

## **Abstract in English, Title and Keywords**

### **Late payment interest and contractual penalty in theory and practice**

This diploma thesis is concerned with late payment interest, contractual penalty and their mutual comparison.

Late payment interest and contractual penalty are both very important and frequently used institutes of civil law. Both of them show many similarities on one hand, but on the other hand they also have many differences. I address these similarities and differences specifically in the third part of my thesis, where I not only explore the differences that can be easily recognised from the text of the Civil code itself (e.g., how these legal institutes arise) but also the finer nuances, which are often the subject of expert/scholar discussion or arise only in the complex legal disputes (e.g., which function should prevail in the given institution).

However, before I could compare these two institutes, it was necessary to describe each of them individually. I deal with this in the first two parts of my work.

In the part of my thesis concerning late payment interest, I focused on describing its functions, conditions which must be met in order for the right on late payment interest to arise and the determination of its amount. Regarding the determination of its amount, I describe both the automatic determination based on the Government Regulation No. 351/2013 Coll., as well as the possibilities and limits of contractually agreed amount, where I primarily based my findings on the analysis of case law of the Czech Supreme Court and the Czech Constitutional Court.

In the part of my thesis concerning contractual penalty, I focused on the description of this institute, its functions, and the way how it can be agreed between the contracting parties. Particularly, to this agreement on the contractual penalty is given special attention, where, through the analysis of case law, I examine the possible forms of this contractual penalty agreement, the way how the amount of contractual penalty can be determined, and the type of obligation that can be corroborated by the contractual penalty. In this chapter, I will also focus on the new decision of the Czech Supreme Court, dated 11.1.2023, file No. 31 Cdo 2273/2022, which largely deviated from the existing case law and fundamentally changed the approach courts should take towards the moderation of contractual penalties. I not only describe this decision but also subject it to criticism and focus on the new questions that have arisen as a result of it and how they may be addressed in the future.

**Keywords: late payment interest, contractual penalty, moderation of the contractual penalty**