

Abstract:

This diploma thesis deals with the issue of debtor's default, as a universal legal institute through the prism of current legislation in private law. It looks at the problem from both a general and theoretical perspective, and also discusses various partial and specific parameters occurring in legal practice. When defining the concept and content of the debtor's default, the conclusion is that the debtor's default can only be discussed when the obligation is not fulfilled in time. Not proper performance does have its reflection to debtor's default only via the creditors entitlement to refuse such a performance, thus causing the debtor to default if the debtor does not correct his performance before the due date. However, if a situation arises where a defective performance is provided and this is accepted by the creditor, then there is no default of a debtor, but the creditor acquires rights from the defective performance. The thesis also deals with the issue of debtor's default in case of monetary obligations, when it discusses, among other things, the issue of contractual and statutory default interests. It compares the development of this regulation in relation to the former legislation represented by Civil Code of 1964, including the development of case law, concluding that, contrary to the historical regulation, the amount of default interest, defined by a government regulation, has only mandatory nature and the parties may agree differently. However, this nature is not limitless when the law provides possibility of a court to declare the ineffectiveness of such an arrangement and the subsequent application of the statutory amount of interest. The thesis also compares the debtor's default representing a significant and insignificant breach of contract, in relation to the creditor's right to withdraw from the contract. In the analysis of damages caused by the debtor's default, attention is paid i. a. to the relationship between the damages and default interest, when it is concluded that default interest is included in the claim for damages. However, this is, with respect to some exceptions, a mandatory rule. Given the nature of the debtor's default, as a breach of a legal obligation, space is also given to the issue of a contractual penalty agreed in the event of the debtor's default. Concerns and recommendations relating to the definition of a debtor's default are expressed here, as the words of the law may lead the parties to a different conclusion on the content of the term than what prevails in legal theory and practice, which is always useful to prevent effectively.