Conference Proceedings

LOAN CONTRACT (ROMAN MUTUUM) – LEGAL RULES PRE AND AFTER THE SERBIAN CIVIL CODE FROM 1844. AND THE CRIMINAL CODE FROM 1929.

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ABSTRACT

If we understand that every business requires money that would be further invested in the necessary equipment in order to develop it, the question arises: what should be done in case the entrepreneur lacks certain means to achieve the intended goal? One of the possible solutions is a loan, regardless of whether it is in the form of a bank loan or a loan from a "friend". The impression that loans have been present in civilized society since ancient times is justified - business transactions and the development of trade have existed "as long as the world and centuries", and thus a loan as a legal action undertaken with the aim of maintaining transactions or raising the activity to another stronger and more intensive one level, which brings with it the question of responsibility for non-fulfillment of the contract. The authors in this article deal with the loan, more specifically the loan contract, as one of the drivers of today's business through the prism of legal rules from ancient times to the present day, as well as the issue of responsibility for it, defending the acquired position that the loan agreement is one of the basic contracts when it comes to about the economy, business and entrepreneurial spirit.

KEYWORDS

loan contract, Roman law, legal rules, code, usury

INTRODUCTION

"Economy as a historical legacy to the society and its integral part, has always adapted to its changes and needs, while finding ways to expand, supplement, resist or survive every challenge of humanity." It is indisputable that the economy is sometimes (justifiably or unjustifiably) equated with trade and mentionable, contractual obligations lie at the base of every economy and business" (Jovanovic, Atanasovska Cvetkovic, 2023). Since the earliest times, people have undertaken business ventures, bartered and exchanged goods in order to enable better earnings, and thus a better position in society. Therefore, behind every undertaking lay some motive (e.g. monetary), i.e. the basic driver that represented (and still represents) a specific process within each person with the aim of achieving certain results based on the undertaking of various activities (Gavric, Cukanovic Karavidic, Pesic, 2020). In

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order for the results to move in the positive part of the life chart, an indispensable part is the use of other people's things. Perhaps it is quite enough to use a simple example to state the importance of using other people's things both then and now: during wine production, the producer wants to expand his capacity, so he is not able to buy the vessels in which the wine is stored, and for this purpose he takes a loan with the obligation to return the money over a certain period of time. In this example, loaned money means using someone else's property, that is, money.

The purpose of the loan contract: the lender hands the borrower a certain amount of money, and the borrower has an obligation to return the same amount. There is another important connotation in this part: the borrower does not have the necessary funds, the borrower is a member of the poorer stratum of society. From here, it is an inevitable conclusion that the loan contract and the use of other people's things follow the sales contract (as the most important) in terms of their importance, as well as the fact that the loan contract exists "as long as the world and the century". In order to get a complete picture of the evolutionary development of the legal rules that are dedicated to the loan contract, it is necessary to go back in time, and then, step by step, look at those same legal rules in the historical context in order to understand why the loan contract is still significant today.

METHODS AND OBJECTIVES

The methods which are used in order to emphasize the purpose of this article - legal rules on the loan contract through human civilizational achievements are: historical-legal method, sociological method, method of analysis, comparison and definition, as well as comparative legal method. The historical-legal method was used in order to present normative solutions from the earliest times, while attention was paid to the Code of Hammurabi, as the most significant normative act of the ancient times. Through analysis and definition, we will understand what legal rules on the loan contract were current in Sparta and Athens, as two antipodean states in ancient Greece.

The same method will be used in order to present the Roman legal rules in the context of sociological events in that historical period in order to understand that Roman law is the basis of today's loan contract. The Byzantine Laws, Prochiron, Eclogue and Syntagma of Matija Vlastar are an indispensable part of this work in order to continue the tradition of the loan contract and its regulation through the laws valid for the Middle Ages. In the same context, with the method of analysis, attention will also be paid to the Salian Law, part of the barbarian laws, valid for the Salian Franks who lived on the territory of the medieval Frankish state.

The analysis of this law aims to present the legal life of the loan contract in the territory of the western part of the Roman Empire after the complete stumbles and setbacks experienced during its total collapse. Given that the loan contract is legally regulated by the rules of the obligations, it is necessary to analyze and compare the Serbian Civil Code from 1844 and its rules, especially for the reason of the significance of this New Century codification for the territories of the those days Serbia and the Kingdom of Serbs, Croats and Slovenians and the direct influence of the Roman rules on the legal determination of the loan issue. It is also important to analyze the fault, that is, the responsibility of the contractor in Srbian Criminal code form 1929 and contemorary Criminal code. The analysis was carried out in order to confirm the position that today's loan contract finds its basis in Roman legal rules and the necessity of protecting the contractor.

RESULTS

Throughout each historical stage, we notice the existence of loan contract. It is concluded that its existence in society, at least in the context of segmented forms, is more than visible. The necessity of normative regulation of the loan is confirmed by the need for the existence of legal rules and legal norms of the past and present, which confirms the goal of this paper. The development of society and civilization, inclusion in the then valid rules indicate indisputable importance not only in the legal and economic context as a social phenomenon, which again illustrates the goal of the work. The result is indisputable – it is the second most important contract (right after the sales contract) in every civilized society.

LOAN CONTRACT BEFORE THE SERBIAN CIVIL CODE FROM 1844.

Perhaps one of the most interesting parts of the article is precisely the fact that this segment analyzes the oldest legal rules dedicated to the loan contract and its historical and evolutionary path as well as its roots. The oldest loan segments are found in clan societies, that is, in common pastures in a situation when someone lacked suitable tools for work as things for personal use. In this case, we cannot speak of a legal regulation, but of a customary right within the tribe for the purpose of survival, to lend someone a specific tool for work (this can also refer to hunting weapons). We find the oldest written traces related to the loan in the first formed state in history: Eastern despotism and ancient states that mark the old century and its law.

Let's go sequentially - the first eastern despotism in which we find the first traces of loan contract is Egypt. This despotism left us no written evidence from Egyptian law, but non-legal sources such as Herodotus' History confirm its law presence of that time (Nikolic, 2011). Characteristics of than Egyptian law of obligations were: slow development, strict formalism and orality, so we can come to the conclusion that the loan contract was an oral deal accompanied by religious rituals (Atanasovska Cvetkovic, 2023). Mesopotamia, on the other hand, leaves written traces of legal regulations for today's civilization. The most significant, the Code of Hammurabi, written in cuneiform script in the Akkadian language, found on Iranian soil (Kandic, 1988), contains norms specifically dedicated to the loan. Those articles are tenth in number: 48-52. The key legal wordings that indicate a loan are: if someone owes a debt with interest – Art. 48; if someone borrows money from the merchant and reaps the merchant's harvest prepared for grain or sesame – Art. 49; ... the money will be returned to the merchant with interest – Art. 50; ...for the value of the money and interest received from the merchant... – Art. 51; ... the contract does not become void – Art. 52. There was also Article 88 from the same code that specifically referred to loans with interest (Apasiev, 2017).

The norm of the loan set in this way also dictates compensation for the used money (silver) - the rule of interest, i.e. interest, is imposed. The payment of interest was also required, but it could be paid with any good (grain or sesame), and the Code of Hammurabi limited the interest rate to 33.3% for a grain loan and 20% for a cash loan (Atanasovska, 2015). From here, it is indisputable that Babylon was no stranger to bankers (damkars), loans and interest and those loans were often used. One gets the impression that the debtor has been protected since oldest times, and the legislator (law giver) limited interest rates and unquestionably tried to eradicate usury. The regulations, several in number, confirm this position, and we single out article 48. " If any one owe a debt for a loan, and a storm prostrates the grain, or the harvest fail, or the grain does not grow for lack of water; in that year he need not give his creditor any grain, he washes his debt-tablet in water and pays no rent for this year " (Nikolić, Đorđevic, 2002).

On European soil, we pay our attention to Sparta and Athens, two ancient states, completely different states in their intensity and organization, but also in the sociological characteristics of the people. It is indisputable that we look at Sparta through the prism of a warrior state, where wars were priority, so the loan necessity, as a contractual relationship, we can state that it did not even exist, considering that the obligations was omitted from the law of the same city-state. However, whether the loan existed or not, in some form, in terms of the loan of weapons used in the war, we can only speculate (Gilbart, 1847).

In Athenian law, we have a completely different situation regarding the loan: it is present in Athenian society with quite often usage. The loan had two forms - an interest-free loan (friendly loan), *eranos*, and a loan with interest, *hreos.* When we talk about a loan with interest (*tokos*), we indicate that the interest rate was not limited as in the age of Hammurabi, but it ranged from 1% per month to 25% on a daily basis, for high risk loans, such as, for example, maritimes loans, but that did not mean that usurious did not exist and also interest was paid on interest. It is indisputable that there were no bankers (trapezites) in the Athenian society at that time (Avramović, 2000).

Grandiose Rome, from a small city state to the most powerful and territorially large empire, was created as a result of great raids and wars of conquest (Jovanović, Atanasovska Cvetković, 2022). Great and powerful Rome, as confirmed by many historians and novelists, left a great legacy to human civilization (Atanasovska Cvetkovic, Jovanovic, 2022). Without a doubt, one of the greatest benefits of today, which was inherited from Rome, is law (Atanasovska Cvetković, 2021) and to a large extent, clearly defined and elaborated legal institutes, although for the ancient Romans defining terms was very unusual act. It is an indisputable fact that the Romans, in their characteristic manner of strongly developed legal awareness and logic (Jovanovic, Atanasovska Cvetkovic, 2022), did not hesitate at all to give their understandings, legal development and legal rules related to the loan contract. The sources we use to confirm the presence of a loan contract are the Law of XII Tables and, of course, the Digests, which are an integral part of Justinian's great codification *Corpus Juris civilis*.

From the earliest times, the loan existed in two forms: a loan in times of need (*mutuum*) and a loan with interest (*fenus*). The first, *mutuum*, was considered interest-free, concluded with a friend, in an informal way, while *fenus* was always concluded in the form of *nexum*. The basis of an interest-free loan is help, solidarity or simply to encounter the needs of a friend or relative. What granted the return of the loan was honor, honesty, good faith (Kurtović, 2015). As the old form of *nexum* left Roman law, *mutuum* first received its protection - *condictio* (procedural means), and then its place as a real contract (a type of contract) known to Roman law. The linguistic coin tremina *mutuum* in the Latin language finds its basis in the two words: mine (*meum*) and yours (*tuum*), so in the figurative sense of those words, mine becomes yours, lies in the meaning of this term (Gai, 3, 90).

Hence, with this contract, things in the debtor's possession were handed over with the right of freely dispose of them. In Roman law, *mutuum* is defined as: a free *strict iuris* contract by which one party (lender, creditor) hands over to another (borrower, debtor) a certain amount of money or other exchangeable things, with the obligation that the borrower returns to the lender an equal amount of things of the same kind and quality (Romac, 1983). The contract is concluded at the moment when the subject of the contract is handed over to the debtor (Berger, 1968). The lender and the borrower, who had both the function of creditor and debtor, had the possibility to contract a loan only with things that could be determined by weight, measure, number. This meant that all replaceable and consumable things such as money, silver, gold, wine, grain were the subject of this significant contract (Gai, 3, 90). The lender from this contractual relationship had one right - the right to demand the return of the loan. The borrower had one obligation - to return things of the same type, quantity and quality within the specified period. This means that one right and one obligation was created for both contracting parties, so the lender could not demand more than what he gave for the loan. A *mutuum* concluded in this way, as a legal transaction, did not give the right to interest, and in order for interest to exist, it was necessary to conclude a special contract (*stipulation usuarum*) (Romac, 1983).

In the Roman era, the interest rate was from 6% to 12%, so that, in the end, Justinian prescribed a regular interest rate of 6% (Atanasovska Cvetkovic, 2023). The effect of the *mutuum* ended at the moment when the object was returned to the lender. If the contractual relationship was not respected, in the hands of the contracting parties were *condictio create creditae pecuniae* (if it was a loan in money) and *condictio cretae rei* (if it was about things given on loan) (Gai, 4, 50 - 51; D.12, 1).

With the development of the Roman state, the development of trade and shipping a special form of loan emerged: maritime loan (*pecunia traiecticia, fenus nauticium*). In case of a maritime loan, taken from Greek maritime customs, with a meaning of an insurance, creditors gave ship owners (ship captains, debtors) a certain amount of money in order to purchase goods and transport due to the lack of security and possible attacks by pirate ships or possible shipwrecks. All the assumed risk belonged to the lender, so it is not in dispute that the high interest rate contract was allowed by a simple pact (D. 22, 2, 7). Based on the risky business, ship captains were not obliged to return the loan and interest if the goods transported by sea perished without fault - simply, the legal business did not even exist (Vladetić, Stanković, 2014).

The entire Roman Empire, its economy, trade, the entire social life, and above all, the period of constant decadence, the appearance of feudal elements, the division of the Empire into the eastern and western (pars Orientis and pars Occidentis) parts and the final the fall of the western part in 476 AD were faced challenges (Boras, Margetić, 1980). The eastern part of the Roman Empire (later known as Byzantium) marked the beginning of the life as a part of the empire territory that continued the life of the Roman legal system – the Roman law, i.e. legal tradition. Even Byzantium was not without turbulent periods, divisions, falls, crises, the rule of different dynasties, but it was the result of the fusion of Hellenistic culture and Christian religion with the Roman state form (Ostrogorski, 2017) with a new capital – New Rome (Nea Romea), Constantinople.

As much as Byzantium had a life of a whole millennium, it ended ingloriously with the terminal fall of Constantinople under the Turks-Ottomans in 1453. It seems that this kind of introduction is more than necessary precisely because Roman law contributes to the creation of Byzantine medieval law, and law developed with the exceptional legislative and codification work of the emperors, and with the contribution of the church. By itself, the question arises: what happened to the loan contract during that period?

The answer is more than obvious – of course it existed in society, but the valid rules now we are searching in the Eclogue (*Ecloga ton nomon*) and Prochiron (*Procherios nomos*), laws passed in the first and second periods of promulgating important laws and codifications for the soil of Byzantium. In the Eclogue (legal compendium adopted during the reign of Leo III of Isauria, 726) Title X is dedicated to the loan contract, so from Article 1 we learn that even then the loan was given on the basis of a verbal contract or a receipt, and the contractual subject was money or silver, but also "value of land or of water", that is, things that can be measured and counted, as it was set back in the Roman era.

The existence of a maritime loan, as well as an ordinary loan, can be observed, as there was no possibility to postpone the repayment of the debt to the debtor (borrower) due to "enemy attack or pirate raid or any other event" and the *vis maior* institute was not applicable. In the same direction, the borrower did not have the right to waive the return (Momčilović, 2018). Interest is not mentioned, but given Justinian's code, it is not unusual to conclude that the code's interest rate rules apply. The lender had the right to admonish the debtor for the obligation to pay the debt, in the presence of witnesses, but if he still did not want to fulfill the obligation after two or three warnings, the lender could proceed with the sale of the pledged items, after assessment by the state authorities, which would everything that was owed to him was settled (Article 2) (Nikolić, 2007). The obligation that belonged to him (the lender) was to keep the object of the pledge and it had to be kept with the same care that he pays to his belongings, but this obligation was not taken into account in situations where an accident was a fact for the destruction of things and that only if the court so decides (Article 1, TitleX, Eclogue). From this, Roman law was further incorporated into the "new law of the Byzantine era". Prochiron or also known as the "City Law", enacted during the Macedonian dynasty, issued between 870 and 879, dedicates Chapter XIV to loans under the title Loans and Security.

By diligent reading, we notice that to a large extent Roman law still lives in this law of Byzantium, which directly affects the legislation of medieval Serbia [Atanasovska Cvetković, 2023, pp. 135]. In accordance with this law, the lender and the borrower may continue to lend or borrow things such as money, gold, movable things that can be measured, counted or weighed. If a person denied that he had signed something with his own hand or that he had received money, then the penalty would be double, but if he confessed then that same penalty would be the payment of costs (Article 12, Chapter XIV) (Freshfield, 1928). As for interest, it was forbidden because it was not in the spirit of the age - it was unworthy of a Christian state and forbidden by divine law. A universal prohibition aimed at all loans, and if someone pays interest after the publication of the act, the interest was considered repayment of the principal debt (Article 14, Chapter XIV) (Freshfield, 1928).

Of course, the third period of Byzantium's legislation is also worth mentioning, from which we single out the Syntagma of Matthias Vlastar, in which both loan and interest are mentioned, where the rule of Roman law is emphasized - interest cannot grow beyond the amount of the principal, anatocism is forbidden, i.e. taking the "interest on interest" was under a prohibition with the threat of deprivation of civil honor to the one who did it. This confirms the rule based on Roman law. In the segmented part, Justinian's rules on the interest rate can be determined, which further shows that Roman law still lives on (Serbian Academy of Sciences and Arts, 2013).

On the other side of Europe, after the collapse of the Western Roman Empire, small states of the feudal type sprung up on - the first medieval states with their own characteristics: strong rulers, binding of peasants to the land and strong influence of the church. In order to determine whether there is even a loan contract in the western part of the former Roman Empire, as a suitable example, and for the purpose of this article, we accept the Salian Law that was valid for the Salian Franks, part of the tribe of the Franks, who lived in the Frankish state. Barbarian laws (such as the Salian Law) and collections of Roman law, which were valid for members of the Frankish territory with Gallo-Roman origins, also met in that territory.

And in this Varavar law there are provisions devoted to loans (titulus LII) – On things given on loan or in service. Despite the fact that it was a collection of common law, the loan remains universally present in the society and legal system of that time, and things were lent with the obligation to return. If the borrower did not have the intention to return them (by measure, number, weight), then he had to answer in front of the court with a suitable summons made in front of witnesses and within a certain period, that is, seven nights plus another sunset. For this period, the debt grew by 120 dinars, or 3 solidi. And again, if the repayment of the debt was problematic, another deadline was given again. In the end, the debtor had to pay the creditor 600 dinars, or 15 solids. In this case, we see that there is some form of today's legal interest, and thus, to a large extent, Roman law introduced a legal customary character, which meant the continued life of the loan contract (Kandić, 1988).

LOAN CONTRACT IN THE SERBIAN CIVIL CODE FROM 1844.

The new century brings new understandings of human rights, and civilization was presented with codifications - a comprehensive way of systematizing concrete legal matter on the entire territory of the state. Pioneers in the codification of the entire civil law are the French (Code civile), and after them, on European soil, Austria, the Netherlands, Germany, and Switzerland promulgate their codifications. Of course, Serbia too. After the historical vicissitudes and turmoil regarding the adoption of the Serbian codification, the Serbian Civil Code (hereinafter: SCC) saw the light of day in 1844. This code is important to us, not only from a legal - historical aspect, but also from the aspect of modern law - in the absence of suitable legal solutions, we still use its legal norm today (for example, a gift contract), which confirms that it is still in force – there is no act abolishing SCC.

Chapter XXI and articles 593 – 608 are of particular interest – they are legal solutions related to loan contracts. The first impression is that the reception of Roman law exists in the part of defining the contract itself, the subject of the contract and the repayment of the loan. The Roman *mutuum* is still alive and now a loan is such a contract "by which consumable things are given to whom, so that he is free to use, spend and dispose of them according to his will, but in due time he is obliged to return things of the same kind and value" [art. 593, SCC] Even in the era of the Serbs, Croats and Slovenians, it was necessary that the thing (subject of the contract) can be consumable, but also the money still are the subject in contract [Art. 954], with the meaning of the possibility to return the same – same number and gender. The Roman rule still remains – the thing given on the basis of a loan contract is transferred with the right to either spend it or dispose of it in accordance with needs or wishes.

The division of the loan into interest-bearing and interest-free (loan in distress, friendly loan) still remains current [Art. 594 SCC], but this time infiltrated in society and in the legal contracting of the then Kingdom of SCS, with the possibility for the contracting parties to determine whether the loan contract will be concluded in writing or orally [Art. 595, SCC]. SCC distinguishes between secured loans (pledge and surety) and unsecured loans [Art. 594 SCC]. It is an interesting fact that for a loan given in money, the same repayment, the same type and the same amount are required. The Roman rules are also reflected in the interest rate – Justinian's 6% (if the interest is contracted, but not the rate) and 12% as the maximum interest rate [Art. 601, 601a, 602 SCC]. Anatocism was forbidden [Art. 603, 604a, SCC]. From here, the Roman rights and obligations belonging to the contracting parties are confirmed - to hand over the contracting subject in ownership and to return the same (regardless of whether it is precious materials, money or movable things) after the expiration of the time. If the contract stipulates that there is no deadline for returning the subject given by the loan, in such a case the legislator (law giver) stipulates a rule that the lender can demand the return at any time [Art. 606, SCC]. From here, there is an inevitable statement about the reception of Roman law and its rules in the SGZ, no matter how much the prevailing opinion is that our codification from that period of history is just a simple copy (translation), i.e. a shortened version of the Austrian Civil Code (Avramović, 2014).

LOAN AGREEMENT AFTER THE SERBIAN CIVIL CODE

The modern loan contract is regulated by the legal provisions of the positive law of the Republic of Serbia, more specifically by the Law on Obligations ("Official Gazette of the SFRY", no. 29/78, 39/85, 45/89 - decision of the Court of Justice and 57/89, "Official list SRJ", No. 31/93, "Official Gazette of SCG", No. 1/2003 – Constitutional Charter and "Official Gazette of RS", No. 18/2020). Based on the definition, the loan contract is defined by the legal provision as follows: "The loan contract obliges the lender to hand over to the borrower a certain amount of money or some other exchangeable things, and the borrower undertakes to return the same amount of money to him after a certain time, that is, the same quantity of things of the same kind and of the same quality" [Article 557, Law on Obligations], to a large extent confirms the position that the foundation of the modern contract is found in the Roman *mutuum*. Therefore, even today, the rules of Roman law remain in force: quantity, type and quality (Roman genus, measure, number, weight), money, things of a fungible nature, the deadline for return. Henceforth, a valid contract is any loan contract where the contracting parties have agreed on the essential elements.

Considering that even today there is an encumbrance loan and a charitable loan, there are the following variants of it: if the interest is agreed upon, then it is a burdensome loan contract, and if it is absent from the contractual relationship, then the loan agreement has a charitable character (Ognjanović, 2010). Another confirmation of the reception of the Roman rules - interest and interest or interest-free loan agreement. The modern Law on Obligations and Article 558 is proof of this attitude. Time period of returning the contractual subject do not belong to the essential elements, only if the contracting parties do not specify a specific deadline in the contract – the subject will be handed over and the borrower to return it. As far as rights and obligations are concerned, the lender's obligations are reduced to handing over a certain thing at the agreed time, i.e. when requested by the borrower in situations where the deadline for handing over is not predetermined [Art. 559, para. 1, Law on Obligations]. As far as the borrower's rights are concerned, he can demand that certain things that belong to him be handed over to him with the risk of statute of limitations - the right expires in three months from the arrival of the lender in arrears [Art. 559, para. 2, Law on Obligations]. It can be said that even today, in this segment, there are overlaps with the rules from the Roman era.

GUILT OF CONTRACTING PARTIES AND USURY BEFORE THE CRIMINAL CODE OF 1929.

The legal issue of the loan contract of permanent importance, entails the need for legal regulation of contractual relationship between the contracting parties and their protection due to non-fulfillment of obligations. For this reason, it is necessary to analyze the solutions from the past and look at the evolution of these rules with the aim of understanding the meaning they have today. Since there have been contracts, and that means since ancient times, there have been rules for violating contractual discipline, which are being transformed, expanded and still exist today. Even in the oldest period of Roman law, the debtor/borrower was liable for non-fulfillment or delay in repaying the loan. In that period, guilt was not important as a responsibility for breach of contract because the responsibility lay in the principle that the debtor is bound by the words he uttered when concluding the contract. In classical Roman law, this responsibility grows into subjective responsibility. Only the General Civil Code of Austria from 1811 foresees compensation for damages in case of liability for non-fulfillment of contractual obligations. Historically, the debtor was liable regardless of the existence or non-existence of fault for non-fulfillment of the contract up to fault as a presumption of contractual obligation.

In order for the legal transaction to constitute a loan contract, it is essential that the lender, which is not a bank, does not engage in money lending as its main activity, because otherwise such an agreement would have the legal nature of a loan contract. The loan contract carries with it a possible double responsibility – of the lender: contracting a disproportionate property benefit or responsibility for usurpation, and the borrower's responsibility for non-fulfillment of obligations or late payment. It is always in the interest of the borrower to borrow money for the purpose of achieving the goal and the planned business. Does the lender have an interest or just a desire to help the borrower? In contrast to Code of Hammurabi, which in Article 88 foresees a loan with interest, today interest is permitted to authorized institutions (banks) and not to natural persons. The lender's interest is often the realization of an individual's profit, so the loan contract itself often "turns into a usurious contract", and usurious turns into a criminal offense recognized by all legislations. The intention to eradicate usurious dates back to the Babylonian era.

Although Athens has legal rules about *eranos*, *hreos* and *tokos*, usurious is not absent from the practice of that era. The same was partially suppressed by the provision of maritime loan in Roman law and Byzantium. Unlike the Salian Law, the legal rules of Prochiron, the law of Byzantium, prohibited interest on loans.

Usurious, a criminal offense whose fate has changed throughout history, given that it was punishable in the Middle Ages under the influence of the church, in free-spirited epochs it was sought to be defined as a criminal offense. This kind of request was brought under the mixing of the concept of sin and immoral act under the concept of criminal act. Supporters of strictly formal jurisprudence, in accordance with the Roman formula "*coactus voluit*", believed that the criminal law should not contain norms on punishment due to the non-fulfillment of a contract concluded in any difficult situation for the reason that the conclusion of the contract is voluntary, and that therefore the contract is a usurious proper contract. Legislators, law givers of the new era took the position that embezzlement must be punishable and that the state must not tolerate immoral contracts. The voluntariness invoked by the supporters of formal jurisprudence according to the attitudes of the new age is not justified due to its appearance due to the impossibility of a free choice between green conditions and severe suffering for oneself or one's family

The issue of punishment in the new age arises in the case of conscious exploitation of underdevelopment or economic weakness and necessity and in the case of taking too high interest. The position is taken that the justified basis for punishing greening is excessive self-interest.

THE CRIMINAL CODE OF THE KINGDOM OF SERBS, CROATS AND SLOVENIANS FROM 1929.

The Criminal Code of the Kingdom of Serbs, Croats and Slovenians (hereinafter CC KSCS) from 1929 in the section Usury provides for: fines and loss of honor rights for contracting excessive property benefits using frivolity, insufficient understanding or difficult financial situation of the other contractor (Art. 357 CC KSCS) and punishing the contractor who maliciously damaged or jeopardized the credit of another with strict imprisonment and a fine (Art. 361 CC KSCS). Within the section of the code: damage to other people's things and property interest in article 378 and 379, the responsibility of public lenders is provided.

The crime of usury consists in the premeditated exploitation of the difficult financial situation of the other contractor, connected with the conclusion of the contract, which brings the perpetrator or another person an excessive financial benefit. With this CC KSCS, exploiting a difficult financial situation is equated with exploiting a difficult financial situation or the contractor's delusion about the importance, essence and consequences of the concluded contract. Excessive property benefit is decided by the court in each specific case. The definition of usury in Article 357 includes, in addition to the loan contract, the most common usury-related contracts, other contracts of a property nature are also included. By anticipating insufficient understanding of the nature and consequences of concluding a contract, both adults and minors are protected.

The existence of awareness of the condition of the contractor and the acquisition by transfer of any claim, which by its very nature is usurious, leads to responsibility for both subjective and objective moments of usury. In practice, moneylenders often even seemingly transfer the claim to another person, and the legislator, law giver in Article 358 sanctions this criminal offense with the same penalty as for usury and also provides for the sanctioning of an attempted offense. In the next article, the law giver lists two qualified types of usury: the intention to cause economic ruin to the other contractor and the performance of an act in the form of a trade.

Unlike the CC KSCS from 1929, which uses the term usury, the current Criminal Code of the Republic of Serbia uses the term usury. The existing legal definition of the criminal offense of embezzlement, a property crime (Jovanović, 2022) foresees a prison sentence and a fine for the one who, for lending money or other consumable items to someone, receives or promises a disproportionate material benefit for himself or another, taking advantage of the poor financial situation, difficult circumstances, necessity, frivolity or lack of judgment of the injured party [Art. 217 CC RS]. Comparing the existing legal solution with the CC KSCS, we see almost identical (with additions in the new solution) these two regulations in determining usury (usury). The analysis of the loan contract and usurious in the period before the adoption of CC KSCS confirms the basics of usurious in the legal rules of that time.

CONCLUSION

Even today, this contract has the qualification of the most used contract in trade, economy, entrepreneurship and regular legal life. The legal rules presented in this way, from ancient times to modern times, indicate and confirm its importance in every period of the historical development of civilization. In a large segment, the legal rules were set in the Roman period on the loan contract and correspond and coincide with the provisions included in the SCC and CC and with the legal solutions of the positive law of the Republic of Serbia. The only thing that changes and depends from period to period of history is interest and the interest rate, and in one period of Byzantine law, the interest rate did not even exist, because it was in total contrast with the understanding of Christian character and the determination of usury as an illegal act.

Due to its complexity and importance, the issue of the loan contract is interdisciplinary, it is regulated by the legal rules of the Civil Code, the Law on Obligations and the Criminal Code, which are based on Roman law. What is perhaps more than certain - the loan contract is necessary in everyday business, and it is expected to retain its primacy in the future.

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