXX of 1723 took action on the redress already in connection with punishing the usurers: *'It is fair that the usurers (...) are sentenced not only to lose the whole interest but also the capital money and they have to repay the interest, which is above the statutory interest of six percent to the debtors according to the same judgment⁵.*

Since usurer activities proliferated despite the provisions of previous mentioned acts, the Act XXI of 1802 on the limitation of usury made already possible the imposition of an imprisonment through the restrictions of the sanctions by penalty against the perpetrator:

1. § *These rules shall not only remain in effect in the future but shall also be applied to cases when persons demand bigger amount of money in exchange or smaller amount money for themselves provided that the sum of money which the debtor actually got from the creditor with its interest shall not be paid to the creditor but to the royal prosecutor (the part which is due to the debtor shall remain uninjured); furthermore, if the debtor had already paid above the statutory interest in the meanwhile then the creditor shall repay such interest to the debtor and (...) a person, who specifies a sum above the standard amount, shall be sentenced additionally to a fine or imprisonment at the wise discretion of the judge upon the same motion of the prosecutor⁶.*

In the judgment of this phenomenon there was a fundamental change due to the Act XXXI of 1868 which repealed the limitation of the interest rates regulated in the previous acts. Its reason was that contractors may establish interest according to their pleasure. It was possible to pay after the expired interest only *'...if it was explicitly specified or if the expired interest was taken to court, in the*

⁴ <http://www.1000ev.hu/index.php?a=3¶m=4440>

⁵ <http://www.1000ev.hu/index.php?a=3¶m=4647>

⁶ <http://www.1000ev.hu/index.php?a=3¶m=5000>

latter case it shall be counted from the day of the initiation of the suit⁷. The consequence of this measure was that usurers authorized by the law practically may have exploited every people who were in a wrong financial situation.

The Act VIII of 1877 on the modification of Act XXXI of 1868 determined the highest value of the interest in 8 percent, a notary may not have picked up an authentic act from private agreement containing taller interest condition at this, concerned may not have invested it with the quality of notarial document, and the 4th article of the act prescribed that *'the judge cannot specify an interest of more than eight percent'*⁸.

The Codex Csemegi, namely the Act V of 1878 also regularized the punishable actions related to usury namely inside the frameworks of the state of affairs of the fraud. One of the most serious cases of the usury activity, the so called exploitation was punishable by the law by the article 385: *A person commits a fraud and shall be sentenced according to the differences stipulated by this chapter, who uses the inexperience, carelessness or distress of a minor or of a person under guardianship for his own or other's purpose in a way that such persons are persuaded to sign a document in which they undertake to pay money to their own detriment, dispose any of their rights or let somebody off financial obligation wholly or partly*⁹.

The Act XXV of 1883 formulated usury crimes already as in a separate state of fact, as a default:

1. § *Who lend money or grant delayed payment by using others' distress, carelessness or inexperience with conditions that simultaneously cause or increase damage to the debtor or the guarantor and give excessive pecuniary advantage to the creditor or a third person; or the conditions, under the specific circumstances, lead to conspicuous disproportion of service and counter-service; the person commits the misdemeanour of usury and is punishable by imprisonment of one to six months and by a fine of 100 HUF to 2000 HUF. Furthermore, he can be sentenced together or separately to deprivation of office and to suspension of exercising political rights*¹⁰.

According to the law, to starting the criminal procedure of usury it was necessary to had proposal of the authorized person, less than 8 percent interest rate was not punishable and – already at this time – business-like method represented a qualified case. It was a reason of abolition of culpability, if the perpetrator retrieved the action before the proposal, and the usurer paid back the advantages with the 6 percent interest to the debtor or to the assign.

⁷ <http://www.1000ev.hu/index.php?a=3¶m=5353>

⁸ <http://www.1000ev.hu/index.php?a=3¶m=5772>

⁹ <http://www.1000ev.hu/index.php?a=3¶m=5799>

¹⁰ <http://www.1000ev.hu/index.php?a=3¶m=6103>

Next disposition was the Act VI of 1932 with the title „The criminal consequences of the usury” which said usury is a default, as well:

5. § A person commits usury and is punishable by imprisonment of not more than one year, and also by deprivation of office and suspension of exercising political rights, who specifies or obtains the pecuniary advantage of usury for his own or a third person’s benefit in an usury contract (1. §) that determines the advanced service as money or other personal property.

The act of the above written paragraph constitutes a felony and is punishable by imprisonment of not more than three years, and also by deprivation of office and suspension of exercising political rights, if the perpetrator enters into usury contracts (1. §) in a businesslike manner or specifies the pecuniary advantage of usury secretly in a false transaction, bill of exchange, notarially attested deed, preliminary court ruling or judicial agreement.

Business-like method represented here also a qualified case. A characteristic of this article was that it determined the consequences of civil law related to usury, as well as the definition of usury contract in terms of the criminal code: *‘Usury contract is a contract, in which somebody uses the other contracting party’s distress, carelessness, mental weakness, inexperience or position of trust concerning himself in order to specify or obtain a pecuniary advantage for his own or a third person’s interest that remarkably exceeds the value of his own service (usury pecuniary advantage) in exchange of giving a loan or generally in exchange of advancing any kind of service, or in exchange of giving delay to honour the other party’s commitment or in exchange of modifying or terminating his own claim against the other party. All of the circumstances of the case must be taken into account when it is determined whether the pecuniary advantage, which is specified or obtained as counter-service, exceeds the value of the service in a remarkably disproportionate way, and if the nature of the transaction includes special assumption of risk, then the extent thereof also shall be taken into account’¹¹.*

The Act V of 1961 on the Criminal Code of Hungarian People’s Republic contained Chapter XVI with the title „Crimes against property of society”, in which usury was regulated between crimes against personal properties, without any reference to the civil law at the article 307: *Who specifies or obtains a counter-service that exceeds the value of his own service in a remarkably disproportionate way by using other’s distress or dependency, inexperience, carelessness or mental weakness*¹². It was a qualified case if the action was business-like or the perpetrator was recidivist. As it can be seen, state of affairs

¹¹ <http://www.1000ev.hu/index.php?a=3¶m=7900>

¹² <http://www.1000ev.hu/index.php?a=3¶m=8438>

listed situations item by item with which the crime could be realized via their exploitation.

We can find states of affairs related to usury in the Act IV of 1978 on the Criminal Code between crimes about injurious of the economy's order, in concrete in the article 300 which is about profiteering: *A person, who lends money in a businesslike manner, commits a felony and is punishable by imprisonment of not more than three years*¹³.

According to the ministerial justification these actions are punishable because business of lending money is dangerous for the purposefulness of money borrowing beside other facts, for example it contains always usury contracts and it is a source of income without work.

Business of lending money was repealed in 1993. After this, the punishment was possible only within the frameworks of unauthorized financial activities, however, the literature showed a pretty rift in this question.

The number of activities with the characteristics of usury increased notably lately therefore the Parliament accepted the bill against usury crimes with 361 'Yes' votes in 15 December 2008¹⁴. It mean that business-like usury became again a crime from 1 January 2009 in the part of crimes against property, namely in the article 330/A. However, the text was not unambiguous and clear for the law practice from its validity therefore state of affairs of Special Part was created in the autumn of 2011 which satisfied better the expectations of criminal policy and modified the text of the nom in the article 330/A of the Criminal Code¹⁵. The currently valid state of affairs is the following:

(1) A person, who uses other's distress and enters into an agreement that includes a counter-service of extraordinarily disproportionate extent and which is suitable to subject the obligor of the agreement, the relative of the obligor who lives together with the obligor, and the person depending form the obligor – due to alimony obligations provided by the rule of law, judicial decision, official decision or a contract – to heavy or additional heavy indigence, commits a felony and is punishable by imprisonment of not more than three years.

(2) The punishment is imprisonment up to five years, if usury was committed
a) in conspiracy,
b) in a businesslike manner.

(3) As secondary punishment, exiling can be ordered as well.

(4) The sentence of a person, who brings the authority's attention to the crime before the authority find out about it and reveals the circumstances of the perpetration, can be reduced without restraint.

¹³ <http://www.1000ev.hu/index.php?a=3¶m=8525>

¹⁴ Bill T/6854. In this bill the paragraph of 201 of Civil Code got to a supplement.

¹⁵ Bill T/4128. This act was adopted on the 17 October 2011 by the Parliament.

From among the modifications two considerable changes are noteworthy: first in the state of affairs there was no definition for the results of consequences caused by behaviour because the legislator defined usury in the jeopardized state of affairs instead of result crime. Another change was a bigger rigor with the lack of business-like as a part of state of affairs in the basic statement. The legislative reason of it was that *'...recent forms of usury (...) took on a character – due to their inhuman and exploiting nature – that they constitute a serious danger to society, and therefore determining usury as a criminal offence is necessary regardless whether it is committed in a businesslike manner or not'*.

The activity of usury based always on the economic conditions of demand and supply. In depressed areas of Hungary – where the level of employment and the level of educational attainment of population are low, furthermore the number of elderly and minorities are high – usury is often substantially there as a characteristic. People in needs haven't got any movable or immovable properties so the only way for them as an 'ultima ratio' to get money is a usurer instead of credit institutions to provide daily living.

Since complex political and social reasons generate the existence of the usurious loans due to this the redress of the phenomenon is not via the subsidiary criminal law but via the tools of sociology is possible because stopping the impoverishment of the population and solving their living problems in these areas are not the tasks of criminal law.