EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Repayment in euros of a property loan taken out in Swiss francs: application inadmissible

In its decision in the case of **Antonopoulou v. Greece** (application no. 46505/19) the European Court of Human Rights has unanimously declared the application inadmissible.

The case concerned the conclusion of a loan agreement and the repayment of the loan. The applicant complained that she had had to repay to the bank an amount in euros that far exceeded the amount she had borrowed in Swiss francs.

The Court noted that domestic law had afforded the applicant appropriate remedies by which to assert her property rights. The applicant had made use of the remedy of an application to the civil courts to set aside the clause in the agreement which she regarded as unfair. She had also had the option of applying to the courts to have the agreement renegotiated or even terminated under Article 388 of the Civil Code. Lastly, under the terms of the agreement, she could have requested the bank at any time to convert the loan into euros and could have taken out insurance against an increase in the monthly repayments. The legal framework put in place by the State had therefore provided the applicant with a mechanism by which to assert her rights under Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The decision is final.

Principal facts

The applicant, Xanthi Antonopoulou, is a Greek national who was born in 1957 and lives in Thessaloniki.

In order to buy an apartment, Ms Antonopoulou, who had a small craft business, entered into a loan agreement with the bank Eurobank Ergasias to borrow an amount of 243,225 Swiss francs (CHF) (corresponding to 150,000 euros (EUR) on 10 January 2007, the date of disbursement of the loan) in the form of a mortgage on the apartment. On the advice of the bank she took out the loan in Swiss francs. The agreement made provision for the loan to be converted from Swiss francs into euros. The loan was insured against the applicant's death or total disability. Ms Antonopoulou also took out insurance with the bank against the risk of a change in the exchange rate, and over a period of several years, until 26 February 2015, made the monthly repayments on the loan in euros.

As she was unable to meet her contractual obligations as of 24 August 2011, having lost her sight and ceased work, Ms Antonopoulou successfully requested a covenant to the loan agreement governing the repayment of the loan. In all, she signed four covenants with the bank amending the original loan agreement.

Ms Antonopoulou stressed that, owing to the change in the exchange rate, the amount of capital borrowed had increased from EUR 150,000 to EUR 239,041.76 by 4 February 2015.

On 18 February 2015 Ms Antonopoulou brought proceedings against the bank in the Thessaloniki Court of First Instance, requesting firstly that the court declare invalid, as being unfair, the clause in the loan agreement providing for the debt to be repaid in euros on the basis of the exchange rate with the Swiss franc applicable on the date of repayment. Secondly, she requested that the exchange rate between the two currencies applicable on the date of disbursement of the loan be recognised as the sole basis for the conversion into euros of the amount due in Swiss francs. Lastly,

she asked the court to recognise that she no longer owed the bank the additional amounts payable under the loan agreement.

The court rejected the applicant's requests. Ms Antonopoulou did not challenge the judgment in the Court of Appeal, but applied directly to the Court of Cassation. The First Division of that court, taking the view that the case concerned a matter of general interest, referred it to the full court.

The Court of Cassation dismissed the applicant's appeal.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 August 2019.

Relying on Article 1 of Protocol No. 1, the applicant complained that she had been required to repay to the bank an amount in euros far exceeding the amount she had borrowed in Swiss francs.

The decision was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Alena **Poláčková** (Slovakia),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Lorraine **Schembri Orland** (Malta),

and also Renata **Degener**, *Deputy Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1

The Court observed that the applicant had brought an action against the bank in the Thessaloniki Court of First Instance requesting, in particular, that the court declare invalid, as being unfair, the clause in the loan agreement providing for her debt to be repaid in euros on the basis of the exchange rate with the Swiss franc applicable on the date of repayment.

The Court of First Instance had dismissed the applicant's claims, finding that it could not examine the clause in question – which was a declaratory clause reflecting the content of Article 291 of the Civil Code – from the perspective of Directive 93/13/EU. It further found that the clause in question could not be considered unfair or vague.

The Court of Cassation, sitting as a full court, held that the Court of First Instance had not committed any error. While Law no. 2251/1994 did not expressly transpose into domestic law the exemption of such declaratory clauses from an assessment of their fairness, that exemption was reflected in section 2(6) of the Law as a consequence of the interpretation of Community law in accordance with the purpose of Directive 93/13/EU.

The Court considered that the applicant had not been unaware of the risk entailed in taking out a loan in Swiss francs and the risk that such a strong currency would fluctuate upwards over the 25-year term of the loan. She had been insured for three years against the risk of an increase in her monthly repayments owing to a rise in the exchange rate, and could have renewed that insurance. The loan agreement had also allowed her to request at any time that the loan be converted into euros. Lastly, the applicant had signed four covenants to the original agreement with the bank, reducing the monthly repayments, extending the time-limits for repayment and even temporarily suspending some of the repayments.

Furthermore, between 2007 and 2015 the applicant had continued to make her monthly repayments without claiming that she had been unable to meet her obligations owing to the fluctuation in the exchange rate. If she had considered that her ability to repay the loan had been impaired owing to unforeseen circumstances beyond her control and that of the bank, she could have applied to the courts under Article 388 of the Civil Code to have the agreement renegotiated or even terminated.

The Court observed that domestic law had afforded the applicant appropriate remedies by which to assert her property rights. Those remedies were an application to the civil courts to set aside the clause in the loan agreement which she considered unfair – a remedy of which she had made use – and the possibility of applying to the courts to have the agreement renegotiated or even terminated under Article 388 of the Civil Code. In addition, under the terms of the agreement itself she could have requested the bank at any time to convert the loan into euros and could have taken out insurance against a possible increase in the monthly repayments.

Lastly, with regard to the effectiveness of the legal remedy which she had chosen, the Court noted that the applicant had been given the opportunity to set out all her arguments before the competent courts and to obtain a judgment, giving detailed reasons, by the Court of Cassation sitting as a full court. The Court of Cassation had interpreted the domestic law in accordance with the relevant case-law of the Court of Justice of the European Union.

Accordingly, the legal framework put in place by the State had provided the applicant with a mechanism by which to assert her rights under Article 1 of Protocol No. 1.

The Court therefore declared the application inadmissible as being manifestly ill-founded.

The decision is available only in French.

Press contacts
During the current public-health crisis, journalists can continue to contact the Press Unit via echrpress@echr.coe.int.

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