

The Supreme Court of Lithuania: in case of early termination of the loan agreement, the interest-profit shall not be calculated – instead, civil liability shall apply

In national civil law, interest is understood in two ways: as a fee for lending money (interest-profit), and as compensation for the minimum loss of a creditor for exceeding the term of a pecuniary obligation (compensatory interest).



Pursuant to Article 6.261 of the Civil code of the Republic of Lithuania, all creditors to whom monetary obligations have not been fulfilled on time and who have not established other consequences of such non-fulfilment in agreements with debtors have the right to receive compensatory interest established by law. Compensatory interest, in this case, is considered to be the minimum loss suffered by the creditor as a result of the overdue debt.

Interest, as a fee for lending money, also known in the case law as the interest-profit, is fundamentally different from compensatory interest paid for default. The obligation to pay interest-profit (in other words, the fee for lending money) is the main condition defining the obligation to borrow. The Supreme Court of Lithuania clarified that a creditor's claim of payment of interest on a monetary loan within the term specified in the contract is to be treated not as a claim for compensation for losses incurred due to the use of the creditor's money, but as a claim to fulfil an obligation in kind, i.e. to pay the fee established by law or the agreement of the parties for the use of the loan amount.

Previously, the Supreme Court of Lithuania clarified that the debtor's obligation to pay interest-profit remains even after the termination of the loan agreement by the creditor unless otherwise provided in the loan agreement.

However, on 25 May 2020 the Supreme Court of Lithuania (the extended panel of seven judges) has formulated the following rules concerning interest-profit upon early termination of the agreement:

- i. Upon early termination of the loan agreement, the performance of the main obligations under the agreement in kind ceases, why the interest-profit to the debtor under this agreement can no longer be calculated

ii. Upon early termination of the loan (credit) agreement, the creditor acquires the right to claim civil liability from the debtor: to demand compensatory interest in the amount specified in the agreement or by law until full repayment of the loan, as well as to demand (profit) interest under the terminated loan (credit) agreement; as a loss of income for the creditor;

iii. Under the general rules on civil liability, the creditor may be awarded the higher of the amounts claimed by claiming compensatory interest (forfeiture) and loss of income (loss).



LAIMONAS MARKAUSKAS

ATTORNEY AT LAW,
PARTNER

+370 5 250 6155

LAIMONAS.MARKAUSKAS@NJORD.LT