SWISS FRANC LOANS IN GREECE – POLITICAL AND LEGISLATIVE REPERCUSSIONS

Dear Mrs. Alexander - Theodotou, Chairwoman of the European Legal Committee for Consumer Rights,

Dear colleagues,

Ladies and Gentlemen,

Thank you Mrs. Alexander-Theodotou for the invitation to participate to this Convention about the very concerning problem of FX loans.

I would like to introduce myself. My name is Amalia Sarantopoulos and I am a Greek lawyer. I have my own legal practice in the suburbs of Athens for the past 7 years. I take on all legal cases, including bank law. But, certain circumstances made me delve into the FX loans problem. The reason is that my mother has a case, as a debtor, against the Greek Bank Eurobank. Our two loans, as legal agreements, progressed irregularly. I will refer to my personal case briefly as follows, as it is pending before the Greek first – instance courts.

The topic I will analyze is about the Swiss francs loans that were given to debtors, their nature and disclosure as harmful and dangerous stock broking – investment products and my own conclusion on how this problem could be resolved effectively by the Greek parliamentary legislative power.

Since the year 2006 until the year 2009 Greek banks gave Swiss franc loans massively to borrowers. Only Greek borrowers never asked specifically for those loans, on the contrary they meant to borrow Euros for the purposes of buying a house etc. Furthermore, banks proposed and convinced borrowers that had loans in Euro, to convert them to Swiss francs. At that time, the

banks' ad campaigns were very alluring because they promised these FX loans' advantages:

(A) Swiss franc security and stability
(B) Stable exchange rate between the two currencies
(C) Very low interest rate (Libor)

The marketing behind these bank products was very deceptive. Commercial spots showed on TV, advertisements in newspapers, magazines etc. led people to believe that these loans are a real bargain! Of course, the innate dangers of these loans were withheld. When the future borrower went to the bank, the bank's employees gave reasons in favor of these loans, by presenting a whole different reality. That reality played the most catalytic role to the formation of the future borrower's capacity and volition. Otherwise, if they had known how dangerous and deceptive those loans were, they would have never signed the agreements. The banks' agents, while presenting them, stressed these, undeniable and unquestionable, facts:

(A) Swiss franc security and stability
(B) Stable exchange rate between the two currencies
(C) Very low interest rate (Libor), which is preferable to Euribor which would have been higher.

These descriptions, promises, outlines were only verbal layouts without any written specification of the two currencies' fragile exchange rate, without a written realistic example of true economic figures and aggregates of each borrower and how exactly exchange rates, monthly payments and remaining unpaid sum, would be affected and formed in the future, as many variables must be taken into consideration (such as: exchange rate overturn, borrower's income and expenses, probable income reduction, economic crisis, floating rate together with floating exchange rate etc). Furthermore, since these loans had nothing else than advantages, how do the banks profit from them? Nobody

stressed that! Because we all know that banks are not non–profit charitable organizations, but lawful, legitimate loan sharks… They dissimulated that their profit, apart from the interest rate would be over the moon exactly because of the exchange rate deceit.

As a result, we have about 75.000 Greek borrowers today that are facing the Swiss franc loans "guillotine"… ***Today they owe more money than what they borrowed in the first place!***

As time went by, the truth started to come out. And the truth and reality about these loans is this:

These Swiss franc loans are investment portfolio products, cross currency swaps products and the loan agreement is essentially an agreement between two parties to exchange interest payments and principal on loans denominated in two different currencies. This means that it is not a mortgage, as the borrower had in mind and understood. After January 15, 2015, when the Swiss franc exchange rate release occurred, borrowers started to realize that a loan in foreign currency is connected to all the dangers of the macroeconomic environment, therefore every kind of prediction as to how this loan will develop in time, is abstruse to the common everyday borrower who of course has no financial knowledge. Banks, on the other hand, have the knowledge base, they use risk compensation products to secure their profits (financial derivatives, FX swaps, FX forward contracts, FX future contracts, options) (which they never recommended to the borrowers in Greece, as they should have done!), they also are obliged to have the specialized staff to help borrowers form their volition.

The question that arises then is the following: how exactly did the Greek banks profit from all this… We can make two assumptions, as many Greek distinguished jurists have declared:

(1) They had already accumulated Swiss francs from previous transactions, that they disposed in the Greek market only virtually, meaning they were only a logistic register in their books, and that is how they earned a great deal of money through exchange sale (because monthly loan payments are essentially exchange sales) or

(2) There were never Swiss francs and all can be explained based on swaps agreements with other banks. These transactions between banks were fabricated, fictitious; with the sole obligation for one bank to pay the exchange rate difference to the other bank if that was necessary in the future. In this way, Greek banks demonstrated capital adequacy and their capital adequacy index and credibility index remained high, which was very important to them, so as not to appear a company in difficulty. If they managed to appear as economically healthy companies they would still be able to give credit to more borrowers which would lead to more profit! And all that without affect to their credibility index, because in reality these transaction, the FX loans, are not considered loans, mortgages and the monthly payments are not essentially loan repayment but they are the cost, the price of acquiring Swiss francs!

In any case no borrower ever saw Swiss francs or received a receipt, a certificate of foreign currency sale.

This is criminal conduct and it arises many contravention and infringement issues, including a matter of inspection and supervision by the Bank of Greece (which never happened of course).

Note that, since Greek Banks, by law, were among the companies that offer investment services, they are by law, obliged to have specialized staff where FX loans are concerned, but they don't have it.

In any case, we have to do with clauses that are pre-phrased by the banks, so you cannot negotiate those contracts, you either join up or you don't sign the contract at all. That is why we have the 2251/1994 Law that protects borrowers and consumers in general from these kinds of contracts, so this law is the basic legislative instrument that debtors refer to before Greek courts.

As far as judicial reality and jurisprudence in Greece is concerned, we never actually realized, even we attorneys, the enormity and significance of the problem, in spite of the fact that borrowers started to challenge their contracts since the years 2012-2013. But after the January 15th 2015 incident, it all became clear, despite the Greek banks' affirmations that it's going to be all right and taken care of.

In our judicial system, we have two legal "weapons", according to our Civil Procedure Code and our Civil Code:

When the situation calls for urgent measures and when someone's property is at stake (because there is always a mortgage prenotation by the bank that gave the loan) we have the right to file an application for interim measures before the First Instance Court, with the petition that the monthly repayments are calculated with the exchange rate that was in effect on the date of the loan's expenditure.

In addition to that application, a civil lawsuit has to be filed, simultaneously, with the petition that the monthly repayments are calculated according to the date of the loan's expenditure's exchange rate and of course with the petition that the Court compels the bank to re-calculate the whole loan, all repayments with the exchange rate that was in effect on the date of the

loan's payout. In addition, we ask that the bank is prevented from denouncing the loan, because that would lead to tragic consequences for the debtors, their properties and their lives. Our goal, using the above judicial remedies, is to prevent banks from proceeding to the point that foreclosure is inevitable for the debtor.

As far as jurisprudence is concerned, about 30 court rulings have been issued, in favor of the borrowers. Of course the Arpad Kasler case helped hugely and we thank him for that because he paved the way. Greek judges have ruled that it is the bank's obligation to re-calculate the loan with the exchange rate of the loan's expenditure date.

On the other hand, about 26 court rulings, which are to my knowledge, are in favor of the banks. Most of these rulings pertain to applications of interim measures and apparently judges were not convinced either of the extremely urgent of the case or they thought that the plaintiff would be completely vindicated. It should be noted here that in our legal system, complete vindication of rights is forbidden via applications of interim measures and that can be accomplished only through the civil lawsuit before the first instance court.

Now, as far as, my personal case is concerned, I will refer to it roughly:

My mother asked from the Greek bank Eurobank a loan to cover her needs, namely to repair an old house and to fund the repayment of previous debts. Eurobank proposed a loan in foreign currency, in Swiss francs. Eurobank led her to believe all the lies that were previously analyzed (εδώ καρτέλα power point), so she signed two loan agreements, one for *47.186,34 CHF and the other for 61.181,95 CHF* (28.336,74 Euros and 36.741,50 Euros). The exchange rate at the date of the loans' expenditure was **1, 6652**), with a mortgage prenotation on our

house. My mother is a Greek – American, who was born and raised in New York and doesn't know the Greek language so well and of course she has no clue about contractual terms. She trusted that the bank told her the truth that the bank protected her, as a consumer and counterparty, as it is obliged to do by laws and generally recognized legal principals.

Obviously she couldn't have bargained the terms, she was obliged to just sign the agreements, in the belief and assurance that during the whole time of the loan repayment, the exchange rate would remain stable or relatively stable.

At first all went well, but in 2010, apart from the financial crisis in Greece, personal tragedies occurred, sicknesses and deaths in the family, income reduction etc. Monthly repayments were starting to go higher and higher and could not be kept up. Eurobank, completely in bad faith, continued the affirmations that the increased repayments in Euros would go down soon, and that would be a temporary occurrence. They never mentioned that the remaining sum would be constantly revaluated, depending on the changes of the exchange rate.

From the year 2010 until January 15, 2015 we managed to keep up with reduced repayments, by signing modification contracts. These modifications stated that, according to our reduced income, we were to pay less every month, but essentially that is not a solution. The debt only passes on to future repayments.

After the known incident with the exchange rate in 2015, when the exchange rate was approximately ***1***, what did the Greek Banks do? They offered a new modification contract that stated that we the debtors accept the revaluation of repayments and remaining owed amount in Swiss francs, after the new exchange rate! Only, the remaining amount, even in Swiss francs, does not represent the actual owed sum, because the lawful and right thing to

do is recalculate it with the exchange rate of the date when the loan was taken. Signing such modification is of course unacceptable.

So, our only way was through Court. We filled the above mentioned legal remedies. I also plan to file an indictment, because this is not only a civil offence, but according to the Greek Penal Code it is also a crime, the crime of fraud (article of Greek Penal Code: 386, see card), so the people of Eurobank that form its board of directors should be charged by the Greek Prosecutor.

The update on my case is that I am awaiting the judge's ruling. And at this point I am reaching the core of this speech…

Greek judges do not know the problem! And in many cases they seem to refuse to study it! Of course it is something new for us; it is an obscure legal matter for the Greek legal professions. But it is our purpose and our duty to evolve and enrich our legal knowledge and of course learn from the examples of other countries.

It is noteworthy that, in my case, the judge refused to call witnesses on the stand and he mocked the fact that I have, and I quote "written a thesis of 85 pages"!!!

The problem with witnesses in the Greek legal system is this: up until now their testimony was solid evidence, according to our civil procedure code. But our civil procedure code is one of the many changes, "reforms" now they call them, that need to be made according to the Troika (the IMF, the European Commission and the ECB), to our national creditors, because, as you all know, Greece is nothing other but a protectorate. We are no longer a sovereign nation; therefore we are not able to legislate on our own. All reforms are dictated by our creditors; therefore we are under their memoranda rule.

Back to our civil procedure code, the changes on that legislative instrument, which will be in effect from January 1st 2016, are roughly the following:

Witnesses' testimony will be abolished from most civil procedures.

Foreclosure procedures will be faster

Debtors' rights of defense will be limited

Banks will be awarded the most of the auction proceeds.

It is obvious what will happen to debtors in Greece in case they lose in Court. They will end up in the street. It is obvious what will happen to the Greek debtors who don't have the means to pay a lawyer and court expenses. They too will end up in the street in no time. And the thing is that with the constantly changing exchange rate and the remaining sum revaluated, even the mortgaged property will not suffice to cover the owed amount.

Before the latest elections, the political party that later formed the government, SYRIZA, promised a legislative solution to the 75.000 Greek FX loans borrowers. When Mr. Stathakis became Minister of Economy, he stated to the media that the Greek Parliament will legislate only after irrevocable court rulings. In order to have irrevocable court rulings in Greece, at least 5 years must go by! What will happen until then, amidst this terrible, brutal economic crisis?

Addressing the problem to court is not enough. It is costly, time-consuming, and soul-destroying.

But what can be done, in a country where democracy is brutally attacked, where severe violation of human and social rights and fundamental freedoms is an established reality…

Under the current political circumstances in my country, there is no hope for a legislative initiative, as far as Swiss franc loans are concerned. Actually, the Greek government must refrain from any legislative initiative without prior approval by the creditors…

The creditors' goal, and our government's goal, as it so unfortunately turned out, is to save the Greek private banks (along with German private banks, but that is another subject), at the expense of the people. That is a disgrace, it is extortion, it is a humanitarian disaster.

What do I purpose to a state, where sovereign debt is being used against the Greek people to reduce democracy?

The only solution is by a new law which will determine that we owe repayments revaluated with the exchange rate that was in effect at the date each loan was given to the debtor. This combined with the prohibition of foreclosure when the debtor is consistent to those monthly payments and the infliction of high penalty payments on behalf of the banks and in favor of the debtors and maybe the state's treasuries. Of course, until such law is passed, our government should right away freeze interest rate and loan repayments, freeze our debts entirely.

The latest amendment pertaining to the law of "overdrawn natural persons" does not suffice, because again it doesn't give a final solution.

I will close this speech expressing my firm conviction that peoples of the world working together, forming jurisprudence, forging collaborative legal battles can make the difference.

I would like to tell you that I will always cherish the memory of this trip and this conference! I will always remember that my first trip outside Greece was to England! Thank you for your hospitality!