

VI EUROPEAN CONFERENCE ON FOREIGN EXCHANGE MORTGAGES IN BARCELONA – 18/05/2017

- Centar za zastistu korisnika bankarskih usluga CHF Srbija  
Association for protection consumers of banking service CHF Serbia
- Founded in June 2016 year, consist of 17 Board members, about 600 registered associates and permanent 6000-8000 followers of web and FB page
- [www.chfsrbija.org](http://www.chfsrbija.org), <https://www.facebook.com/chfsrbija/?ref=bookmarks>,  
<https://www.facebook.com/groups/1666968686917187/?ref=bookmarks>

**1.37**

TITLE OF PRESENTATION: Indexes loans in Serbia

NAME OF THE SPEAKER: Jelena Pavlovic

TITLE OF THE SPEAKER: Attorney –at- law and member of management board of Association CHF Serbia

Dear sirs/madams,

First if all, I would like to say that it is great pleasure and honor to be here and to share experience concerning indexes loans with all of you.

Thank you very much for organizing this very important Conference and for inviting our Association from Serbia.

My name is Jelena Pavlovic, I am coming from Belgrade; I am consumer of Swiss franc indexes loan and member of management board of CHF Srbija.

Promotion of CHF indexes loans in Serbia started on September 2005, by Ministry of finance. That was first advertisement for these loans – on Ministry of finance web page. Directly from Wien, together with representatives of HVB bank (today it is Unicredit bank) our ministry said that offer of HVB bank with interest of 4,5% will be the most favorable mortgage loan. In that advertisement, it is also said, lather on, that loan shall be indexes in Swiss franc (whatever it means, as this was the first time we heard about that type of loans).

After HVB bank, another 14 banks also made this “irresistible” CHF indexes loan product (almost banks from Austria– Erste bank, Raiffeisen bank, Hypo Alphe Adria bank, from Greece – EFG bank, Piraeus bank, Alpha bank, and National bank of Greece, Marfin bank, then Intesa bank, KBC bank, Komercijalna, OTP, Privredna Banka and Volksbank). Only six banks didn’t offer these loans.

At the time of offering these loans, banks were conducted very aggressive advertising campaign, offering CHF indexes loans and euro indexes loans; interest was from 3,9 %- 8 % on CHF indexes loans, while offer for euro indexes loan was about 3 % higher.

No one informed consumers about serious risk correlated with CHF indexes loans. Banks first sold these loans to employees, and then employees told consumers that they also have that great loan and that client can turn that loan in euro index lather. This concept was also presented to me, by my bank officer.

That was organized trap and bank now using argument that client choose cheaper loan.

But, there is no consent of client when he is not informed. When consumer has right to be informed, then bank has obligation to inform.

There is about 22.000 of CHF indexes loans in Serbia, what mean that at least 100.000 of people are directly affected by this loans.

Together with ministry of finance advertising campaign of CHF loans, government in Serbia founded corporation named *National Corporation for insurance of housing loans*. Everyone thought it is great, because our country will help people, mostly young families to buy first house.

But it was not insurance. In 2013, when first insured loan agreement was terminated, it was discovered that only bank is insured, and that it is not insurance, but guarantee that National corporation will paid to bank every unpaid loan installment until house is sold, and then up to 75 % of net loss of the bank. After paying, Corporation demands from consumer to recover all this payments. This was second fraud. Consumers paid for that guarantee from 2-4.2 % of loan, to be safe, and no one told them that this is second trap.

Because 22.000 of CHF indexes loans are guarantee covered (unofficially we know that there is about 36.000 of CHF indexes loans) banks in Serbia do not have serious credit risk. Precisely, with state guarantee, they do not have credit risk at all.

As banks do not have credit risk of their unacceptable risky product, central bank is not interested in resolving this problem, government is not interested.

At the time of offering these loans, governor of central bank Mr Radovan Jelasic said that this loan can be risky and gave an advice to consumers to read portals of Hungarian central banks, Austrian central banks, Swiss central banks ( in language consumers don't understand). He never explained what is risky in these loans, nor central bank as a regulator instructed 1. that bank must explain this very complex agreement to consumers on transparent way and 2. that bank must be professional when analyzing ability of client for this type of currency agreement, as consumers in Serbia do not have any connection with CHF currency and sources of income ( that are in Serbian dinars) absolutely mismatches CHF currency of installments and principal.

Consumers od indexes loans decided to associate when we realized that thinks are going in really wrong way, that our central bank didn't do anything to protect consumers and that shall not corrected effects of unfair bank practice, that our government is not interested in resolving the problem and that courts have a lot of respect to banking sector and very, very little knowledge about how banking business is running today.

As a result, there were many of court decisions stating that contract is legal, except only one clause – it is a clause that defined bank's right to change the interest rate at any time. Base on that clause some people tried to annul all contract, stating that when interest rate can be changed by bank, that means subject of contract is not defined, and all contract is null. This was very risky and dangerous practice, with lot of cases that really, with number of refusing judgments, harmed all consumers in Serbia.

At 2013 collective protection is suspended by Constitutional court, about 45 days after first collective action against CHF indexes loans took place.

Today we do not have legal measures for collective protection, and this is also one of goals of our Association. We have only regular court procedure, that really last for years, and consumers that are very economically exhausted, with high court expenses are in very bad position.

The situation is even worst with a lot of refusing court judgments; at the moment few process are at Supreme Court and we expect that first positive measure shall be in this year. It is very sad for one country when people do not believe that court will be professional and independent.

I am a lawyer and I believe that this battle will be positive resolved in court, because this fraud agreements simply cannot resist test of legality and fairness.

Banks in Serbia do not have any proof that they warned clients on specific nature of this loans, of double valued risk ( as in Serbia euro is not official currency) banks do not have any legal argument for indexes loans, but only this very bad current court practice.

That is why foreign practice – Spain, Italy, Croatia, France, Poland etc. is very important to us in Serbia.

Paradox is that in Serbia these contracts are not only unfair, they, but they are also illegal.

Indexes loan is not standard loan agreement. It is complex agreement that consists of two agreements.

First is loan agreement (three important elements are: received principal –money you really got from the bank, term and interest).

Second agreement is agreement on using financial instrument (currency exchange of principal).

But using of any financial instruments was forbidden for residential people in Serbia until 2011.

In that aspect, judgment of Spanish Supreme court 323 from 2015 is really very important to us.

Despite the fact that our Law on security market defines very precisely what is financial instrument, despite the fact that many banks in Serbia in financial statements recognize using of financial instrument, through IAS (international accounting standard) 39 it is special mission of proving that in court.

First mission of our Association is informing and breaking of wrong prejudice. As Association we do not have a lot of official members, but more important at the moment is that we have a very lot of followers.

I am very sure that this problem shall be resolved in Serbia, but it really needs a very lot of energy, work and patience. I also believe that this is only first step in making banking sector more ethical and believe that it is mission of every single consumer.

The banks that are not responsible lenders are very dangerous to all consumers and to state budget.

Loan indexes in CHF was always very profitable banking product, but we really need to take care of product of nature that is more important, and that is human been.

Irresponsible lending must be stopped and individuals who created this product dangerous to people, together with individuals who were obliged to prohibit this dangerous product, but they didn't, must be legally sanctioned.

Only then we are talking about justice and responsibility. It is not too much. It is necessary if we really want to stop unethical and unprofessional behavior.

Thank you very much for your attention. Good luck to all of you.