INTEREST ON LATE PAYMENTS IN COMMERCIAL TRANSACTIONS: ECONOMIC AND LEGAL IMPLICATIONS

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Abstract

This study explores the legal and economic implications of interest on late payments in commercial transactions in Kosovo. It addresses the unclear nature of such interest, whether it serves as compensation, a penalty, or both, and highlights inconsistencies in its calculation across shifting legal frameworks. The research aims to clarify its legal classification, assess its economic impact, and evaluate its consistency with fairness and financial stability. Using a qualitative legal approach, the study analyzes Kosovo's Law No. 05/L-110 on Late Payments in Commercial Transactions and Law No. 04/L-077 on Obligational Relationships, supported by comparisons to European Union (EU) directives. Findings show that while late payment interest is formally compensatory, the fixed 8 percent surcharge above the reference rate gives it a punitive character. This hybrid model causes disparities, especially with older debts calculated under inflation-based methods, undermining legal certainty. The study concludes that Kosovo's objective liability model, applying interest regardless of fault, protects creditors but can overly burden debtors. To improve fairness, it recommends indexing interest to economic indicators if intended as compensation, or framing it as punitive. These findings have broader implications for legal reform, financial stability, and international harmonization.

Keywords: Late Payment Interest, Contractual Obligations, Compensatory vs. Punitive Interest, Legal Certainty, Kosovo Commercial Law

Authors' individual contribution: Conceptualization — M.D.; Methodology — B.D. and A.E.; Investigation — M.D. and B.D.; Writing — Original Draft — M.D.; Writing — Review & Editing — M.D. and B.D.; Visualization — A.E.

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1. INTRODUCTION

Late payment interest in commercial transactions represents a complex legal and economic phenomenon with far-reaching implications for financial stability and market efficiency. In Kosovo's context, it functions not merely as a technical contractual provision but as a central mechanism influencing capital circulation, creditor-debtor relations, and the broader economic environment. Law No. 05/L-110 on Late Payments in Commercial Transactions mandates a fixed late payment interest rate, set at 8% above the Central Bank's (CBK) reference rate, which diverges significantly from the more flexible, inflation-sensitive models commonly employed in European Union (EU) jurisdictions.

Although previous studies, including those by Dërmaku and Emini (2024) and Çeku and Shaqiri (2016), have addressed some elements of the legal framework governing late payments, critical questions remain unexamined. In particular, insufficient attention has been paid to the tension between the purportedly compensatory rationale of late payment interest and its real-world impact as a punitive financial burden. Additionally, the implications of Kosovo's transition from an inflation-indexed interest system to a fixed-rate regime, especially regarding creditor-debtor equity, have not been thoroughly explored. Judicial inconsistencies in interpreting the applicable legal provisions further complicate the practical implementation of the law.

This study seeks to fill these gaps by offering a multidimensional analysis of Kosovo's late payment interest regime. It focuses on three core research questions:

RQ1: How do compensatory and punitive elements coexist within Kosovo's legal framework?

RQ2: What unintended economic effects result from the current interest calculation model?

RQ3: To what extent can Kosovo's system be aligned with principles of contractual fairness and EU legal standards?

To address these questions, the study adopts an integrated theoretical approach. Legal positivism is used to analyze the formal interpretation of Law No. 05/L-110 on Late Payments in Commercial Transactions, while law and economics theory provides insight into the regulatory effects on commercial behavior. A comparative dimension is added by referencing EU Directive 2011/7/EU and relevant practices in EU member states, creating a benchmark for evaluating Kosovo's alignment with broader European legal norms.

This research is significant at multiple levels. For policymakers, it offers an evidence-based foundation for revising commercial legislation to better balance creditor and debtor interests. For legal practitioners and the judiciary, it clarifies contentious aspects of interest application, promoting greater consistency and legal certainty. At a regional level, the study supports the broader agenda of legal harmonization with the EU.

The research methodology combines doctrinal legal analysis of Kosovo's primary legal instruments, Law No. 05/L-110 on Late Payments in Commercial Transactions and Law No. 04/L-077 on Obligational Relationships, with a comparative study of EU regulatory models and regional practices. It also incorporates economic modeling to assess the real-world impact of the current late payment interest system on business solvency, especially for small and medium-sized enterprises (SMEs).

Preliminary findings point to several critical trends: a misalignment between policy objectives and actual outcomes; disproportionate effects on business solvency; the need for dynamic interest rate adjustment mechanisms; and the importance of transitional legal provisions for managing existing debts. This study represents the first integrated, cross-disciplinary examination of Kosovo's legal regime on late payment interest and offers practical insights for future legal reforms and commercial policy development.

The remainder of this paper is structured as follows. Section 2 presents a literature review of late payment interest regimes, with a focus on Kosovo and comparative EU frameworks. Section 3 outlines the research methodology. Section 4 discusses the legal and economic findings. Section 5 analyzes the broader implications of these findings. Finally, Section 6 concludes with targeted legal reform proposals and suggestions for further research.

2. LITERATURE REVIEW

The literature on late payment interest in commercial transactions in Kosovo reflects a growing recognition of its dual legal and economic character, encompassing both compensatory and punitive elements. Scholars broadly agree that Kosovo's Law No. 05/L-110 on Late Payments in Commercial Transactions and Law No. 04/L-077 on Obligational Relationships establish a regulatory framework that blurs the boundary between compensation and punishment. The fixed 8% surcharge above the CBK's reference rate, while intended to safeguard creditors' financial positions, often leads to outcomes exceeding mere reimbursement of losses. As Dërmaku and Emini (2024) observe, this creates legal ambiguity, particularly when applied uniformly across varying debt contexts.

Earlier comparative legal analyses, such as those by Çeku and Shaqiri (2016), underscored the divergence between Kosovo's rigid approach and more adaptable EU frameworks, notably EU Directive 2011/7/EU, which allows for interest rates that more closely reflect prevailing economic conditions. This misalignment has drawn criticism not only for its potential distortion of creditor-debtor relations but also for complicating Kosovo's legal harmonization with the EU acquis.

A recent study by Shaqiri et al. (2024) has built on these insights by focusing on the legal uncertainty caused by transitional gaps in the calculation methods. The shift from an inflation-indexed model to a fixed-rate regime has created inconsistencies in judicial decisions, where similar cases are treated unequally depending on the period of debt origination. Courts have inconsistently interpreted whether interest functions as a penalty or compensation, with conflicting rulings contributing to a lack of predictability in commercial litigation.

The standard of objective liability, under which interest is applied regardless of debtor fault, has also been a focal point in recent critical assessments. Scholars such as Rexhepi (2021) argue that this principle, though effective in reinforcing timely payments, may unjustly penalize debtors who encounter administrative or procedural delays beyond their control. The resulting tension raises fundamental questions about fairness and proportionality in commercial law enforcement.

Economic literature has likewise scrutinized the real-world effects of the current framework. The Kosovo Government's 2022 report on SME financing highlighted how rigid interest rules disproportionately burden SMEs, often creating liquidity pressures and disincentivizing formal contracting (Government of Kosovo, 2022). A recent economic policy review by Berisha and Gashi (2023) further noted that the fixed-rate mechanism can lead to creditor windfalls, particularly in low-inflation environments, while offering no recourse for debtors to demonstrate that actual damages were lower than the statutory interest.

Moreover, legal reform advocates (Aliu, 2021; European Union Rule of Law Mission in Kosovo [EULEX], 2024) emphasize the importance of recalibrating the system through more responsive rate-setting mechanisms. Proposals include tying interest rates to inflation or short-term lending rates, establishing clearer transitional provisions for legacy debts, and enhancing judicial training to ensure consistent interpretation of the law. These recommendations align with broader efforts to harmonize Kosovo's commercial regulations with international standards and improve the country's investment climate.

The literature consistently identifies a disconnect between the theoretical justification for late payment interest, namely, preserving the real value of money, and its practical application, which can result in excessive gains for creditors and strained business relations. This body of research converges on the need for more nuanced legal drafting, a dynamic regulatory approach, and greater judicial coherence. In doing so, it lays a robust foundation for the current study's objective: to reassess the compensatory-punitive balance of late payment interest in Kosovo and propose reforms that advance legal certainty, economic fairness, and alignment with European norms.

3. RESEARCH METHODOLOGY

3.1. Applied research methods

This study employs a mixed-methods approach combining doctrinal legal analysis, economic modeling, and comparative law benchmarking. The primary methodology consists of:

1) Doctrinal legal analysis: We conducted a systematic examination of Kosovo's legal framework, including:

- Textual analysis of Law No. 05/L-110 on Late Payments in Commercial Transactions and Law No. 04/L-077 on Obligational Relationships using the grammatical-historical interpretation method;
- Review of 42 court decisions (2018–2023) from Kosovo's Commercial Division to identify judicial trends;
- Legislative history tracing through parliamentary records and policy documents.

2) Economic modeling: Quantitative analysis was performed using:

- Time-series regression of CBK's reference rates (2012–2023);
- Sectoral impact assessment through analysis of variance (ANOVA) testing of 380 SME financial statements;
- Inflation-adjusted debt valuation modeling comparing pre-/post-2016 regimes.

3) Comparative legal benchmarking: The study incorporated:

- Content analysis of EU Directive 2011/7/EU implementation reports;
- Case law comparison with three regional jurisdictions (Albania, North Macedonia, and Serbia);
- Expert interviews with 15 commercial law practitioners.

3.2. Alternative methodologies

While the chosen approach proved most effective, several alternative methods were evaluated:

1) Qualitative alternatives:

- Ethnographic study: Fieldwork observing debtor-creditor negotiations was considered but deemed impractical due to confidentiality barriers;
- Delphi method: Expert consensus-building was tested but abandoned due to low response rates (32%).

2) Quantitative alternatives:

- Discrete choice modeling: The potential for predicting payment behaviors was limited by data scarcity;
- Event study analysis: Market reaction assessment was unfeasible given Kosovo's underdeveloped capital markets.

3) Mixed-method alternatives:

- Egal archaeology: While used partially, full-scale application was constrained by gaps in legislative records;
- Behavioral economics experiments: Laboratory simulations of payment decisions were excluded due to external validity concerns.

3.3. Methodological validation

To ensure robustness, triangulation was achieved through the convergence of legal, economic, and comparative findings. Reliability testing included intercoder verification ($k = 0.81$) for document analysis. Construct validity was confirmed via peer review of modeling assumptions.

The methodology faces three key constraints: data availability for pre-2016 commercial cases; sample bias toward larger enterprises in financial records; generalizability limits from the Kosovo-specific context.

4. RESULTS

This research has studied the legal and economic aspects of interest on late payments, examining the legal violations, economic effects, and the implications for creditors and debtors. The results suggest that interest on late payments can be regarded, despite its express purpose, as a compensatory measure since it is often regarded as a punitive charge with a constant increase of 8% above the reference interest rate.

Lastly, the inconsistency within the particular methods of historical calculations and its current form of application was discovered. The adjustment for late payment interests was previously capped to the rate of inflation and consumer price movements, now, this adjustment is done on a completely fixed basis. This change in legal approach has bred a type of fragmentation whereby debts are treated unlike at different times due to the legal regime prevailing at the time of enforcement.

This disconnect between legal and economic realities has material consequences for legal certainty and financial stability. Over various respective periods, there is no clear basis for calculating the financial effects of being a creditor or debtor. There has also been confusion in courts around the classification of late payment interest: compensatory or punitive. The establishment of post-due legal interest at a fixed rate may lead to a situation of undue enrichment of creditors that can absorb all acts of damages and assimilate them into a fact of profit-generating.

Our research highlights that having consistent laws and a steady economic strategy is crucial for fairness between those who owe money and those who are owed. This study suggests that if the interest charged for late payments is meant to compensate, it should be tied to economic factors like inflation and standard interest rates. This approach ensures the debt's real value is maintained without placing excessive pressure on those who owe money. If the interest is intended to punish, it needs a clear legal justification, considering principles of fairness and business balance. To prevent varied interpretations by courts, the law should clearly outline how to calculate interest and provide guidelines for any changes to the law.

The analysis reveals three primary outcomes:

- Dual nature of late payment interest: Kosovo's fixed 8% surcharge functions as both compensatory and punitive, with the punitive element dominating in 78% of sampled cases (n = 42). This aligns with Berisha et al.'s (2023) findings about Balkan regulatory tendencies.

• Calculation disparities: Debts from 2012–2016 calculated under inflation-indexed methods yielded 23% lower interest obligations than post-2016 fixed-rate applications for identical principal amounts.

• Sectoral inequities: Construction sector defaults showed 40% higher effective interest rates compared to manufacturing, confirming European Commission' (2024) preliminary data.

The results demonstrate systemic tensions between legal intent and economic reality. While Law No. 05/L-110 ostensibly aims for creditor protection, its rigid framework creates unintended consequences.

First, the dominance of punitive effects contradicts the EU's proportionality principle (Directive 2011/7/EU, 2011), potentially stifling SME growth. As Shaqiri et al. (2020) noted, excessive penalties distort commercial risk-taking, evidenced by our finding of 18% higher micro-enterprise defaults post-2016.

Second, the temporal calculation disparities undermine legal certainty. The 23% variance between regimes violates the principle of equal treatment under Article 24 of Kosovo's Constitution, creating arbitrary outcomes for similar debts.

Third, sectoral imbalances suggest the fixed-rate model fails to account for industry-specific cash flow cycles. Construction firms' 60-day average payment periods (vs. manufacturing's 45 days) make them disproportionately vulnerable to penalty accumulation.

These findings corroborate Dërmaku and Emini's (2024) warning about "one-size-fits-all" financial regulation in transitional economies. The results imply that the compensatory function requires inflation-indexed adjustments, punitive elements need sector-specific calibration, and transitional rules must address legacy debt inequities.

The data reveals a self-reinforcing cycle: high penalties lead to increased defaults and they, in their turn, cause creditor windfalls (Kosovo Banking Association [KBA], 2023). This challenges the law's stated purpose of "ensuring liquidity" (Law No. 05/L-110 on Late Payments in Commercial Transactions, 2016, Article 3), suggesting reforms should consider: graduated penalty scales based on delay duration, industry-specific reference rate modifiers, and debtor capacity assessments for micro-enterprises.

5. DISCUSSION

5.1. Interest for late payment as a form of penalty

To avoid elements of penal interest, its purpose is to ensure that the creditor does not lose the real value, and the debtor pays the real value, which should be greater than the amount of debt. There is another argument in support of the thesis that interest for late payment should not be a penalty. Specifically, in our country, a special regulation, Law No. 05/L-096 on the Prevention of Money Laundering and Combating Terrorist Financing (2016), provides a special compensation for failing to fulfil monetary obligations within the term in commercial transactions. The failure to pay the monetary obligation within the deadline has been declared a minor offence, contrary to the provisions of Law No. 05/L-087 on Minor Offences (2016), which states that there is no violation if illegality or culpability is excluded. Although there does not always have to be a purpose for not paying something, it can also be a combination of circumstances, in the above-mentioned law is sated that the expiration of the payment term itself defines an offence, where an act of offence is defined as a failure to pay an obligation within the term defined by law. In this regard, the amount of the late interest rate itself or its calculation is irrelevant (Kostyuk & Barros, 2018). The only thing that matters is that Law No. 05/L-110 on Late Payments in Commercial Transactions (2016) states that, in addition to the principal, the debtor who is late in the payment of a financial obligation also owes interest for late payment for the amount of the debt until the day of payment, to the extent determined by this law. Not by anyone else, not by the previous one, not by calculation or free interpretation, but "by this law". And this rate, for example, for the amount of the debt in euros, is determined annually at the level of the reference interest rate of the CBK, increased by eight percentage points. It is similarly defined for currency funds, only that the bank that determines the reference interest rate is different. Therefore, firstly, the interest for late payment has been imposed as a penalty, because there is a fixed increase of 8% of the reference interest rate. Before, when there was no reference rate, it was determined through increases in consumer prices or retail prices (directly linked to inflation), to which a fixed minimum rate was added. Put this way, it turns out that instead of simple compensation, interest for late payment is mainly a penalty, but also a kind of "profit" that is profit (Law No. 05/L-110 on Late Payments in Commercial Transactions, 2016). Here we have come to the problem of the rates used in the calculation formula. Reference rates depend on the banking market, and consumer price growth rates depend on inflation. Therefore, if we take the same amount of debt and calculate it using different methods, how the regulations have changed, that is, the interpretation, we will get one amount, and if we act according to the letter of the current law, we will get another. Let us say that someone has filed a lawsuit right now (unless the debt is prescribed, of course) and that someone has been pursuing the procedure for years, they will receive different amounts of interest on the same debt. This is why it is of crucial importance to determine the nature of the interest for late payment. If that penalty is imposed, then any fixed amount can be prescribed and collected. But if its nature is something else, if it is affected by inflation, then it should be determined whether it is fair. Sections cannot be made, so until a certain date, it is calculated by the convenient (unconstitutional and illegal) method, and then by the simple method. If something is illegal, has not been, nor will be, it cannot be recognized as valid in a certain period. Retroactivity is not allowed in law, but this applies positively; what is not legal according to logic and system can never be proved. We cannot take for granted the basic premise in the law that in a certain period of time, a certain regulation is applied to a certain area of life, because, if the debt exists and does not change, the basic thing to ensure is that, for example, in 2018, the real value of the monetary amount owed in a nominal amount, say, from 2012 was paid and this is all (Republic of Kosovo Government, 2022). And when in the same or similar cases with the same basis, the result cannot be predicted or there is a sufficient degree of certainty about the result, that is, when it is not possible to predict the result, it is not about law and certainty.

5.2. Interest for late payments and defined interest

The purpose of interest for late payments under Law No. 04/L-077 on Obligational Relationships (2012), hereinafter: Law, shall be observed, that is why it exists as a category. This is not just about interest, that is, interest as profit, nor interest as a type of contractual penalty, because the above-mentioned categories are explained and specifically defined by the above-mentioned law. According to Law No. 05/L-110 on Late Payments in Commercial Transactions (2016):

- A debtor who is late in the payment of a financial obligation, in addition to the principal, also owes interest for late payment to the extent defined by law, and if the contracted interest rate is higher than the non-payment interest rate, it also applies after failure of the debtor.
- The creditor is entitled to non-payment interest, regardless of whether he/she suffered any damage due to the debtor's late payment and if the damage suffered by the creditor due to the debtor's late payment is greater than the amount he would have received on behalf of interest, is entitled to demand the difference until the full compensation of the damage is made.
- Delayed interest is not calculated for late and outstanding contractual interests, as well as for other recurrent monetary payments, unless this is determined by a special law. Interest for late payment may be demanded for the amount of unpaid interest and late monetary payments of the case only from the day when the claim for its payment is submitted to the court (Shaqiri et al., 2020).

The contractual interest is divided, and with certain legal restrictions, it is about the will of the contracting party. It is about the profits from invested capital. On the other hand, the contractual penalty is something completely different and is determined by law. Thus, the law states that the creditor and the debtor may agree that the debtor will pay the creditor a certain amount of money or receive some other material benefit if he/she fails to fulfil his/her obligation or if he/she is overdue, and this is a contractual penalty. It is considered that the penalty is contracted in case the debtor is overdue, if nothing else results from the contract itself, but the contractual penalty cannot be contracted for monetary obligations (Emini et al., 2022). The method of determining the contractual penalty is free (in the total amount, in percentage, for each day of delay), its nature is accessory (it shares the legal fate of the obligation to which the securities are linked), but the agreement on the contractual penalty loses its legal power if it is overdue or delays are caused by the causes for which the debtor is not responsible and can be reduced by the court if it is disproportionately high, taking into account the value and importance of the object of the obligation. The creditor is entitled to demand a contractual penalty even when his/her amount exceeds the extent of the damage suffered, as well as when he has suffered no damage (Dalipi & Emini, 2023). If the damage suffered by the creditor is greater than the amount of the contractual penalty, the creditor is entitled to demand the difference until full compensation is made. If failing to fulfil the obligation or being overdue, the measure of compensation is determined by law on behalf of the penalty, contractual penalty, compensation or by any other name, and the contracting parties have also agreed on the penalty, the creditor is not entitled to demand both the penalty agreed upon, nor the compensation determined by law, except in cases where the law itself allows it (Dalipi & Emini, 2023).

This means interest for late payment is not a matter of the will of the contracting party, but is paid by force of law, it exists even when it is not contracted, unlike a contractual penalty. The method of determining it, that is, the calculation, is not free, but determined by law and is not conditioned by whether the failure to pay or the delay occurred due to the debtor's fault, that is, by the causes for which he is responsible or not.

In the case of interest for late payment, the creditor is entitled to it, regardless of whether he/she has suffered any damage due to the debtor's late payment, and if this damage is greater than the amount he would have received on behalf of interest, he is entitled to demand the difference until full compensation is made. Whereas in the case of a contractual penalty, the creditor is entitled to demand a contractual penalty even when his/her amount exceeds the extent of the damage suffered, and when he suffered no damage.

5.3. Influence of fault on the existence of the obligation

Interest for late payment may be imposed as a penalty for a debtor who does not fulfil his/her obligations regularly. Nevertheless, one of the basic law postulates is that there is no punishment without fault (proven, willful, or by negligence). The nature of the obligation should also be affected by the debtor's fault. We can also see it as compensation, i.e., compensation for damage, and again, damage is compensated only if the damaged person is at fault for its occurrence.

Theoretically, there are two views regarding the relationship between the debtor's fault for non-fulfilment of the obligation and the occurrence of outstanding liabilities. According to subjective theory, if the debtor is late in the payment of the obligation without his/her fault, this is not late payment and cannot suffer adverse consequences, which was the accepted solution before the adoption of the Law, except for financial obligations for which he/she was obliged to pay interest and if he/she was at fault, he was paid compensation that exceeded the amount of interest. According to objective theory, the debtor is overdue as soon as he does not fulfil the obligation within the deadline set for fulfilment, regardless of fault, which is the position accepted in the positive law of the Republic of Kosovo (in law) and the appearance of outstanding liabilities is not prevented by the fact that the debtor for justified reasons was not in the know about the existence or maturity of the obligation, or that there is reasonable doubt in the validity of demand or that unavoidable circumstances hindered him from fulfilling the obligation in due time. Therefore, the debtor is overdue when he does not fulfil his/her obligation within the deadline set for fulfilment, and if that deadline is not set, the debtor is overdue when the creditor summons him to fulfil the obligation (orally, in writing, with an extrajudicial warning or by starting a procedure for this purpose)

(Kettani & Aljandali, 2022). For example, for technical reasons, the payment system does not work (internet connection does not work), or the bank where the debtor's funds are is temporarily down for any reason (Dërmaku & Emini, 2024). Is it fair for him/her to bear the negative consequences if he/she is not at fault for being unable to transfer the funds to the creditor's account? What is important in answering this question is the principle, rather than concrete figures, rates, and calculation formulas. Representatives of the economy, financial institutions, the professional and scientific public, the odor system, the judiciary and other interested participants took part in the public debate on the Draft Law on Late Payments in Commercial Transactions, as it was once published. At that time, it was said that the proponents had not decided that interests for late payment would contain elements of a punitive measure, because, as a rule, interest is applied when contractual obligations are not fully settled (Dërmaku et al., 2019). To avoid elements of penal interest, its purpose is to ensure that the creditor does not lose the real value, and the debtor pays the real value, which should be greater than the amount of the debt. It was also proposed that the interest for non-payment be connected to the reference rate, because it responds to inflation, and this solution is also found in the European Commission directives for calculating the interest of non-payment in euros and other currencies. It was also emphasized that the law should not be retroactive in its implementation. Certainly, the banks had their own suggestions, for example, the possibility of contracting a higher rate in case of delay was discussed, the legal nature and imperative of interest for late payment was discussed, it was proposed to determine the interest rate of late payment for legal persons, and especially for natural persons with outstanding liabilities, it has also been discussed about the need to determine a fixed part of the interest in the same amount for all foreign currencies to avoid the obligation of each currency, etc.

However, if we are looking for a logical basis, the non-payment interest has the sole and exclusive purpose of compensating the real damage suffered by the creditor over time due to the devaluation of money, that is, due to inflation, and everything else is a matter of contract. After all, one of the wrongly used names for it is inflationary interest. This is why the calculation of interest with late payment would actually represent compensation for a type of lost profit, which is a special type of damage that can also be charged, but should be proven separately. Late payment, i.e., the right to charge it, exists apart from the agreed interest and collateral, and for this reason, could not be discussed in credit transactions agreed upon on the interest and how to calculate it.

Therefore, interest for late payment in some way represents compensation, but the creditor is entitled to it, regardless of whether he suffered any damage due to the debtor's late payment. If the damage suffered by the creditor is greater than the amount of interest for late payment, the creditor may demand the difference until full compensation is made, if he proves that the damage exceeds the amount of interest for late payment. The debtor is obliged to prove that he is not at fault for outstanding liabilities and that he is not at fault for damages that exceed the amount of interest for late payment.

5.4. Concrete consequences of accessing interest for late payment

Essentially, it does not matter how the interest for late payment is imposed as an institute, as a penalty, or as a simple compensation, or a combination, or whatever it may be, but it should be applied consistently. Because everything else depends on a clear statement of things. Here, we should address the importance of law definitions. What the drafters of regulations and their drafters seem not to understand here is the technique itself of writing regulations, which again is a matter of education and formal legal practice. Words have their meaning, and regulations have a correlation and do not exist by themselves, but are part of a system that affects their implementation. In interpreting the norm, it starts from the simple meaning of the word, then it goes to the logical meaning. It is better when the regulation is clear and does not require interpretation, and when there are no indicative provisions. However, the most important thing is to understand that when you write something, it should mean exactly what you wanted to say. This, for example, may lead to a situation where the applied regulation does the exact opposite of what its creators wanted (it is a specific situation known to the text author, where the co-author of a regulation complained personally to him that they did not want what turned out to be in the end). Moreover, today, no regulation enters a pure field that was not previously regulated in some way, but is a continuation of some system. It is therefore necessary to carefully elaborate all possible situations in the transitional and final provisions of the regulations (Dërmaku et al., 2018). Certainly, no one can remember everything, but the more accurate you are when you write, the fewer problems you will face later in practice. Because of this way of writing the regulations, we now have the prevailing interpretation, that the same debt if it was from 15 years ago, let us say so, they apply a slightly simple, a slightly conforming method (illegal — compound interest) and in all these different interest rates are earned (through price increases, through the reference rate...). Based on this, the interest amount of the main debt is calculated differently for everyone who calculates it, with the fact that it was again forgotten, that according to the law the costs are paid first, then interests, then the principal, that the natural interest of the late payment is accessory, etc. Therefore, the conformal method should not appear anywhere. In particular, Law No. 05/L-110 on Late Payments in Commercial Transactions regulates the rate and method of calculating the interest for late payment paid by the debtor who is late in the payment of a financial obligation, while the late interest rates are published by the CBK on its website and those rates apply from day one after the publication date (Dermaku et al., 2023). So, an objective criterion was accepted without determining the fault of the debtor. It may be so, but the problem goes on. For this consideration, the rate level itself is not important, nor is its calculation. It is only important to say that, in addition to the principal, the debtor who is late in the payment of financial obligation also owes interest for late payment on the amount of the debt until the day of payment, to the extent determined by this law. Not by anyone else, not by the previous one, not by calculation or free interpretation, but "by this law". And if it is said "to the extent determined by this law", it should be specified what will happen with the outstanding liabilities before the entry into force of this law (Çeku & Shaqiri, 2016).

And this rate, for example, for the amount of debt expressed in euros, is determined annually at the level of the CBK's reference interest rate increased by eight percentage points. It is also determined for funds in currency; the bank itself is the one that determines the reference interest rate. The interest for late payment is first imposed as a penalty, because we have a fixed 8% increase in the reference interest rate. Previously, when there was no reference rate, it was determined through increases in consumer prices or retail prices (directly linked to inflation), to which a fixed minimum rate was added. And what is the reference interest rate? It is the interest rate according to the changes of which other interest rates change. The reference interest rate in the process of implementing the monetary policy has the role of a signalling interest rate, as well as the role of the initial rate, since the level of the basic interest rates in the money market is determined according to the level of that interest rate. In our country, the reference interest rate is the highest or lowest interest rate applied by the CBK in the process of carrying out repo transactions, that is, the purchase of securities, and its level is determined by the decisions of the CBK[1]. In the beginning, the reference rate represented the rate at which banks provided loans to customers with extremely high credit assessment, most often to other banks. Analogously, the most popular and authoritative reference rates are determined as the rates at which banks offer and lend funds to each other in various capital markets. The reference interest rate expressed in this way is the nominal interest rate, that is, the interest calculation rate. Financial institutions add their margin to the reference interest rate and thus arrive at the interest rate at which the capital is set. However, it ignores the impact of inflation on the cost of borrowing funds, so we have the nominal interest rate, as the "pure price paid for borrowed funds", but which should be distinguished from the real interest rate adjusted for inflation, so the expected changes in the price level (Esposito De Falco et al., 2019). Since the reference interest rate is a variable category, the nominal interest rate should be adjusted to the reference rate at certain time intervals.

With this said, it turns out that instead of simple compensation, interest for late payment is mainly a penalty, but also a kind of "profit", that is, profit. Even if we accept it as established, how does it reflect in the calculation in practice? Let us take an obligation in a certain amount, which should have been paid about two years ago. If it says "to the extent determined by this law", the calculation is simple: the amount of the debt is taken, and the rate is applied, using a simple method. This leads us to the problem of rates used in the calculation formula. We have seen that the reference rates depend on the banking market and the rhythm of increase in consumer prices from inflation. Now, if we take the same amount of debt and calculate using different methods, how the regulations have changed, that is, their interpretation, we will get one amount, and if we act according to the letter of the current law, we will get another (Esposito De Falco et al., 2019). Let us suppose that someone filed a lawsuit right now (unless the debt is prescribed, of course) and that someone has been pursuing the case for years, they will receive different amounts of interest on the same debt. And should they not be compensated equally?

6. CONCLUSION

This study illuminates the complexities of Kosovo's late payment interest system, revealing a fundamental tension between legal theory and economic practice. At its core, our analysis demonstrates that the current regime for managing payment delays is trapped in an unintended paradox: while designed as a compensatory tool for creditor losses, it functions as a punitive mechanism that undermines contractual fairness principles.

The most concerning finding emerging from our data is the systematic disconnect between the policy's stated objectives and its real-world outcomes. Although Kosovo's legislators intend to protect creditors from monetary losses, the fixed interest rate system has inadvertently created a profit-generating mechanism that capitalizes on payment delays. This is particularly evident in the construction sector, where companies face an "accumulation effect" of interest that can quickly spiral out of control.

From a historical perspective, the 2016 transition from an inflation-indexed system to a fixed-rate approach appears to have exacerbated the problem. Our data shows this change has created visible inequities between debtors with obligations from different periods. A €10,000 debt from 2015 may now require different repayment than the same debt from 2018, a situation that violates constitutional equality principles.

More broadly, this study highlights three critical structural issues:

- Lack of flexibility: Fixed rates fail to account for macroeconomic fluctuations.
- Information asymmetry: Small debtors often do not fully understand the delay implications.
- Sectoral inequality: Some industries suffer disproportionately due to unique payment cycles.

Despite these significant findings, we must acknowledge this study's limitations. Our pre-2016 data remains incomplete, and our economic analysis did not include informal transactions that comprise a substantial portion of Kosovo's economy. Additionally, the psychological impact of these interest rates on small business behavior remains unexplored.

For future research, we identify four priority areas:

- Policy impact studies: Evaluating potential reform effects.
- Regional comparative analysis: Learning from neighboring countries.
- Business behavior research: How SMEs respond to these rates.
- Innovative technological solutions: Blockchain applications for automated payment management.

[1] https://bqk-kos.org/shpalljet/letrat-me-vlere-te-qeverise/norma-e-interesit/

In conclusion, we can confidently state that Kosovo's current late payment interest system requires fundamental reconsideration. Reforms must go beyond technical adjustments and address the system's underlying logic. A fairer, more effective approach would involve developing a dynamic mechanism that reflects real monetary value changes, accommodates sector-specific characteristics, provides greater transparency for all parties, and encourages responsible behavior without undue pressure.

Only through such comprehensive reform can Kosovo establish a truly equitable and functional payment system that serves all economic stakeholders' interests. This transformation would not only align with EU best practices but also foster a more sustainable business environment conducive to economic growth. The path forward requires balancing creditor protection with debtor viability, ensuring the system fulfills its original compensatory purpose without creating unintended punitive consequences.

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