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HISTORICAL DEFINITION AND THEORETICAL BACKGROUND OF USURY LOAN PROVISIONS

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Abstract The thesis deals with usury and illegal lenders both on the domestic scene and abroad. The usury itself is defined by its characteristics, by adjudication and by historical connotations. The historical definition begins in Mesopotamia and ancient Rome, basically since the emergence of money. The aim of the paper is a comprehensive overview of usury, which from the legal perspective is not precisely defined as a term and the thesis tries to find such a definition with the help of case law and interpretation. The characteristics of usury that are described in the thesis are distress, the presence of a weaker party, mental weakness, and a gross disparity of performance. The thesis also describes the history of loan sharks and usury in the United States, where violence plays a considerable part in the issue. The paper also deals with the social background of usury and illegal lenders in the United Kingdom and outlines possible solutions to eradicate these phenomena in financially disadvantaged communities. In the end the thesis attempts to find unifying characteristics of usury across history and said countries.

JEL classification: G53, K15, P37

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Introduction

Views of the usury concept differ widely. The aim of this thesis is to define the problems connected to the civil view of usury, which concerns not only the considerations of the gross disparity of performance construct, but in the final result also the invalidity of an usury agreement in itself. The Consumer Protection Act defines the weaker party of an agreement and also unfair commercial practices which involve deceptive or aggressive commercial practices which are often tied closely to usury. Usury used to be a synonym for high interest. Nowadays the term usury agreement is used. But not even today should the term "usury" be used for the whole contract and part of the literature does not even use it for the payment provision itself (i.e. concerning interest), but considers usury to be only a definition and characteristics of an exaggerated, disproportionate and therefore prohibited payment for the performance provided (Zimmermann, 1979).

The basis of the term "usury" is therefore an excess of a certain allowed level of payment for performance, which is provided by one contract party to the other and the payment promised in return for such a performance is disproportionate. Usury is a typical concretization and expression of the principle laid down in the Law No. 89/2012 Civil Code Coll. (Civil Code, 2020), § 3 sec. 2 letter c); the protection of the weaker party and is nothing other than abuse of such a party or of a subjective weakness of the other contract party beyond a permitted level.

Subject and Methodology

The aim of the submitted contribution is a comprehensive overview of usury, which from the legal perspective is not precisely defined and this thesis, using case law and interpretation tries to find such a definition. It uses the method of terms description, which are closely linked to the issue of usury. Distress, the presence of a weaker party, mental weakness and gross disparity of performance are amongst such terms. The second method used is an analysis of the state of things in the past and in the present. Based on this analysis it forms a recommendation on how to avoid usury in the future. In the end it forms a synthesis, from which common traits of usury in individual countries derive.

History

Usury or in Czech "lichva" (from the Latin usuria, from the gothic German leihwan meaning "to lend" or German leihen of the same meaning) is in general an obligation disproportionate to the profit gained by such an obligation. The most frequent example are loans with high or even exorbitant interest, even 100% per day. However, the term "usury" had a different meaning in ancient history – usury was used for "any interest earning for money lent".

Lending money for a fee appeared shortly after the emergence of money already in the ancient lands of Mesopotamia, Egypt, Greece and Rome. Since the early medieval ages, this practice met certain limitations coming from different religions. According to the Christian church, interest was a fee for time which belongs to God, thus making it non-negotiable. Another reason was an opinion that lending money in itself does not create any new value. Until this day the Czech language uses the word "unchristian" for an unduly high interest and Islam has forbidden the lending of money for interest up through the present days. In medieval times usury was forbidden for Christians but at the same time allowed for Jews, as one of a very few activities they could perform. Christians viewed it as one of the gravest sins, many of the church councils condemned usury as reprehensible. At the same time, the core of legitimacy of usury in ancient times, as Hayes (2017) points out, was not the interest for lending money, but the payment of compensation for any expenses arising from an otherwise unpaid loan.

In the Lands of the Czech Crown usury was permitted for Christians from the year 1484 by Vladislaus II of Hungary. In the beginning of the 16th century the interest rate was between 10 – 35 %. In 1545 it was also legalized in England by King Henry VIII. There were frequent attempts throughout history to limit interest rates, which could have come from a sovereign´s effort to provide some relief to (or to ingratiate himself with) his subjects or from more practical reasons in the form of limiting his own or governmental debt expenditure (Otto, 1900).

In Austria, the Usury Imperial Patent was in effect since 1751 which was very strict in its provisions. It was abolished in 1787 by the Emperor Joseph II which meant that usury was no longer punishable by death. It caused huge unrest in the country and lawsuits for massive usury abuse, leading to the reinstitution of the abolished Imperial Patent in the year 1803. A loan was considered to be usurious when the interest rate exceeded 5 – 6 %. This Patent was valid until 1866, when this interest rate limit was increased. In 1868 a new law entered into effect, which abolished all the previous usury and interest provisions, thus allowing usury providers to act (Vlček, 1879). Usury in the early modern

age of Germany was a politically charged concept, which contained a lot of illegal practices (Suter, 2017).

In China it was believed that usury is a remnant of times prior to 1948 and nowadays the people of China are confronted with the existence of private financial institutions, which provide predatory loans (loan sharks). Whereas the majority consider usury to be ethically loathsome, the evidence proves that private financial institutions have become a very important source of loans to support economic activity in China as Cheng (2018) points out.

The 1964 Civil Code contained a provision, namely § 49, on agreement on the conclusion under "strikingly disadvantageous conditions" which entitled a contracting party to withdraw from the agreement if concluded in distress and under strikingly unfavorable conditions. The essential difference between these two principles is the fact that if a party concluded an agreement in accordance with the 1964 Civil Code under pressure and under strikingly disadvantageous conditions, they were entitled to withdraw from such an agreement. Absolute invalidity of a usury agreement with reference to § 49 of the 1964 Civil Code was derived from situations where the actions of the beneficiary reached the intensity of § 3 section 1 of the 1964 Civil Code, meaning it was also the exercise of right at variance with good morals.

If an agreement did not reach such intensity, but its conditions were unfavorable or disadvantageous for one of the parties, such party was entitled to withdraw from it. It was also due to this reason that the use of § 49 of the 1964 Civil Code was not very efficient. In accordance with § 1796 of the New Civil Code an agreement is invalid due to usury if one party abuses the distress, inexperience, mental weakness, emotional distress or recklessness of the other contracting party in order to gain profit of grossly disproportionate value to the mutual performance. (Eliáš, 2012).

Prerequisites of usury

By subjective elements of usury are meant the states of a person at a disadvantage who, while concluding an agreement, acts in distress, inexperience, mental weakness, emotional distress or recklessness and then the intentional abuse of such a state by the "usurer". Despite not being agreed upon by everyone, from the perspective of the addressee of the legal norm the New Civil Code obviously builds on the actus reus of usury as defined in the Law No. 40/2009 Penal Code Coll. in § 218 (Criminal Code, 2020).

Amongst the explicitly stated subjective (assessed objectively) states of the party in disadvantage the New Civil Code mentions distress, inexperience, mental weakness, emotional distress and recklessness. The authors Crosato – Dalla Pellegrina (2019) even consider usury to be a crime mainly against the poor. To illustrate the matter better it is convenient to briefly analyse the substance of these "states" and their possible projection into legal transactions:

Distress is possibly the most significant prerequisite of usury in terms of subjective states of the disadvantaged party of the obligation. The Supreme court of the Czechoslovak republic commented on the purposes of usury loans by stating that *"the term distress presumes such a state of the debtor´s wealth, that the debtor feels a pressing need to obtain the finances lacked through a loan and is, due to this reason of pressing need, forced to and compliant with promising or providing a payment of a strikingly disproportionate value in comparison with what is obtained through the loan" (*Judgment of the Supreme Court ČSR from 19. 10. 1925, sp. zn. Zm II. 247/25 (Vážného collection).

This definition, however, affects exclusively the area of usury loans, but its substance is much broader. The term "distress" was aptly defined by the Austrian OGH (Supreme Court): *"state of distress is not conceptually identical to material distress and often the term distress includes all situations in which the injured party is left to choose whether to enter into a disadvantageous agreement or to suffer even greater harm by not concluding such an agreement"* (Judgment OGH 14. 5. 1969, sp. zn. 5 Ob 60/69). Concluding a usury agreement in distress can thus be defined as the lesser of two evils when compared to not entering into such an agreement. It remains to be said that distress (as well as all the other subjective obstacles) must be assumed through objective criteria, therefore not deriving from a subjective feeling of the acting person.

Inexperience means either a complete nonexistence or a deficiency in life experience or knowledge of a business matter. Inexperience is therefore linked to a flaw in life experience and knowledge of circumstances involved in the given legal transaction. A person can be deemed inexperienced while being objectively (assuming from his/her age, education, social background etc.) considered to be experienced, but in the particular undertaken legal transaction not so. The Supreme Court, concerning the purpose of inexperience, stated that *"the sign of inexperience is usually defined as inexperience in dealing with property matters, insufficient knowledge of prices, purchase op-*

tions, etc." (Judgment of the Supreme Court from 14. 3. 2012, sp. zn. 11 Tdo 552/2011).

By mental weakness can be understood a state, where the acting person is obviously lacking the ability to act upon rational motives and is therefore not capable of appropriately assuming the objectivity of mutual obligations or lacks the ability to assume the legal consequences of his or her legal actions (Hohendorf, 2012). This element does not fall under the area of legal capacity which understandably has a different legal regime.

Usury and its substance copies the legislation used in the Penal Code. Emotional distress can thus be derived from criminal law as "*a strong mental reaction, caused by an immediately preceding event, which at the same time intensively influenced the mental or emotional integrity of the acting person"*. The consequence then being that the acting person is not immediately able to comprehend the consequences of his or her legal actions which is in result harmful to this person. The Supreme court (Judgment of the Supreme Court from 25. 8. 2010, sp. zn. 7 Tdo 793/2010) defined the state of emotional distress as "*a mental state in which a person internally and usually externally as well shows a significant emotional excitement or uneasiness, which influences his or her subsequent actions… this justifiable mental reaction can follow only after impulses of exceptional intensity and severity…"*.

Recklessness can be considered an unreal judgement of a particular transaction, where the acting person is not able to understand the consequences of his or her actions in the given moment. Recklessness falls under the category of negligence and a person acts recklessly who knew or in view of all the circumstances of the matter must have known that the legal action in question would not be beneficial for him/her.

Abuse

Abuse in terms of the Civil Code Commentary concerning § 1796 is a situation when the abuser knew or must have known of the distress, inexperience, mental weakness, emotional distress, recklessness or other deficiency or gross disproportion of performance and took advantage of them nonetheless (Hulmák, 2014).

The second subjective element (third in total) which must be met, this time on the part of the usurer, is the deliberate abuse of a weakness of the disadvantaged contracting party. The abuse of a weakness of the contracting party (*"…promises or provides obligation to himself or to another…"*) must be deliberate and thus the civil actus reus cannot be committed (more so the penal one) through negligence. An intention is required at least in its eventual form.

Gross disparity of performance

The concept of usury in Czech conditions is constructed upon the combination of an objective and two subjective elements (foreign sources sometimes speak of a usury structure consisting of four descriptive elements, the difference, however, only being in the division of one of the subjective elements into two individual parts, thus making any more detailed analysis on this approach wholly secondary). A subjective element on the side of the injured party will typically be distress. The second subjective element then being deliberate abuse of such a weakness by the other agreement party. Value of performance is the last part, the objective element.

The disparity must be gross, meaning objectively easily distinguishable. Where the value of performance is only half of the counter-performance value, it is a gross disparity (the value being 50:100). The interest rate used in a given situation by banks can serve as a guideline. Gross disparity of performance can then be a situation where the interest laid out in the agreement exceeds at least twice the interest demanded by banks in similar conditions. If the interest exceeds this rate even four times, it can be considered a gross disparity beyond any doubt. The decisive moment for defining whether the disparity is gross or not is the moment of conclusion of the agreement; any posterior price development has no influence on whether § 1796 will be applied or not. This provision affects credit agreements as well.

In the case of usury as a criminal offense the element of gross disparity of performance was defined by the Supreme Court (Judgment of the Supreme Court from 12. 1. 2005, sp. zn. 5 Tdo 1282/2004), which in this ad hoc adjudication ruled that *"…providing a financial loan with an interest of 70-200 % per year sets a disparity in mutual performance beyond any doubt…"* In the previous adjudication the Supreme Court (Judgment of the Supreme Court from 22. 4. 2003, sp. zn. 5 Tdo 248/2003) reached a decision that *"…it is not the borrowed principal that has the nature of usury in sense of § 253 sec. 1 sentence two of the Penal Code which the injured party was obliged to repay, but rather*

the agreed upon usurious interest of 66 % per year forming the accessory of the original loan. Interest is a payment for use of the principle."

This decision is frequently referred to not only by Case law itself but by appellants also. An interest rate of 66 %, proclaimed to be usurious by the Supreme Court in 2003 is the lowest interest rate defined as usurious for the purposes of usury in the sense of a criminal offense; in the decision of the Supreme Court f. no. 21 Cdo 1484/2004 the Court stated that an interest rate of 60 % is in variance with good manners. In this decision the Court was dealing only with the question of interest and not APR. In the reference date of the aforementioned decisions of the Supreme Court, the APR for loan agreements ranged from 9 to 14% per annum for banking institutions. A person has thus committed a criminal offense of usury, or acted in variance with good manners, when an interest rate five times higher than the APR usual in the given place and time was demanded.

Defining the limits of usury

The Czech civil case law has not, until this day, provided an answer to the question of what can be considered a gross disparity of performance. Despite providing the definition of usury agreements already in 2003, the Supreme Court did not venture into more detail concerning the issue of criteria, meaning the value of performance, which could be used as a basis for denomination of gross disparity and thus a possible invalidity of a relevant agreement provision. Paradoxically, the civil law jurisprudence found greater use in the conclusions of the penal senates of the Supreme Court.

Relatively strange situations came to pass when appellants in civil cases raised the objection of usury and in a civil litigation pointed out legal conclusions which had been presented by penal senates. In the case of usury as a criminal offense the element of gross disparity of performance was defined by the Supreme Court (Judgment of the Supreme Court from 12. 1. 2005, sp. zn. 5 Tdo 1282/2004), which in the following ad hoc adjudication ruled that *"… providing a financial loan with an interest of 70-200 % per year sets a disparity in mutual performance beyond any doubt…"* In the previous adjudication the Supreme Court (Judgment of the Supreme Court from 22. 4. 2003, sp. zn. 5 Tdo 248/2003) reached a decision *that "…it is not the borrowed principal that has the nature of usury in sense of § 253 sec. 1 sentence two of the Penal Code which the injured party was obliged to repay, but rather the agreed upon usury interest of 66 % per year forming the accessory of the original loan. Interest is a payment for use of the principle."*

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When commenting on usury from the perspective of criminal law, the Supreme Court always targeted particular provisions between parties and did not accept a clearly defined criterium of gross disparity of performance, meaning performance which can be in its essence presumed as usurious and which meets the physical elements of usury as a criminal offense. Criminal case law has thus not until this day answered the crucial question of when can agreement parties expect a provision to be considered usurious, neither has it set any criteria for the basis of such an answer.

When defining the limits of gross disparity of mutual performance (like with laesio enormis) one must always build on objective, average values, therefore in this case average costs of a credit (loan), for which performance is provided in a given place and time (compared to the objective value theory). Only then can such a criterium be objective. Such a legal opinion of the Supreme Court, however, lacks elements of objectivity, if it was concluded that grossly disproportionate performance must be assessed.

Presumptions of contestability

By subjective elements of usury are meant the states of a person at a disadvantage, who, while concluding an agreement, acts in distress, inexperience,

mental weakness, emotional distress or recklessness and then the intentional abuse of such a state by the "usurer". Despite not being agreed upon by everyone, from the perspective of the addressee of the legal norm the New Civil Code obviously builds on the penal actus reus of usury as defined in the Law No. 40/2009 Coll. Penal Code in § 218.

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Inexperience means either a complete non-existence or a deficiency in life experience or knowledge of a business matter. Inexperience is therefore linked to a flaw in life experience and knowledge of the circumstances involved in the given legal transaction. A person can be deemed inexperienced while being objectively (assuming from his/her age, education, social background etc.) considered to be experienced, but in the particular undertaken legal transaction it is not so. The Supreme Court (Judgment of the Supreme Court from 14. 3. 2012, sp. zn. 11 Tdo 552/2011), concerning the purpose of inexperience, stated that *"the sign of inexperience is usually defined as inexperience in dealing with property matters, insufficient knowledge of prices, purchase options etc."*

Relationship between laesio enormis and usury

Whereas laesio enormis is defined by one factual element, the gross disparity of mutual performance, usury derives from a number of factual elements. Elements of usury are divided into objective elements (performance of grossly disproportionate value to the mutual performances) and subjective elements (distress, inexperience, mental weakness, emotional distress or recklessness of one legal subject and abuse of such by the other legal subject). It is the gross disparity of mutual performances that represents the objective conceptual element and the predatory nature of usury is what represents the subjective ones.

The relationship between laesio enormis and usury is that usury represents a special case of the former. In both situations there must be a gross disparity of mutual performances (the so called objective conceptual element). It must therefore be a legal obligation with mutual performances, where the value of one of the performances is in gross disproportion to the other (§ 1793 sec. 1 and § 1796, Civil Code).

In the case of usury, however, there is another conceptual element present (the so called subjective conceptual element) and that is either distress, inexperience, mental weakness, emotional distress or recklessness of one legal subject and the abuse of such a state by the other legal subject. Usury therefore is not any gross disparity of mutual performances, but only such a disparity, where, while concluding the agreement, one subject abused the distress, inexperience, mental weakness, emotional distress or recklessness of the other party of the agreement (in other words preyed on the other legal subject).

The purpose of distinction between laesio enormies as a general concept encompassing all situations when the principle of proportion is breached and of usury which, as a special case, affects only a part of such situations, is to associate these different concepts with legal consequences of different severity and strictness.

According to § 1796 of law no. 89/2012 Coll. Civil Code it is only usury that can be associated with invalidity. Invalidity is one of the most severe consequences known to private law, which represents its severity in legal life as well (Mayer-Maly, 2001). Laesio enormis is not as grave an offense as usury, its special case, and is therefore associated with milder legal consequences. Moreover, exceptions exist that eliminate the possibility of the aforementioned legal consequence of invalidity when laesio enormis happens. The first exception can be found in § 1793 sec. 1 second sentence of the Civil Code and concerns situations where the gross disparity of mutual performance is based on facts that the second agreement party (meaning the one not in disadvantage) did not or did not have to know.

The second exception is laid out in § 1794 sec. 1 Civil Code and concerns a special relationship between the acting legal subjects from which the reason of gross disparity of mutual performance arises. The third and last exception can be found in § 1794 sec. 2 Civil Code and can be described as an approach of the injured legal subject. In particular, it concerns situations where

the injured legal subject expressly waives his rights from laesio enormis and, at the same time, states that he accepts the payment for pretium affectionis or agrees with the disproportionate price of performance, although the real price was known or must have been known to him.

Despite the fact that gross disparity of mutual performance is present, either because the legal subjects wish so or because neither of them is aware of or does not have to know about it, these exceptions balance out these two basic principles of private law. Besides these exceptions there is one more to be found within the Czech legal system in § 1797 Civil Code and it concerns entrepreneurs. Unlike the previous three, this exception exists in order to fulfil the internal consistency of private substantive law, in particular the consistency between the principle of fairness and expert knowledge requirement.

Predatory loans in the USA

The hypothesis of predatory loans is based on the capping of interest rates which in return allows usurers, expelled from the market by its deregulation, to return. This hypothesis is frequently used by the defenders of short-term credit and defenders of the financial market deregulation. *The History Repeats Itself: Why Interest Rate Caps Pave the Way for the Return of the Loan Sharks* publication defends this hypothesis with a theory that creditors will not lend money to risky subjects on a regulated market. Regulation of credit prices then creates space for predatory lenders, the worst possible scenario, since they are willing to resort to violence.

This hypothesis, according to the predatory loan definition, is untrue or overly simplified. It divides predatory lenders into violent and non-violent, the second type being much more frequent. The number of violent lenders on the small loans market increased after the usury criteria was made stricter and they disappeared once more as a source of loans for the working class as they used to be before the deregulation at the end of the 1970s. The non-violent lenders thrived regardless of regulation. Deregulation does not force non-violent predators out of the market, on the contrary, it opens the door for them. The aim of legal regulation should be forcing both types of predatory lenders out of the market.

The term predatory loan (or loan shark) is not precisely defined, financially nor linguistically. Its meaning changes with time. It became popular in the end of the 19th century as a pejorative label, hinting at the predatory behaviour of sharks. During the American Civil War expensive, short-term loans, particularly inventory mortgages (against household inventory) or loans against forfeiture of wage started to appear. The term was used for the whole market, rather than for a single subject.

Origin

These lenders originally rarely resorted to violence and did not have ties to crime families which were very rare in those times. They even employed women as debt collectors because such a practice reduced the probability of violence. Loans began to be called predatory not because of how the money was collected but due to the conditions of the loan which resembled a trap. The purpose of this trap was to force the client to repeatedly accept loans and thus pay interest. As a result, the client is able to pay the interest only.

Another aspect of their behaviour is the extremely short duration of these loans and therefore a very high repayment, which forces the client to refinance the credit. Illegal predatory lenders have one goal, however, to get money from interest. This goal prevails over the long-term effort to capture the client in a debt trap.

Second meaning

The meaning of predatory lenders underwent a major change in the 1960s with the emergence of Mafia clans. The main pejorative meaning of the term shifted more towards the method of collecting the debt and mainly to violence. In 1968 the Congress passed the Consumer Credit Protection Act also known as the Anti-predatory Credits Act. Although this term was never explicitly stated in the Act, its meaning targeted the conditions of credits. Despite this fact violence became an element implicitly associated with predatory lenders rather than the concept of entrapping the client.

Common denominator

History shows that there are two main types of predatory lenders. The first type uses price, weakening of solvency and short-term duration to trap their clients. The second type uses the practices of the first one as well, however, loans provided by the Mafia often required repayment of the whole loan with interest

together in one big installment. The client, unable to pay, thus had a tendency to delay the moment of payment, while being forced to pay the monthly interest. Some lenders had to resort to violence to make this model profitable in the long run. These two types coexist in a complicated relationship and steps taken to limit one of them usually benefit the other. Extreme steps are often very contraproductive.

If the aforementioned definitions should be deemed valid, it is then rather obvious that the number of predatory lenders was lowest in times when usury loans and interest rates were capped on average levels. Reducing yearly interest rates to 36 % proved to be most efficient in the elimination of predators. It is true that a certain number of violent lenders emerged in those times, however this happened on a local level only and the total number of such lenders decreased significantly. Deregulation led to the elimination of violent lenders from the market, however, it also led to the return of predatory lenders in full strength.

There are nowadays some bank loans (in the US) with total interest over 1000 %. Defenders of short-term loans claim that these banks resorted to predatory behaviour and hide behind a representative facade and that short-term loans help to fight against these predators.

It is nowadays a widely and often debated question whether short-term lending limits the use of very expensive overdraft products. It is possible to conclude, however, that it indeed is predatory lending because it results in a debt trap. Violent lenders, the most dangerous ones, are nowadays also the rarest and are a relic of times long gone and it is very improbable that they should return in the 21st century. The issue that needs to be tackled and confronted is legal predatory lending which is nowadays having an unprecedented boom.

Illegal lending in the United Kingdom

The estimated number of households which used services of illegal lenders is 165.000, half of which are located in financially endangered areas. This number represents 0,44 % of the adult population in the UK, 3% of low income households and 6 % of households from the poorest areas. To compare, the number of clients of legal, expensive, long-term loans is 2.3 million, 6,15 % of the adult population of the UK. In the poorest areas 50 % of households used services of illegal lenders in the last five years. The estimated volume of the illegal loans market is said to be 40 million pounds per annum, the installment volume then being estimated at 120 million pounds.

In comparison the volume of the legal short-term loans market is 1.5 billion pounds and the estimated volume of installments 1.9 billion pounds. The total volume of money provided by illegal lenders forms 0.02 % of the consumer credit market. The layout of illegal lenders corresponds with models of social disadvantages, nationality and households that do not have access to the legal loans market. This correlates with the poorest of areas. The highest concentration can thus be found amongst households from urban and suburban areas with the lowest income. The majority of areas with the risk of illegal lending appears to be in Scotland, Northern and Western Midlands and on a smaller scale in London and Wales.

Illegal lenders and their clients, modus operandi

Clients of illegal lenders are often unable to access the market for legal loans due to many reasons. Approximately one out of five clients of illegal lenders lives in a place where legal loans are unavailable. Approximately half of the clients has unpaid legal credits or has reached the credit limit of legal loans. The profile of clients of illegal lenders is similar to that of legal short-term loan clients. These are mostly women with families, between the age of 30 and 40, although a certain bias against men and a greater tendency for these credits to be more disadvantageous than on the legal loans market is present. Most of the money from illegal loans is used for the same purposes as money from legal short-term loans. A significant minority exists, however, which spends these resources on alcohol and drugs.

Illegal lending happens most frequently in closed communities where lenders are well-known and have established a network of contacts. Relationships between lenders and clients are usually based on intimidation and lenders try to control the lives of their clients through the use of coercive means. Fear and violence provide lenders with a priority when a client repays debts and protects them against being reported to authorities. Control over clients is also reinforced through illegal pledges, most frequently those that control the victim´s income such as cheque books and/or credit cards. The client´s inability to repay the loan can then eventually lead to capturing the client in a net of

criminal activities including drug distribution or prostitution.

A variety of illegal typologies of lenders has been identified. These range from a small number of more or less harmless lenders to violent, coercive lenders where illegal lending forms but a part of a wider criminal life. The latter appears to be the prevailing model, although not all illegal lenders indulge in other criminal activities. Illegal lending in the UK does not show signs of being linked to organised crime. It is mostly done by individuals or by families.

Nature of the problem

Illegal lending is obviously harmful to the victims and to the community as a whole. While formulating relevant legislation it is necessary to take into account that part of the demand for illegal loans is ineliminable. Even though the volume of illegal lending is small, its layout, linked to the financially endangered communities, will be the same as the layout of these communities. According to evidence it is possible to suggest that the high price of legal short-term loans is not a desirable part of the solution, however, these loans are in every case a preferred alternative to illegal lending.

While attempting to reduce the prices of short-term loans through regulation it is necessary to take into account the need to balance out the benefit of the lower price for the majority and the price of a significantly increased risk of illegal loans for the most financially endangered persons. Mayer points out two main questions, which concern usury credits; a political question and a question of morale. Commercial short-term loans have probably reached their limit when it comes to lending to highly risky clients and no increase of such limits can be expected. Commercial and regulatory pressure exerted on legal, expensive and short-term lenders will lead to a quicker withdrawal of supply for most endangered clients, which will then lead to a potential increase of use of illegal loans and the reluctance of legal lenders to fill the vacuum made by the elimination of illegal lenders.

Seeking alternatives to illegal lending

Seeking out and fighting illegal lenders is a highly important part of their elimination from the market. Pilot teams used to combat these lenders reported first major successes and helped to condemn and eliminate Pilot teams used to combat these lenders reported first major successes and helped to condemn and eliminate illegal lenders, thus providing relief to communities and victims where these lenders lived and operated. Evidence suggests, however, that the most efficient way of fighting illegal lending are alternative loan options. It is essential to create alternatives of social lending used to pay for existing illegal debts and to fill the vacuum formed by the retreating illegal lenders. It is probable that legal lenders will withdraw faster than it will be made possible to prepare and launch social lending in a similar scope.

The most convenient source of alternative loans seems to be a narrowly aimed social fund because it is already in contact with a number of the victims of illegal lending. Broadening community grants can offer another alternative in the increase of sources. There is a danger that the social fund may not be flexible enough to drive out illegal lenders. The most promising approach seems to be in creating special units which will be financed through reserved sources and will cooperate with other offices. Some problems faced by the consumers of illegal loans are so complex, that their solution requires a holistic approach.

Some credit unions have obviously significant experience with lending to the riskiest of clients and can significantly contribute to the solution either on their own or in cooperation with administrative offices. After some time, some of the processes proven by these unions and based on their experience could be used to broaden the access to accessible credits and to solve the financial exclusion. Unfortunately, most of the credit unions do not have access to the affected communities so that they could form a vanguard in the battle against illegal lenders and earn experience with the riskiest of clients. Many measures that aim to broaden the market and make it accessible to the most financially endangered people are in their earliest stage of development and are rather limited in their reach.

Efficient infrastructure is yet to be developed. The price range of new solutions must be first tested in practice. Consulting and financial literacy will be an important part of any long-term strategy as will raising awareness of the dangers of illegal loans. It is improbable, however, that it would have an immediate effect on the number of illegal loans. There is nevertheless an obvious need of financial consulting for the victims of illegal lending or lending in the long run.

Overlap of illegal loans and other credit instruments

There is a far lower probability of the use of mainstream financial services amongst clients of illegal lend-

ers compared to other inhabitants of financially endangered areas. In areas where services of legal lenders are not available, illegal lenders are the main source of cash loans. In similarly endangered areas where, however, services of legal lenders are available, the main source of loans are these lenders and that by a significant margin. There is a significant overlap of the use of services provided by illegal lenders and expensive legal loans, social benefits and social funds.

Approximately 1 out of 10 households in the most financially endangered areas admits to the use of illegal loans. Approximately half of the consumers of illegal loans had a legal short-term loan in the last year. Half of the consumers of illegal loans had a social fund loan in the last year. Amongst the consumers of illegal loans or people that were rejected by legal lenders are only scarce examples of credit union loans. However, credit unions that provide loans to the riskiest clients, even consumers of illegal credits, appeared, especially in Scotland.

Price of loans from illegal lenders

Illegal lenders try to control the lives of their victims with the objective of creating a stable, long-term income, which can be extended for as long as possible. Due to this reason the price of the loan, as well as other payment conditions, is hidden by various mechanisms. The most important amongst those are exorbitant and often automatic fees for delayed installments or small "additional" loans. These often serve to pay an installment which would otherwise be delayed. Because of these mechanisms there are usually no official records or contracts provided with the loan. Conditions are stated verbally, clients cannot calculate the remainder nor the repayment period. Money repaid with installments has not much to do with the remaining sum of the loan to be repaid and how much actually is paid to repay the debt.

The size of such a loan can be small, 250 pounds on average, they can, however, range between 30 and 50 pounds with the due date in the following week, which appears most commonly in Scotland. Average total interest is 83 pounds for every 100 pounds lent. The total repaid sum then being 183 pounds. The loan period is not clear. The price of illegal credit can therefore be even triple in comparison with the highest legally acceptable interest. It is also more than double of what people expect to pay. Mayer (2013), advocating for a capped rate, points to the differences on the deregulated market of the US where in Minnesota the rate of a 100 dollar loan is capped at 15 dollars, while in the neighbouring state of Wisconsin the limit for a 100 dollar loan is set to 23 dollars.

Usury and financial literacy

As a result of the financial crisis banks and solid non-banking companies were forced to evaluate the client's solvency in a much stricter way, which made, especially between the years 2009 and 2013, space for increased existence of unfair business practices of smaller non-banking companies and other credit providers. Consumer credits are a frequently used product amongst socially excluded citizenry. This group of people, however, tends to be threatened by disadvantageous predatory loans which usually exploit their distress, ignorance or low financial literacy. This is the reason why unfair business practices appear in the area of consumer credit provision.

Unfair business practice is defined in § 4 of Act no. 634/1992 Coll. on Consumer Protection as amended (the last version is from 15th of April 2020). It generally considers such a practice to be an act towards a customer, in conflict with the requirements of professional care, which significantly disrupts his economical behaviour.

The issue of unfair business practices is closely linked to the level of financial literacy of citizens, which is important for the management of household budgets and the ability to manage household money. Insufficient financial literacy is very risky in the case of loans and credits which are usually provided to customers under very unfavorable conditions. It does often happen to over-indebted households. An over-indebted household is considered such a household that after paying all the essential expenses is not able to meet its obligations.

Financial literacy is a part of a wider economic literacy which includes the ability to ensure one´s income, consider the consequences of personal actions on present and future income, orientation on the labour market, ability to manage one´s expenses, etc. (Hruška-Ševčík, 2016).

Financial literacy as a whole is divided into:

1) money literacy – ability needed for the management of cash and cashless finances and transactions

with money as well as the management of instruments designed for this purpose (i.e. current account, payment instruments, etc.),

2) price literacy – ability essential to understand price mechanisms and inflation,

3) budget literacy – ability essential for the management of personal/family budget (i.e. ability to maintain a budget, set financial goals and decide about the allocation of financial means) and it includes the ability to deal with various life situations from a financial perspective (Ministry of Education, 2020).

Discussion

American experience with payday lending over the past 150 years teaches us that the total quantity of loan-sharking has been reduced the most when interest-rate ceilings are pegged at a moderate level (Mayer, 2012). Finally, reconciling the statutory language concerning criminal and civil usury would be a big step to help clear confusion and ambiguity in contracts already in place and protect and avoid borrowers paying a tremendous amount of interest that was once hidden usury on a financial instrument (Basile, 2020).

Usury laws are not, at the moment, at the top of the political agenda, although there has been some concern with "payday" loans. We should not, however, ignore usury laws on that account. Economic regulation and deregulation is a hardy perennial. And usury laws provide a good case study of how economic regulation is shaped through the interaction of economic ideas and economic conditions (Rockoff, 2003).

Although the performance of world economic growth and with it productive goods and services is increasing, at the same time the divide is opening between rich and poor countries, and at the same time between poor and rich people, as Štědroň (2012) points out. It is therefore necessary that the citizens be definitively educated and that the country have enough qualified experts in this field, as pointed out by Chlumská (2019).

Conclusion

The term usury in context of the Czech legal system is anchored in the New Civil Code. The basis of usury is an excess of a certain permitted level of payment for performance, which was provided by one agreement party to another and a payment that was promised or provided is disproportionate. The most significant prerequisite for the application of the term usury is distress, other elements are gross disparity of performance, mental weakness, alternatively recklessness.

Lending money for a fee appeared immediately after the origin of money already in ancient Mesopotamia, Egypt, Greece or Rome. Through the course of history, the definition and level of interest rates varied, and it is not fixedly set in current legislation and the Supreme Court will always decide individually. Judging from the results of the adjudication it is however evident that the limit of usury is around 60 % per annum, while the quadruple of the current interest rate is considered.

In comparison with the US and the UK the practices of usury provision are different. Usury loans in Great Britain are linked predominantly to illegal lenders inside closed communities. These communities are often extremely poor and out of reach of licensed lenders, who find it hard to profit from providing credit for interest capped by the state. In the US the term loan shark became associated with usurers. History of short-term loans with high interest dates back to the American Civil War; today´s understanding of the term, however, emerged in the 1960s in connection with the Mafia and violent practices involved in the collection of payments.

The issue of usury provision also has a strong linkage to insufficient level of financial literacy. While providing this type of credit, coercive or even aggressive business practices are often involved when usurers abuse the distress or mental weakness of clients or try to capture them in a debt trap where the client pays only the interest and the usurer is thus provided with a permanent income. To improve the situation of financial education, financial literacy was introduced as a mandatory subject in elementary schools and high schools in 2007. It is essential to continue with the education of financial literacy amongst citizens and people of all ages and especially those in the greatest financial danger.

Dedication

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