

Three issues of consideration of consumer contract penalty clauses in judgments rendered between 2020 and 2022

Abstract

This diploma thesis deals with the issue of penalty clauses in consumer contracts. The goal of this diploma thesis was to determine, based on the analysis of the decisions of court rendered between 2020 and 2022, whether there is a differing legal assessment in cases with similar factual circumstances (penalty clauses) in the judicial practice of courts, and if so, for what reasons. The diploma thesis reveals that in some aspects, the legal assessment by courts in factually similar cases is entirely different.

Based on the analysis conducted, three main problems arising in the consideration of penalty clauses in consumer contracts are formulated. Namely the issue of assessing the adequacy of the amount of the contractual penalty and the related discretionary power of a court to reduce an excessive contractual penalty, whether the penalty clause is formulated in plain and intelligible language, and the (im)possibility of including penalty clauses in the terms and conditions or other documents different from the main consumer contract. It also emerged from the analysis that in more than 1/3 of cases the courts ignore the special legal regulation of consumer contracts and do not deal with the specifics of the position of the consumer in relations with the entrepreneur.

In connection with the identified problems, the current legislation is evaluated and specific solutions are proposed for each of the problems, which are based on practice of the domestic courts, foreign legislation, as well as contractual documentation used in practice by entrepreneurs. Both specific solutions aimed at changing the legal regulation of contractual penalties and provisions on obligations from contracts concluded with consumers (especially changes to the legal regulation contained in the Civil Code) are proposed, as well as solutions of a more general nature, which do not fall exclusively on contractual penalties clauses, but are potentially also applicable to other clauses in the area of consumer contracts.

Keywords

contractual penalty, consumer contract, unfair contract terms, terms and conditions, plain and intelligible language