

Judgment of first instance Commercial Court Croatia, judge Mr. Radovan Dobronić,

case No. P-1401/2012, the date of the judgment 07.04.2013.,

pages 158. (part about unbalanced bank sheets, swaps, no-enough CHF deposits, loans are actually funded from local currency HRK).

In fact, given that the Swiss franc is not the currency that is in circulation in these contracts with foreign currency clause indexed to the Swiss franc, perhaps it is best, for the purpose of this judgment, to name the Swiss Franc with the term as Rosenberg calls it "comparative factor", and in the spirit of today time the CHF in contracts, of this type, could be called a "virtual currency", but it is more appropriate to call it a measure of value "unit of account" or "comparative factor". Therefore, for lending to consumers under a contract indexed to CHF, the defendant banks were required to obtain only local currency Croatian Kuna HRK, which was the only one put in use.

In addition, it should be noted that even the banks have indicated that only a small portion of the funds were acquired through purchasing of the Swiss franc, mainly through foreign banks which are their owners or through third banks who are also associated with foreign banks-their owners, it can be said there was no actual purchase of CHF on the market, but funds were obtained through owner-banks (it seems that only OTP Bank has obtained most funds from its owner-banks in Hungary, and OTP Bank was the only bank that has fully submitted all the information about it to this court, including the evidence of payment of the amounts), while most of the funds necessary for financing, the respondent banks had obtained by "replacing currencies" (swaps), mostly substituting euros for CHF,

Croatian language

presuda prvostupanjskog trgovačkog suda, sudac Radovan Dobronić, predmet broj P-1401/2012, datum presude 04.07.2013., stranica 158.(dio o swap-ovima, derivatima, manjak CHF depozita).

Naime, s obzirom da švicarski franak uopće nije valuta koja se nalazi u opticaju kod ugovora s valutnom klauzulom vezanom uz švicarski franak, možda ga je najbolje radi obrazloženja nazvati terminom kojeg Rosenberg naziva "komparacionom faktorom", u duhu današnjeg vremena bi se CHF kod ugovora ove vrste mogao nazvati i "virtulanom valutom", no pravilnije je zvati ga ili mjerilo vrijednosti "unit of account" ili komparacionim faktorom, dakle za potrebe kreditiranja potrošača na temelju ugovora skopljenih uz valutnu klauzulu vezanu za CHF tuženim bankama je bilo potrebno nabaviti samo Hrvatske kune, koje su jedino i stavljene u korištenje, a dodatno treba naglasiti da su i same banke navele da su samo manjim dijelom sredstva pribavljale kupovinom švicarskog franka i to uglavnom preko inozemnih banaka koje su im vlasnici ili preko trećih banaka koje su također vlasnički ili na neki drugi način povezane s inozemnim bankama-njihovim vlasnicima, može se reći da prave kupnje na tržištu nije bilo, nego se radi o pribavljanju dijela potrebnih sredstava ovim putem (čini se da je jedino OTP banka veći dio sredstava pribavila od svog vlasnika-banke u Mađarskoj, pa je OTP banka ujedino i jedina koja je u cijelosti dostavila sve podatke o tome, uključivši i dokaze o isplati iznosa), dok su veći dio sredstava potrebnih za kreditiranje tužene banke pribavile putem zamjene valuta-swap, uglavnom zamjenom EURA za CHF.....

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pages 137-140. (part about IMF study on CHF appreciation).

Swiss Franc as a currency and Switzerland as a country have their own peculiarities, as previously noted Switzerland has for long time not been a member of the IMF, but her currency never participated either as currency in the so-called Special Drawing Rights (SDR), in the initial stage, in the basket of currencies, that included the US dollar (with a share of 33%), the German mark (with a share of 12.5%), the British pound (9%), the French franc (7.5%), Japanese yen (1, 5), Canadian dollar (1%), Italian lira (6%), the Dutch guilder (4.5%), Belgian francs (3.5%), Swedish Krona (2.5%), the Australian dollar (1.5%), Danish Krone (1.5%), Norwegian Krone (1.5%), Spanish pesetas (1.5 %), the Austrian Schilling (1%), the South African rand (1%).

On 1st.January 1981 came into force an amendment that removed out the smaller currencies and smaller countries from the basket of currencies that make up the SDR, so it is was reduced to five currencies: the US dollar (42%), German mark (19%), Japanese yen (13%), French franc (13%) and British sterling (13%).

And after the introduction of the Euro, the SDR consists of: US dollar (41.9%), Euro (37.4%), the Japanese yen (9.4%) and British pound (11.3%).

Swiss franc is not in the basket of currencies that make up the SDR, now, nor it ever was before, therefore regarding the Swiss franc currency the following must be stated:

Swiss Franc has never been part of the basket of currencies known as SDR (foreign exchange reserve of IMF), this is partly a result of Switzerland as a country that operates a policy of strict isolation, is not a UN-member, and until 1990 was neither a member of the IMF, but its currency is regarded as stable, but nevertheless will never be a world currency, simply because the share of the Swiss economy in the world trade is too small, despite the fact that its welfare is not based only on stored deposits in its banks, but also on solid industry such as chemical, pharmaceutical, food, along with tourism.

Nevertheless, its share in the world economy is much too small, and tendencies are such that new powers like China, India, and others, are catching on, and there are already talks about the need for IMF reform, but what matters is that the business community and banks know that Swiss Franc has never been and will never be a World currency, on which most of the world's trade could be carried on.

Therefore, no one in the time of global crisis counts on the Swiss franc, except as an object of speculation. Because of the stability of Switzerland as a country, its legal system (with which we share the same system of mandatory law, because our Law of Obligations is reception of the Swiss Law on Obligations) and its economy, it is known that Switzerland will not have a significant fall in its economy, nor of its currency, and therefore it could be predicted that in the situation of floating currencies, and after the introduction of the Euro, and after it was realized Euro it is not as stable as expected, that the correlation between EURO-CHF when the euro weakens, the Swiss franc, inversely proportionally, will increase, and thus the growth of CHF exchange rate in correlation to the euro, was almost certain for such professionals such as the respondent banks, backed by their foreign owners also banks.

Thus, the growth of Swiss franc exchange rate until years 2004, 2005 was predictable, because it has already been shown that the EURO is unstable and initially is too high, the only thing that could not be predicted is that the growth of Swiss franc exchange rate will be so strong, and this is the result of exceptional circumstances, in which in a unique and unprecedented way, it happened that at the same time three of the four currencies that now form the SDR have considerably weakened. The

successively weakened US dollar, euro, and then the Japanese yen (this is partly due to natural disasters in the form of earthquake, tsunami and nuclear accident), which has the characteristics of exceptional circumstances without precedent, thus three of four currencies that make up the SDR are depreciated, and this turn of events has increased the pressure, mainly from speculative capital, on the Swiss franc in the form the increased demand for Swiss franc, but this event has a character of a fully exceptional circumstances, which puts on the of growth of Swiss franc exchange rate an extra dimension of extraordinary circumstances/event which thus justifies the application of the "rebus sic stantibus" clause, and in accordance with that the modification and adaptation of contracts to new circumstances, but the respondent banks refused to do so.

Therefore, the conclusion of this court, is that mild to moderate increase in Swiss franc exchange rate was predictable and probable for the banks who are experts for currencies and markets, ... but the excessive growth of the exchange rate due to extraordinary events and the described coincidences, was unpredictable for everyone, and even for respondent banks.

That this is so, and that some movements with a high degree of probability, almost a complete certainty, could have been predicted, it can be confirmed, for example, by the fact that the research department of the IMF (available on the website of the IMF, the data about Switzerland - a study prepared by Douglas Laxton and Eswar Prasad with the support of others) in March year 1997 has made an analysis of the possible effects of the European Monetary Union on Switzerland, in order to determine what measures of fiscal policy were best for this country. This study was done back in 1997, that is, when it was known that the European Union is moving in the project of creating the Euro zone, but it's still full five years before the full introduction of the Euro as a common currency.

In the mentioned study, which is available on the website of the IMF, a number of possible scenarios are elaborated. Basic attitudes and predicting of this research state that Switzerland should be worried that the uncertainty created by introduction of the European monetary union could lead to capital flight from the EU currency into deposits denominated in other hard currencies, including the Swiss franc, and that, as stated in the introduction and conclusion of the study, could result in pressure on the Swiss franc, which will lead to its appreciation.

The mentioned study, states that as the date of the third stage of the introduction of the European Monetary Union (EMU) is approaching, it is likely that the effects of EMU will be related not only to those countries participating in the creation of the European Monetary Union, but also in countries like Switzerland, not a member of the European Union, but which has a significant trade and other economic ties with members of the EMU zone.

The study states that there is a concern that arises from the perception of investors about macroeconomic and financial discipline within the European Monetary Union and that this concern may lead to increased propensity of investors to "storage" their deposits in hard currencies outside the Euro zone, which includes the Swiss franc. Starting statement of the study in the original reads:

"This paper examines the possible effects on Switzerland of asset preference shifts in Favor of Swiss Franc denominated assets that could result from EMU. Alternative policy responses to temporary and persistent asset preference shift and the consequent pressures for exchange rate appreciation are examined".

The study states that Switzerland had interest rates significantly lower than the rates in other industrial economies like Germany, although the differential decreased during the nineties of the last century, the study of the IMF from 1997 emphasizes that the group of countries intending to establish a European Monetary Union is large and based on a flexible interpretation of the Maastricht criteria, and that the euro is perceived as a soft currency by market participants, and that the new European Central Bank lacks the German Bundesbank credibility, and concludes that the depositors of the new EURO probably will want to switch their deposits into currencies that carry higher yields such as the US dollar or the British pound, or in currencies that carry lower yields, such as the Swiss franc.

The study further states that in 1997 the Swiss short-term interest rates were below the comparable rate for deposits in US dollars and British pounds, further it states that the interest rate on EURO could rise above the basic interest rate for the DM, and it could create pressure on Swiss interest rates.

The study elaborates on a number of possible scenarios, including one scenario in which there is a delayed reaction of monetary policy in a way that short-term interest rates remain unchanged and states that in that case there will be appreciation of the Swiss franc, and that in the second and following years, there will be a decline in interest rates, etc.

Thus, since 1997 year such studies were available and known by everyone working in the banking sector, these studies show that with reasonable certainty, professional analysts, could have predicted a certain pressure on the Swiss franc. And in connection with the anticipated introduction of the Euro zone and the EURO, the IMF study as back in 1997, has well predicted that the euro in the initial phase will be a "soft " currency and relatively unstable, and that will create some distrust of investors towards the EURO and has predicted certain capital flight from the Euro zone to other hard currencies, including the Swiss franc, all this in a situation where the state of the Swiss economy was slightly weaker than usual.

The mentioned IMF study was done in order to provide recommendations to monetary policy of Switzerland, and methods for the country to try to prevent foreseeable negative effects of the introduction of the Euro on its currency and balance sheets.

The mentioned IMF study, confirms that the respondent banks and their parent banks abroad knew about the existence of such predictions (all IMF studies made public are well known to analytical departments of all banks - it's something within banking circles that has notion notorious facts) and could predict slight to moderate increase in the exchange rate of the Swiss franc as a likely sequence of events, which have been confirmed later, but in an even greater degree than the aforementioned predictions, and that due to serious disturbances in the American banking system which has been carried on the European banking system (although not alike in all countries).

The respondent bank Zaba - Zagrebačka Banka (Unicredit Group) has stated that the crisis began due to bankruptcy of Lehman Brothers, and that no one could have predicted that, and the other seven respondent banks had agreed with this viewpoint of Zaba - Zagrebačka Banka (Unicredit Group).

However, the Nobel prize winning economist Paul Krugman in his book: "End this depression now!", (published by W.W. Norton & Company, Inc., New York, London, 2012) states:

"In 1998, with much of the emerging world on financial crisis, the failure of a single hedge fund, Long Term Capital management, froze financial markets in much the same way that the failure of Lehman Brothers would freeze markets a decade later."

Which "loosely" translated means that in 1998, the collapse of hedge fund Long Term Capital Management froze the financial markets in many ways the same way as the collapse of Lehman Brothers froze financial markets decade later.

In addition, the respected author in the same book states:

"Even though the United States avoided a debilitating financial crisis until 2008, the dangers of a deregulated banking system were becoming apparent much earlier for those willing to see".

Which "loosely" translated means that despite that USA has avoided a financial crisis until 2008, the dangers of deregulated systems were becoming apparent to all those who wanted to see it.

And after that, the yen has weakened, however, as it was stated before, that part was not predictable for banks, but mild to moderate growth in Swiss franc exchange rate was reasonably foreseeable, but the respondent banks did nothing about informing the consumers, as part of their duty which is often called the "duty of disclosure", quite the reverse, from the testimony of numerous witnesses it was

shown that not only that they (consumers) were not warned on such a possibility, but they (consumers) weren't even informed about the frequency of changes in exchange rates of world currencies, nor they were informed about the current situation of "floating currencies", or the numerous factors that affect the exchange rates movements, which makes such currencies less predictable in the long term, and almost unpredictable for a period of ten years, twenty or thirty years, nor did the respondent banks even inform the consumers with the mentioned IMF study, or analysis of other experts, about the completely predictable pressure of capital, from future EURO zone, on the Swiss franc.

presuda prvostupanjskog trgovačkog suda, sudac Radovan Dobronić, predmet broj P-1401/2012, datum presude 04.07.2013., stranica 137-140.(dio o MMF analizi).

Švicarski franak kao valuta i Švicarska kao država imaju svoje specifičnosti, prethodno je napomenuto da Švicarska dugo nije bila članica MMF-a, no njezina valuta nija nikad sudjelovala ni kao valuta unutra tkz. specijalnih vučenja (SDR) a u početnoj fazi su u košari valuta sudjelovali američki dolar s udjelom od 33% , njemačka marka s udjelom od 12.5%, engleska funta od 9%, francuski franak od 7.5%, japanski jen od 7.5%, kanadski dolar od 6%, talijanska lira od 6%, nizozemski gulden od 4.5%, belgijski franak od 3.5%, švedska kruna od 2.5%, australski dolar od 1.5%, danska kruna od 1.5%, norveška kruna od 1.5%, španoljska pezeta od 1.5%, austrijski šiling od 1%, južnoafrički rand od 1%.

Od 1 siječnja 1981 godine stupila je na snagu izmjena kojom se iz košare valute koje čine SDR izbačene sve manje valute i zemlje, pa je svedena na pet valuta i to američki dolar (42%), njemačka marka (19%), japanski jen (13%), francuski franak (13%), te engleska funta (13%), a nakon uvođenja EUR-a SDR čine američki dolar (41.9%), EUR-o (37.4%, japanski jen (9.4%) i engleska funta 11.3%.

Švicarskog franka nema ni sada niti prije, pa u svezi s ovom valutom treba reći i slijedeće:

Švicarski franak nikad nije bio dio košare valuta znane kao SDR, koji predstavlja poseban rezervni medij Međunarodnog monetarnog fonda, to je dijelom rezultat toga što Švicarska kao država vodi politiku stroge izolacije, nije članica UN-a, a do 1990 godine nije bila ni članica MMF-a, no njezina valuta slovi kao stabilna, no unatoč tome nikada neće moći biti svjetska valuta, jednostavno stoga jer je udjel švicarske ekonomije u svjetskoj trgovini premalen, unatoč tome što se njezino blagostanje ne zasniva samo na pohranjenim depozitima u njezinim bankama nego i solidnoj industriji kao što je kemijska, farmaceutska, prehrambena, uz turizam.

Unatoč tome, njezin udjel u svjetskom gospodarstvu je znatno premalen, a tendencije su takve da nove sile poput Kine, Indije i ostalih uzimaju zamah i u tom dijelu se već govori i o potrebi reforme MMF-a, no bitno je da poslovni krugovi i banke znaju da švicarski franak nije nikad i neće nikada ni biti svjetska valuta na kojoj bi se mogao odvijati imalo veći dio svjetske trgovine.

Stoga nitko u vremenu svjetske krize ne računa na švicarski franak, osim kao na objekt špekulacije. Naime, zbog stabilnosti Švicarske kao države, njezinog pravnog sustava (s kojim dijelimo isti sustav obveznog prava, jer je ZOO recepcija švicarskog zakona o obligacijama) i gospodarstva zna se da kod nje neće doći do značajnijeg pada ekonomije niti njezine valute, pa se stoga moglo predvidjeti da u situaciji fluktirajućih tečajeva, a nakon što se od uvođenja EUR-a uvidjelo da on nije nikakao stabilan kako se to očekivalo, da će na relaciji EUR-CHF doći do toga da EUR-o slabi, dok švicarski franak obrnuto proporcionalno raste te je rast tečaja CHF-a bio u odnosu prema EUR-u gotovo izvjestan za takve profesionalce kao što su tužene banke, potpomognute svojim inozemnim vlasnicima također bankama.

Dakle, rast tečaja švicarskog franka je do 2004, 2005 godine bio predvidiv, jer se do tada već pokazalo da je tečaj EUR-a nestabilan i inicijalno previsoko određen, jedino što se nije moglo predvidjeti je da će rast tečaja švicarskog franka biti toliko jak, a to je rezultat izvanrednih okolnosti u kojima se na jedinstven i nezabilježen način dogodilo da su u jednom trenutku znatno oslabile tri od četiri valute koje danas tvore SDR, dakle sukcesivno je oslabio američki dolar, EUR-o, i nakon toga japanski jen (ovo dijelom zbog prirodne katastrofe u obliku potresa, tsunamija i nuklearne nezgode), što ima obilježja izvanrednog događaja bez presedana, dakle tri od četiri valute koje čine SDR su deprecirale, a takav slijed zbivanja je pojačao pritisak, uglavnom špekulativnog kapitala, na franak u obliku povećane potražnje za švicarskim frankom, no ovaj događaj ima značaj potpuno izvanrednog događaja, a što rastu tečaja švicarskog franka daje dodatnu dimenziju izvanrednog događaja koji opravdava primjenu klauzule "rebus sic stantibus" te u skladu s tim izmjenju-prilagodbu ugovora novonastalim okolnostima, no tužene banke su i to odbile učiniti).

Prema tome, zaključak je ovog suda da je blagi do umjereni rast tečaja švicarskog franka za banke kao poznavatelje valuta i tržišta bio predvidiv odnosno vjerojatan,, ...no prekomjerni rast tečaja zbog izvanrednih događaja i opisane koincidencije je bio nepredvidiv za svakoga, pa onda i za tužene banke.

Da je tako odnosno da su neka kretanja s visokim stupnjem vjerojatnosti, gotovo do potpune izvjesnosti, mogla predvidjeti potvrđuje primjerice i činjenica da je istraživački odjel MMF-a (dostupno na internetskim stranicama MMF-a, unutar podataka za Švicarsku - navodi se da su studiju pripremili Douglas Laxton i Eswar Prasad uz podršku drugih suradnika) još u ožujku 1997 godine napravio analizu mogućih učinaka Europske monetarne unije na Švicarsku, a s ciljem da se utvrdi koje bi mjere fiskalne politike bile najbolje za ovu zemlju. Ova studija je napravljena još 1997 godine odnosno kada se znalo da Europska unije kreće u projekt stvaranja Euro zone, ali to je još uvijek punih pet godina prije punog uvođenja EUR-a kao zajedničke valute.

U spomenutoj studiji koja je dostupna putem internetskih stranica MMF-a se razrađuje više mogućih scenarija. Osnovno stajalište odnosno predviđanje ovog istraživanja govori da bi Švicarsku trebalo zabrinjavati to što nesigurnost koju stvara uvođenje Europske monetarne unije bi moglo dovesti do bijega kapitala iz EU valute u depozite denominirane u drugim tvrdim valutama, uključivši švicarski franak te se kako u uvodu tako i u zaključku navodi da bi to moglo rezultirati pritiscima na švicarski franak koji će dovesti do njegove aprecijacije.

Spomenuto istraživanje MMF-a navodi da kako se datum treće faze uvođenja Europske monetarne unije (EMU) približava to je vjerojatnije da će se učinci EMU-a odnositi ne samo na one države koje sudjeluju u stvaranju Europske monetarne unije nego i na države poput Švicarske, koja nije članica Europske unije, ali ima značajnu trgovinu i druge ekonomske veze s članovima EMU zone.

Studija navodi da postoji zabrinutost koja proizlazi iz precepcije investitora o makroekonomskoj i financijskoj disciplini u okviru Europske monetarne unije i da bi ta zabrinutost mogla dovesti do povećanja sklonosti investitora da svoje depozite pohrane u tvrdim valutama izvan Euro zone, što uključuje švicarski franak, polazna konstatacija studije u izvorniku glasi:

“ This paper examines the possible effects on Switzerland of asset preference shifts in Favor of Swiss Franc denominated assets that could result from EMU. Alternative policy responses to temporary and persistent asset preference shift and the consequent pressures for exchange rate appreciation are examined“.

Studija navodi da je Švicarska imala kamatne stope značajno niže nego stope u drugim industrijskim ekonomijama poput Njemačke, iako se ta razlika smanjila tijekom devedesetih godina prošlog stoljeća, Studija MMF-a iz 1997 godine naglašava da grupa zemalja koja namjerava osnovati Europsku monetarnu unije je velika i bazirana na fleksibilnom tumačenju kriterija iz Maastrichta, a da se EUR-o percipira kao meka valuta od strane sudionika na tržištima i da novoj Europskoj centralnoj banci nedostaje kredibilitet njemačke Bundesbanke te zaključuje da će deponenti novog EUR-a vjerojatno željeti svoje depozite prebaciti u valute koje nose više prinose kao što je američki dolar ili engleska funta ili u valute koje nose niže prinose, kao što je švicarski franak.

Studija dalje navodi da su u 1997 godini Švicarske kratkoročne kamatne stope bile ispod usporedivih stopa za depozite u američkim dolarima i engleskim funtama, dalje navodi da bi kamatne stope na EUR-o mogle rasti iznad osnovnih kamatnih stopa za DEM te bi to moglo stvoriti pritisak na švicarske kamatne stope.

Studija razrađuje više mogućih scenarija, pa tako jedna razrađuje scenarij u kojemu dolazi do zakašnjele reakcije monetarne politike na način da kratkoročne kamatne stope ostanu nepromijenjene

te navodi da bi u tom slučaju došlo do aprecijacije švicarskog franka i da bi u drugoj i slijedećim godinama po toj prognozi došlo do pada kamatnih stopa itd.

Prema tome, još 1997 godine svima koji rade u bankarskom sektoru bile su dostupne i poznate ovakve studije koje pokazuju da se s razumnom sigurnošću već tada od strane profesionalnih analitičara mogao predvidjeti određeni pritisak na tečaj švicarskog franka, a u vezi s predviđenim uvođenjem Euro zone odnosno EUR-a te je ova studija MMF-a još 1997 godine dobro predvidjela da će EUR-o u početnoj fazi biti "meka" valuta odnosno relativno nestabilan te da će e biti stvoreno određeno nepovjerenje investitora prema njemu te da je predvidiv određeni bijeg kapitala iz Euro zone prema drugim tvrdim valutama, uključivši švicarski franka, sve to u situaciji kada je stanje Švicarske ekonomije bilo nešto slabije od uobičajenog.

Spomenuto istraživanje MMF-a je provedeno kako bi se dale preporuke monetarnoj politici Švicarske odnosno kojim metodama da ova zemlja pokuša spriječiti predvidive negativne efekte uvođenja EUR-a na svoju valutu i bilance.

Navedena studija MMF-a potvrđuje da su tužene banke kao i njihove matične banke u inozemstvu znale za postojanje ovakvih predviđanja (sve što MMF javno objavi je poznato svim analitičkim službama banaka – radi se o nečemu što unutar bankarskih krugova ulazi u pojam notorne činjenice) te su mogle predvidjeti blagi do umjereni rast tečaja švicarskog franka kao vrlo izgledan slijed događaja, što se kasnije i ostvarilo, ali u još većem stupnju od spomenutog predviđanja, a to zbog težih poremećaja u američkom bankarstvu koje se prenijelo na europsko bankarstvo (iako ne podjednako u svim zemljama).

ZABA je navodila da je kriza započela stečajem nad Lehman Brothers i da to nitko nije mogao predvidjeti te su se s ovim stajalištem suglasile ostale banke.

Međutim, dobitnik Nobelove nagrade za ekonomiju Paul Krugman u svom dijelu: "End this depression now!", izdavac W.W. Norton & Company, Inc., New York, London, 2012 godine, navodi:

" In 1998, with much of the emerging world on financial crisis, the failure of a single hedge fund, Long Term Capital management, froze financial markets in much the same way that the failure of Lehman Brothers would freeze markets a decade later.", a što u slobodnom prijevodu znači da je u 1998 godini propast hedge fonda Long Term Capital Management zamrzнула financijska tržišta na mnogo čemu isti način kao što je propast Lehman Brothersa zamrzнула financijska tržišta desetljeće kasnije.

Pored toga, uvaženi autor u istom djelu navodi: " Even though the USA avoided a debilitating financial crisis until 2008, the dangers of a deregulated banking system were becoming apparent much earlier for those willing to see, što u slobodnom prijevodu znači unatoč tome što su SAD izbjegle financijsku krizu sve do 2008 godine, opasnosti dereguliranog sustava su postajale očigledne za sve one koji su to željeli vidjeti.

A nakon toga se dogodilo i slabljenje jena, pa kako je rečeno taj dio nije bio predvidiv za banke, ali blagi do umjereni rast tečaja švicarskog franka je bio razumno predvidiv, ali tužene banke ništa nisu o tome prenijele potrošačima u okviru svoje obveze koja se često naziva "duty of disclosure", upravo ubrnutno iz iskaza brojnih svjedoka proizlazi da banke ne samo da nisu upozoravale potrošače na takvu mogućnost nego ih nisu ni generalno upoznale s učestalošću promjene tečajeva svjetskih valuta te današnjom situacijom "plivaju ćih valuta" te brojnim faktorima koji utječu na kretanje tečajeva, što ih čini teško predvidivim na dulji rok odnosno gotovo nepredvidivim na rok od deset godina, dvadeset ili trideste godina, a još manje su ih upoznale s spomenutom analizom MMF-a, ili drugih stručnjaka o potpuno predvidivom pritisku kapitala iz buduće EURO zone na tečaj švicarskog franka.

About the judge

Croatian first instance commercial court judge Mr. Radovan Dobronić, was born 1960., in town Čakovec, Croatia. He finished Law Faculty in Zagreb, Croatia in 1985, and then he volunteered at the Zagreb Municipal Court.

His first job was at Zagrebačka banka (now Unicredit Group), where he worked in the legal department for eight years. Then he did a work placement at the Municipal Court Zagreb, passed the bar exam and he was back to Zagrebačka banka (now Unicredit Group) where he was head of department.

For some period he worked in the State Directorate for Commodity Reserves, and in 1996 he became a judge of the Commercial Court. He received his Masters in the field of international trade law.

In order that it he will not be noted as to fall under someone's influence, after he has been assigned the case 'Swiss Francs', judge Mr. Radovan Dobronić has immediately informed the parties that he was a lawyer/jurist at Zagrebačka banka (now Unicredit Group), and that he has a bank account at that bank.

Since in that time, he has left and is not working for the bank for more than 10 years, none of the parties had any objection. The important fact was that he didn't/doesn't have a loan in Swiss francs.

information taken from article about the judge in Croatian language:

<http://danas.net.hr/hrvatska/tko-je-sudac-radovan-dobronic-koji-je-banke-proglasio-krivima>

2013 Historical first instance court verdict, and citizens' victory against the banks

Zagreb, July, 4th, 2013. – consumers achieved a historical victory in the dispute against eight commercial banks (UniCredit - Zagrebačka Banka, Intesa SanPaolo - Privredna Banka Zagreb, Erste Bank, Raiffeisenbank, Hypo AlpeAdriaBank, OTP Bank, Société Générale - Splitska banka and Sberbank (ex Volksbank).

Judge Mr. Radovan Dobronić has reached the first instance verdict completely in favor of "Consumer" Association.

The judge ruled that the banks acted contrary to the provisions of the Consumer Protection Law since they contracted currency clause in Swiss francs while not informing the consumers about the potential risks.

The banks have also violated the provisions by contracting variable interest rates without determining the calculation parameters. Interest rates varied according to the one-sided bank decisions without the client being informed about the precise calculation method or parameters used.

"This is contrary to the provisions of the Consumer Protection Law, a violation of the Law of Obligations, and the banks are required to reduce the principal to the amount of the domestic currency, Croatian kuna, issued at the beginning of the loan. The interest rate should be applied to the principal calculated in kuna. The applied interest rate should be the same as the one determined at the beginning of loan, and it has to be fixed interest rate for the whole repayment period. Burden of litigation costs borne by the bank, " said the judge Dobronić.

Lawyer Nicole Kwiatkowski, plaintiffs' counsel is satisfied with the first-instance judgment and pointed out that the judgment was positively though, is still only the first instance verdict.

"We have done a lot, but it still does not mean that something will change for those citizens who have been harmed, because there is still appeal"- said Kwiatkowski.

"The judge has successfully applied the laws on the economic matters showing exceptional knowledge and understanding of the problem noting all the harmful effects in the synergy of contractual parameters. Finally, the judge pointed out well that the variable interest rate unilaterally applied to the variable amount of the principal (application indexed). The loan user, as a non-professional, had very little information and all the risk on their backs compared to banks, which are professionals and had all the information available and transferred almost all the risks to the consumers "- said the economist Branka Lukačević-Gregić.