

ACCOUNTING EXPERT'S OPINION AT THE BORDERLINE BETWEEN ECONOMICS AND LAW

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Abstract: *The paper aims at completing nuances of the dynamics of the accounting expert's opinion from an economic perspective, starting from its theoretical dimension in economic doctrine and reaching the practical dimension of financial-accounting. On the one hand, the forensic accounting expert's opinion can achieve maximum results, if the chartered accountant has the ability to capture the implications of the means of evidence of his work and to render the factual economic situation in a manner as suitable as possible to legal assimilation. On the other hand, the judicial body must have the ability to capture the essence of the analysed economic process reflected in the formulation of the objectives, the interpretation, and the appropriation of the conclusions of the expert report.*

Key words: *accounting expert's opinion, means of evidence, financing by credits, abusive clauses.*

1. Introduction

From an economic perspective, an accounting expert's opinion, may aim at various specialized activities. The accounting expert's opinion, forensic or extrajudicial, is a research mission entrusted to a chartered accountant in order to verify the way in which certain economic-financial facts or circumstances are reflected in the accounting documents. Accounting records, account statements or other supporting documents are examined to provide the concerned parties (judicial bodies, economic entities or natural persons) with the information necessary to solve a civil or criminal case, to substantiate a business decision or to complete insolvency proceedings. At the same time, the accounting expert's opinion is a critical work, which in addition to the result of examining the facts from the point of view of formal and substantive accuracy, also includes the chartered accountant's opinion on the causes and effects related to the object under research (Chirită, Oncioiu, 2009). The ensuing variance is calculated as differential between scenarios: with and without use of funds (Drumea, Spatariu, 2011).

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After this presentation, we ought to provide a brief description of the activity behind an accounting expert's opinion report, concretely. The documentation is verified by the chartered accountant through accounting methods and techniques, and these verifications are performed using a methodology that involves a logical sequence of operations, based on critical analysis and thinking (Andone et. al., 2013). The most complex stage is the examination of the documents submitted by the parties. The regularity and accuracy of the documents is transposed into the legal meaning through the notion of legality. Accuracy refers to the correspondence between the information in the document and the factual situation for which it was drafted.

Supporting the assertions above, we shall describe a case presented in court and the interpretation of the paper through the methodology on the practical dimension of the accounting expert's opinion.

The object of the paper is the declaratory judgment of the abusive clauses filed by *Ionescu Valentina* versus a banking financial institution. According to the credit agreement no. 2008 / 19.05.200N, concluded between *Ionescu Valentina*, as debtor and the banking financial institution, as creditor, the natural person borrowed from the credit institution 60,000 euros for 25 years. The credit together with the related interest were staggered according to the repayment schedules, based on the credit agreement.

The credit agreement is secured by establishing a mortgage on a real estate located in ALA commune, described in the mortgage agreement no. 46B / 20.05.200N, and the *applied interest* is in accordance with the Bank credit agreement for individuals no. 2008/ 19.05.200N "which provides the current interest rate of 7.4% per year and is fixed in the first 12 months and variable afterwards. The fixed interest rate remains constant for a period of 12 months, starting with the date of the first drawdown. After this date, the current interest rate consists of the *variable reference interest rate*, which is displayed at the offices of the financial institution, to which 1.50 is added" (agreement no. 2008/19.05.200N). On 18.01.201N, the claimant concludes with the financial institution an addendum for a new repayment in instalments of the credit amounting to **58,239.25 euros**, with a total monthly instalment of 588.83 euros, by decreasing it after negotiation up to 300 euros per month, for 6 months. *The difference between the interest rate calculated according to the Agreement and the interest rate in the amount negotiated according to the addendum is monthly capitalized, being added to the credit balance.* Therefore, the variable interest rate applied by the credit institution, according to the credit agreement, corroborated with the provisions of *the Addendum to the Credit Agreement no. 2008/19.05.200N* determined the increase of the instalment to be reimbursed from 469 euro/month, during June 200N-May 200N, to approximately 630 euro/month, during June 200N-Dec 201N and, implicitly, the excessive burden of the debtor. Eo ipso, *Ionescu Valentina* appealed to the court by filing a declaratory judgment for the abusive character of the clauses of the *credit agreement no. 2008 / 19.05.200N* concluded with the *financial institution* and the amounts collected by the claimant, for the period May 200N-Jan 201N.

2. Research Methodology

For the elaboration of the paper, the existing material in the court file and presented by the parties to the chartered accountant is organized and studied. The use of collection, interpretation and analysis tools and techniques requires testing and identification of problems to be solved. As such, the research aims at the following objectives:

- Determining the amounts actually collected by the financial-banking institution from the claimant in this case, on the grounds of the bank credit contract for individuals no. 2008 / 19.05.200N, during June 200N-May 201N + 1, as well as from June 201N + 1 to date;
- Determining the amount *that should have been collected by the financial institution* from the claimant in this case, on the grounds of the credit agreement, if the last sentence concerning the interest rate *in the agreement* is considered abusive, respectively if the interest rate that should have been legally applied to this whole timeframe would have been 450 euros.

The research methods put into practice, in a procedural presentation, comprise the study of the literature, verification, physical observation, interviewing, questioning, investigation, testing.

3. Research Results

According to the activity of examining the documentary material corroborated with the results of the calculations performed, the principle of credit repayment is established by the method of constant annuities according to which the management commission is deducted with priority, then the calculated monthly interest followed by the diminution of the main credit mount by the remaining balance.

Concerning objective 1, the control of payment documents and account statements provided by the financial institution, related to credit agreement no. 2008 / 19.05.200N, the recalculation, analysis, and synthesis of the information outline that the amounts paid by *Ionescu Valentina and actually collected by the financial institution, for the period June 200N-May 201N are of 19,570.05 euro, of which credit instalment 1622.92 euro, interest 16,876.21 euros, management fee 1047.75 euros and other fees 23.17 euros.*

Moreover, for the period *June 201N - January 201N + 1* the following amounts are determined: annuities amounting to 19,321 euros, of which credit instalment 2688.47 euros, interest 15,601.71 euros, management fee 984.36 euros and other commissions 46.46 euros.

Consequently, the analysis and study of the documents provided to the chartered accountant by the financial institution and also by *Ionescu Valentina*, as a borrower, and the recalculation of the repayment certify *that the total amount actually collected by the financial institution from the claimant, for the period June 200N-January 201N + 5 is 38,891.05 euros, of which credit instalment 4311.39 euros, interest rate 32,477.92 euros, management fee 2032.11 euros and other commissions 69.63 euros.*

The synthetic presentation of *the amounts actually collected by the financial institution from the claimant Ionescu Valentina*, according to the credit agreement no. 2008 / 19.05.200N, *per designations*, is presented in the table below.

Table 1

Amounts collected by the financial banking institution according to the credit agreement

Term	Credit instalment (euro)	Interest rate (euro)	Management fee (euro)	Other commissions (euro)	TOTAL paid up (euro)
<i>June 200N-May 201N</i>	1622,92	16876,21	1047,75	23,17	19570,05
<i>June 201N-January 20N+1</i>	2688,47	15601,71	984,36	46,46	19321,00
TOTAL	4311,39	32477,92	2032,11	69,63	38891,05

Related to Objective 2, according to the documents analysed, starting from the requirements of the objective, the amounts representing the credit repayment instalment, the interest rate and the total management fee, which should have been collected by the financial institution from the claimant, for the period June 200N- May 201N, i.e. 2457.34 euros, 12662.66 euros and 1080 euros respectively, the total instalment 16,200 euros.

The same calculation methodology is used for the period June 201N-January 201N + 3, resulting in a total instalment of 14,400 euros, of which: the total instalment of the credit to be collected by the financial institution is 2671.59 euros, interest of 10768.40 euros and a management fee of 960 euros. To facilitate the study, these values are presented for each period included in the set-out objective in the table below.

Therefore, the level of the amounts that should have been collected by the financial institution for the period June 200N- January 201N + 3, if the clause in the agreement on the interest would be considered abusive, respectively if the total fixed rate that should have been legally applied throughout this period would have been 450 euros, are the following: total instalment of 30,600 euros, of which credit instalment 5128.94 euros, interest rate 23,431.06 euros, management fee 2040 euros, presented in a centralized manner in the following table.

Table 2

The recalculated amounts if the clause in the agreement on the interest would be considered abusive (- euro -)

Explanation	Term	Credit instalment	Interest rate	Management fee	Total instalment	Credit balance
Amounts to be collected by the financial institution	<i>June 200N-may 201N</i>	2457,34	12662,65	1080	16200	56679,79
Amounts to be collected by the financial institution	<i>June 201N-January 201N+3</i>	2671,59	10768,40	960	14400	54008,18
TOTAL	<i>June 200N-Jan. 201N+5</i>	5128,94	23431,05	2040	30600	54008,18

According to the study of documents and to the calculations made, for the period analysed in the accounting expert's work (June 200N- January 20N+5), *the differences between the values actually collected by the financial institution, according to objective 1 and the amounts that should have been collected from the claimant of the case, on the grounds of the bank credit agreement for individuals no. 2008/19.05.200N, during June 200N - May 201N (the date the case was filed), as well as from June 201N to date if the last sentence of the article of the agreement is considered abusive, respectively if the total fixed rate that would be should have been legally applied throughout this period would have been 450 euros.*

As such, *the credit balance on 31.01.201N+5 would have amounted to 54,008.19 euros compared to 56,679.79 euros, the resulting balance, according to the current credit development methodology, based on convention no. 2008 / 19.05.200N.*

For the accuracy of the representation of the results obtained following the restoration of the calculations for the hypothesis of a fixed instalment of 450 euros, in the June 200N- January 201N +5 period, we design the following comparative table.

Table 3

Comparative presentation of the amounts determined by the accounting expert opinion, for the period June 200N- January 201N+5

						-euro-
Explanation	Term	Credit instalment	Interest rate	Management fee	Total instalment	Credit balance
Amount collected by the financial institution	June 200N- January 201N+5	4311,39	32477,92	2101,74	38891,05	56.448,21
Amounts that should have been collected by the financial institution	June 200N- January 201N+5	5128,94	23431,05	2040	30600	54008,188
<i>Differences</i>		-817,55	9046,862	61,74	8291,05	

Consequently, following the calculations performed for the period June 200N - January 201N+5, applying the formula of constant annuities, if the last sentence of Article x of the agreement would be considered abusive, respectively if the instalment should have been legally practiced throughout this period would have been 450 euros, the defendant financial institution would have collected 5128.94 euros as a credit instalment, 23,431.06 euros as interest and 2040 euros representing management fee, namely a total amount of 30,600 euros, compared to the amount actually collected of 38,891.05 euros.

4. Conclusions

The accounting expert's opinion is a research topic that contributes to the understanding of a phenomenon and its components as well as to the identification of factors with impact on its dynamics. The stages of analysis and critical thinking are constantly updated depending on the results obtained (Andone et al., 2011). As a means of evidence for solving civil or criminal cases, it is intended to convey the results to interested parties in an intelligible and unequivocal format. The field of banking services has lately presented concrete situations of intervention of the accounting expert's opinion on the grounds of unilateral contractual agreements. Hence, the impossibility of negotiating the terms of a loan agreement with a financial institution has increased the degree of consumer dissatisfaction and, consequently, the number of cases brought before the court. The accounting expert's opinion that contributes to the settlement of disputes arises at the borderline between economics and law (Anton, Sofian, 2019).

As an important part of the social protection that a democratic society has to promote, and as a basic component of social protection programs, consumer protection is a set of provisions on public or private initiatives aimed at ensuring and continuously improving the respect of consumer interests. In the case of the banking services market, consumer protection stipulates that there should be no abusive clauses in the contracts signed between clients and the bank (Neacsu, 2018).

However, most cases filed to court have the clauses of the credit agreements as a starting point and the accounting expert's opinion is the means of proof that provides certainty, reality, and accuracy of the data.

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