

Interest in Juridical-Contracting Relations

Msc. Albatrit Bytyçi¹

Abstract: Interest takes an important place in (non) contractual relations between the parties, as it creates rights and obligations on the basis of the principal liabilities (claims) from which it derives. Thus, taking into account these circumstances and the reason that interest as an institute of law is often present in the law practising, but which has not been dealt with in this respect and that of the law of obligations, then I intended to present through paper a brief study of interest and its types, as well as the legal effects that they produce in practice in relation to the determination - creation, or more specifically the commencement of flow by degree (level) of the subjects of law, where in their contractual legal relations are presented as fulfilling the accessory obligation alongside the principal.

Keywords: Interest, subject of Law, juridical-contracting relation, rights and obligations, accessory obligation, principal obligation.

Introductory Reviews

Requirements are the main reasons that law subjects decide to enter into various contractual legal relations for the purpose of their realization. Through these legal relationships, they create mutual rights and obligations on the basis of the autonomy of the will, and at the same time one party holding the position of debtor assumes as obligation to the creditor the right to the payment of interest at contracted, provided for by law when not contracted, or caused by delays in meeting cash obligations.

Interest in contractual legal relations is important, as it is in addition to the role of collecting additional assets for the benefit of the creditor, and we can also say to the debtor that it is worth the rent as the result of this obligation arises from the use of the creditor's borrowed funds in time of need for certain purposes.

1. The legal definition of interest² and its legal effects

Law No. 04/L-077 on Obligational Relationships (LOR)³, does not give a clear definition of the notion of interest, beside it emphasizes the fact that to the principal debt (principal), the debtor is also liable to interest, if the same is stipulated by law or if the creditor and debtor have so contracted.⁴ In the legal literature, in the strict sense, interest is treated as an amount of replaceable items owed by the debtor to the creditor in the name of remuneration for their use. In the broad sense, interest is when the lender on a loan receives more than he himself has lent to the borrower.⁵

In English, it is known as "interest" which means something that benefits someone or something.⁶ Whereas, if we lease more on the financial aspect, by interest we mean the portion of profit, expressed as a percentage, which one receives for the loan or debt given to another.⁷ Thus, interest, besides playing the role of enrichment of the issuer in relation to what the beneficiary gave and received, is also a reason for excluding the principle of equivalence of prestige. Where the parties depart from the equal value of the reciprocal award.⁸ Accordingly, the principle of equivalence of prestige has no place in the application of contractual law, where the contracting parties have interest alongside the principal debt, since the substantive law itself has enabled such a derogation from the fundamental rule - which requires to receive as much as you have given.

In the the types of interest, without limitation from the provision of LOR, we find four type: 1. Contractual Interest; 2. Legal Interest, 3. Legal interest delay, as well as 4. Contractual interest delay.

¹ Albatrit Bytyçi-Has finished post-graduating studies in Civil and Property Law in the University of Prishtina, „Hasan Prishtina”.

² For more about interest see: Enforcement Program and Commercial Legislation, *Training Manual - Loan, interest and interest delay rate contracts*, October 2013.

³ Law No. 04/L-077 on Obligation Relationships, Official Gazette 16/2012, Date of Publishing 16.6.2012.

⁴ See: Article 378 of LOR

⁵ See: Dauti, N & Aliu, A & Berisha, R, *Commentary of Law on Obligation Relationships*, Book I, September, 2013 Prishtina, pg. 472.

⁶ See: <https://dictionary.cambridge.org/dictionary/english/bank-interest>, Consulted on 21.7.2019.

⁷ See: <https://fjale.al/kamat%C3%AB>, consulted on 21.7.2019.

⁸ See: Article 7 of LOR.

2. Contractual Interest

One of the most common types of interest encountered in banking business is contractual interest. Contractual interest is the result of a bilateral agreement that in most cases is executed between a bank on the one hand and a natural or legal person on the other. These two types of entities freely determine its height, the period of birth of this obligation, and the time of termination.⁹ A contrario, in the event that the parties have agreed to the interest contract (with interest), but the interest rate and timing of interest payment have not been determined, the interest rate is six percent (6%) per annum and interest flows for payment at the same time as arriving for principal payment (principal amount).¹⁰

2.1. Interest on non-monetary liabilities

The provisions of this law on contractual interest shall apply pursuant to other relations of obligations arising by type, namely liabilities having subject matter of substitutable and prominent objects by type.¹¹

3. Legal Interest

Obligation may also be created for the parties through legal interest. Legal interest is an obligation that is determined by law. This type of interest applies only when the contractual interest is unobservable in terms of the time of occurrence of the liability and its extent. And when such interest is in an unenforceable position as to the level and timing of the interest payment, then legal interest plays the role of completing the interest contract to the parties.

4. Relation between contractual interest and the legal one

We have emphasized above that the contractual interest is the interest that is determined by the agreement of the parties regarding when it arises, how much it is, and when it ends. Whereas legal interest is interest which is expressly provided by law. In the event that the parties contract interest, but do not specify the required data required for interest, such as the attainment of interest payment, interest rate etc., then in accordance with the *ius in re aliena* analogy in connection with the filling of this contractor vacuum the legal interest shall apply under Article 385 paragraph 2 of the LOR.

5. Delay in the Fulfillment of Liabilities (Legal Interest Delay)

The debtor who delays in fulfilling the monetary obligation debits the interest, besides the principal debt.¹² Whereas by delay we mean when the debtor fails to fulfill the obligation within the deadline set for fulfillment.¹³ And if the deadline for performance is not specified, the debtor is late when the creditor invites him to fulfill his obligation, verbally or in writing, out-of-court warning, or by initiating any proceedings, the purpose of which is to fulfill the obligation.¹⁴ And when the debtor delays in fulfilling his obligation, then the interest begins to accrue to him, which is presented as an additional liability along with the principal debt. Usually the default interest rate can be determined and derived at these moments; For example, when the borrower does not repay the borrowed funds to the creditor on 21.7.2019, at 13:00 pm, according to the deadline for repayment; Or in the other case from the moment the creditor issues a receipt to the debtor for the supply of goods, products, water, waste disposal, or electricity execution, etc. This term is in most cases legal,¹⁵ unlike the first case where the parties are designated as contractors. And, when the debtor is in this delay, then the creditor has the right to submit the claim for realization of legal interest at the rate of 8% per annum in accordance with Article 382 paragraph 1. regarding paragraph. 2 of the LOR, or at the rate of seven percent (7%), when it comes to the interest accrued on payment of compensation on the basis of expropriation from the final decision,¹⁶ or at the rate of twelve percent (12%) of the claim for damages, starting from the date of filing the claim for damages, etc.¹⁷

⁹ See: Article 385 parag. 1 of LOR.

¹⁰ See: Article 385 parag. 2 of LOR.

¹¹ See: Article 386 of LOR.

¹² See: Article 382 parag. 1 of LOR.

¹³ See: Article 305 parag. 1 of LOR.

¹⁴ See: Article 305 parag. 2 of LOR.

¹⁵ See: Article 360 parag. 2 of LOR.

¹⁶ See: Article 16 parag. 2. subparag. 2 of Law No. 03/L-139 on the expropriation of immovable property.

¹⁷ See: Article 26 parag. 6 of Law No. 04/L-018 on Compulsory Motor Liability Insurance.

5.1. In calculating the legal interest rate at the rate of 7%, 8%, or 12% per annum, some elements must be taken into account:

- Initially, the amount of the principal must first be taken into account, hence, to be passed on other moment when the debtor has caused a delay –respectively, when the creditor has taken action against the same debtor to present the default, the debtor's delay on the unfulfilled obligation, years of delay by the debtor, that are valid for calculating the legal interest rate, the height (degree) of the legal interest rate, and the moment when the interest ceases to flow.

This method of calculation is done in such a way that the sum of the principal claim is multiplied by the debtor's time-year period (delay), then dividing at the end by the annual percentage rate. On the other hand, the amount of the interest or other interest rates reach the level of the principal debt, then the interest ceases to accrue, as the accrual obligation does not have a spread over this liability.¹⁸

5.2. Contractual interest delay

The creditor and the debtor may agree on a contract that the interest rate should be lower or higher than the level of interest rate decided by law.¹⁹ This default interest comes into consideration when the parties contract as such and agree to be paid by the debtor when it causes the default to be fulfilled. Alternatively, where interest is contracted, the parties may agree in advance to the contract that its rate is higher if the debtor fails to pay interest payments on time.²⁰

It is worth pointing out that what is really debatable in this type of interest is which interest the court should apply in calculating the debtor's delay, when such a claim is addressed to the same for settlement, so should it calculate this interest, or legal interest delay. In my view, the court will have to apply the legal delay, since it is the basis for resolving a dispute where the parties themselves have not been able to resolve it previously by agreement.

5.3. The right to interest without delay, or being harmed by the debtor's delay

The creditor is entitled to interest on the delay whether it has suffered any damage due to the debtor's delay.²¹ However, if the damage suffered by the creditor due to the debtor's delay is greater than the amount he would have received in the name of the interest, he has the right to claim the difference until the full compensation of the damage.²²

6. Delayed interest on out-of-contract relations

Interest also plays a very important role in the other material source of the right of obligation, namely, the cause of damage. Damage is the diminution of one's wealth (ordinary damage) and the impediment of wealth growth (lost gain), as well as the infliction of physical pain, physical suffering, psychological suffering, or fear (non-material damage).²³ And in this case, the injured party who appears in the capacity of the creditor, in addition to the claim for compensation of material or non-pecuniary damage, is entitled to file the claim for interest. The interest in this report arises from the moment when the injured party files a lawsuit, ie takes any action against the injured party with a claim for damages.²⁴ And not according to the case law in Kosovo, when they wrongly point out that the calculation of the delay should take into account the day of receipt of the verdict, while determining the amount according to the deposited bank funds with no specified destination.²⁵ Otherwise,

¹⁸See: Article 380 of LOR, „Interest ceases to accrue when the amount of interest received for payment reaches the level of the principal debt.”

¹⁹ See: Article 383 of LOR.

²⁰ Compare article 379 parag. 3 f LOR.

²¹ See: Article 384 parag. 1 of LOR.

²² See: Article 384 parag. 2 of LOR. So, according to the case law of the Supreme Court, the Administrative College of the Republic of Albania, where in a fragment of its decision no. 00 - 2016 - 489 (107) dt. 14.2.2016, has stated that, *the legal interest is paid without the obligor to prove the damage. When the creditor proves to have suffered a loss greater than the legal interest, the debtor is obliged to pay the rest of the damage.* "

²³ See: Article 137 of LOR.

²⁴ For more on this issue, compare no. 3, pg. 3 of this paper.

²⁵ See: Rev. no. 343/2018, of the Supreme Court of Kosovo rejecting the appeal of the Respondent Kosovo Energy Corporation (KEK) JSC in Pristina filed against Judgment of the Court of Appeal of Kosovo AC.nr.818 / 2014 dated 09.07.2018 ; Judgment Ac.nr. 1669/2015, dt. 29.5.2019 of the Court of Appeal of Kosovo, which upheld Judgment C.nr. 2735/2013, dt.12.9.2014 of the Basic Court in Prishtina; Judgment Ac.nr. 4192/2014, dt. 9.7.2018 of the Court of Appeal of Kosovo, which upheld Judgment C.nr. 2320/2012, dt.4.2.2014 of the Basic

this way of ruling by the courts of fact in Kosovo leads to the incorrect application of substantive law, since when it comes to determining the exact time of the debtor's delay and translating it into the legal interest rate, then it should be considered as an evaluative criterion from when the LOR, or any special reader recognizes the same circumstances, rather than the free evaluation of the judges which leads to erroneous and incomplete determination of the factual situation with the consequence of not properly subscribing with the concrete material-legal norm that should respond to the actual factual situation.²⁶

7. Withholding the interest in interest (Anatocizamusuratum)

Anatocism represents one of the most frequent and most severe forms of economic exploitation of the debtor's weakest by the loaner - the superior creditor. And any such form of exploitation is strictly prohibited by law, as it relates to the prohibition of interest on interest. "Prohibition of interest on interest", has been sanctioned by LOR under Article 379 parag. 1, which states that, "In the contracted interest which is to be paid but is not paid, no interest arises unless otherwise provided by law". And when this is contracted with a provision (article) of the contract, then the same is null.²⁷ However, the parties may agree in advance in the contract that the interest rate will be higher if the debtor fails to pay the interest payments due on time.²⁸ However, like any rule that has its own exceptions (nulla regula sine exceptione), there are exceptions to this rule as well, and the default interest may start to flow to the debtor and be claimed by the creditor only when the claim is filed, and his claim is set to be unpaid interest.²⁹

7.1. Interest as principal obligation

In principle, the legal effects of the commencement of the interest are expressed only in cases when the debtor enters into force, or fails to fulfill the obligation - the principal debt in time and which obligation finds its legal basis in a specific material legal norm. However, there are cases where interest is also presented as the principal obligation.³⁰ Usually, this is a situation where the creditor issues the principal claim from the debtor, but not the interest accruing from it. In these cases, the creditor has the right, as the claim in his lawsuit, to be the unpaid interest, and in addition to this claim another interest arises due to default on the previous interest.

8 Interest rates in rising the assumption of usury contract

Interest, it is possible to have it leveled, in such a way as to create an imbalance of direction and opportunity setting for the parties. After all this is also in the nature of the LOR itself.³¹ But in spite of this there are cases when such a rule is abused by irresponsible parties, where according to the issuance of high interest rates they cause the effect of the contract with usury. In such cases, the LOR has determined when it comes to a contract of interest, and when the interest rate agreed upon by the parties is fifty percent (50%) higher than the delayed interest rate, calculated by the following article³², such an arrangement is considered a contract of usury unless the creditor proves that it has not taken advantage of the debtor's adverse situation, the difficulty of its financial situation, the recklessness or dependence created by it, or that the benefits reserved to the creditor or third party are not disproportionate to what the creditor has offered or undertaken to offer or do.³³

In order to assume the existence of an usury-bearing contract as defined above, it is required that there are several premises in its valuation, which are: there must first be a contract of remuneration,³⁴ difference (height) of 50% higher than the legal delaying interest rate of 8%, as well as cases where the creditor making use of the state of need or the material hardship of another, his inadequate experience, his addiction, contracts

Court in Prishtina; Judgment Ca.nr. 939/2015, dt. 8.1.2019 of the Court of Appeal of Kosovo, which according to my conviction was unjustly amended with regard to the delay Judgment C.nr. 151/2011, dt. 25.11.2014 of the Basic Court in Peja - Branch in Klina, as well as Judgment Ac, no. 2982/2014, dt. 22.10.2018 of the Court of Appeals of Kosovo amending Judgment C.nr. 21/2014, dt.13.5.2014 of the Basic Court in Prishtina - Branch in Gillogoc / Gillogoc regarding the part of interest etc.

²⁶Ibidem, pg.3 of this paper.

²⁷ See: Article 379 parag. 2 of LOR.

²⁸ See: Article 379 parag. 3 of LOR.

²⁹ See: Article 379 parag. 4 of LOR.

³⁰ See: Article 30 parag. 2 of Law No. 03/L-006 on Conceded Procedure.

³¹ See: Article 6 parag. 3 of LOR., „*In exercising their rights, participants in an obligation relationship must refrain from acting that would make it difficult for other participants to perform their duties.*”

³² See: Article 382 parag. 2 of LOR.

³³ See: Article 381 parag. 1 of LOR.

³⁴ Dauti, N & Aliu, A & Berisha, R, Sam book, pg. 474.

for himself or for any third party the utility that is openly disproportionate to what he has given or done to another, or forced to give or do.³⁵ And when such interest is contracted in such a way as to constitute the usury contract, then this accessory obligation deriving from this contract and this contract which is to the detriment of the injured party turns out to be null and void. Except where the injured party himself requests that his liability be reduced to a fair amount.³⁶ And the deadline for submitting the claim to reduce the amount to a fair amount must be done within five (5) years from the bonding of the contract.

Conclusion

Through this paper I presented the interest we have stated that it is an accessory obligation on the debtor. Which obligation arises depending on whether it is the result of contracting, as provided by law, or causing delay in the performance of the obligation. From this result, we also concluded that dividing interest by law, there are: contractual interest, legal interest, as well as legal or contractual interest delay.

As for the contractual interest, we emphasize that in practice we often find it in the reports of the loan contract, where the signatories of this contract, besides the basic obligation, decide to determine also the moment (time) of creation, height (degree), as well as the termination of this interest. The moment of creation, or its derivation, may be from the moment when the underlying liability arises, ie from when the lender submits the funds to the borrower. Its height is determined by agreement, eg 3%, 6%, 10%, but without exceeding the premise of 50% higher than the level of legal interest, as the parties create the contract of usury. Whereas the termination of the flow of this interest is caused when the interest reaches the principal obligation, or in the other case when in addition to the fulfillment of the basic obligation the interest in question is fulfilled.

Legal interest is the interest that is determined by law, ie the moment of starting, its height, is provided by law, and as such is unchanged. This interest shall apply where the contracting parties contract the interest but do not specify the appropriate interest information. Therefore, in the absence of such an agreement, the parties refer to the provisions of the substantive law to determine both the moment of leakage as well as its legal extent against undefined contracting.

In case the interest delay is not contracted, then the legal interest delay is applied. Legal delay arises from the moment when the creditor notifies a delay to the debtor. And this delay should not only be understood in judicial, but also in extrajudicial ways. Otherwise, the essence of this interest is that the law stipulates its rate of 8% and the period of achievement that is annually. So the debtor's delay must be annual in order to be counted as a liability.

Whereas when it comes to contractual interest delay, then the opposite of legal interest delay should be implied, as this interest is the result of the parties' own creation, in relation to the moment of flow, and its height. This interest shall be taken into account when determining the parties to each day of delay of the debtor in the performance of the principal obligation by increasing the rate of contractual interest delay. It is worth pointing out that it should be taken care in defining, in particular, the distinction between this interest and the contractual interest, as the contractual interest is usually applied from the time the obligation arises until the time when the deadline for payment of obligation interest has been completed, and in case the debtor is out of this term of fulfillment of the obligation, then along with the contractual interest that continues to accrue after the month or year of contracting, the contractual delay of interest may apply to the same, understood to the principal obligation of unfulfilled on time and not outstanding contractual interest.

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4. Electronic Links

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