

Summary

Contractual penalty as a means of corroboration of a debt in business relations

The theme of this Master's degree thesis is the contractual penalty as a means of corroboration of a debt in business relations. The author has chosen this topic because the contractual penalty is a traditional private institution, which enjoys great popularity for its function and relative simplicity of negotiation in current practice. The contractual penalty improves a creditor's status. It makes a borrowers fulfil their confirmed obligation since in case of its violation, they would have to provide the creditor with performance representing both generalized compensation of the damage and a penalty. In spite of a frequent use of the contractual penalty, its legislation is rather brief and does not cover all problematic aspects. The relevance of the topic increased with recodification of the private law.

The main aim of the thesis is to explore legislative changes and their impact on selected problematic aspects of the contractual penalty using chosen methodology. The thesis explains whether legislative changes solve existing problems of the contractual penalty or not, what new questions in the context of the a contractual penalty arise and to what extent the conclusions of judicial decision-making practices are still relevant.

The thesis is consists of four sections. Section one is introductory and it describes general issues of the contractual penalty. It outlines historical development of legislation, general changes of the contract law and direct legislative changes of the contractual penalty. The contractual penalty is also characterized in relation to its systematic classification, accessory nature and functions performed. Moreover, it is necessary to distinguish between an agreement on the contractual penalty and a right to fulfil the contractual penalty, which is captured in the second and the third section. The second section deals with formal and content requirements of the agreement on the contractual penalty, its interpretation and potential defects including their consequences. The third section is concerns with the right to fulfil the contractual penalty. It includes the conditions of its creation and maturity, consequences of its fulfilment, or its abuse. The forth section focuses on judicial moderation privilege as a specific instrument of the excessive contractual penalty reduction.

The author finds it positive that the contractual penalty has undergone changes which removed several problematic aspects. On the other hand, judicial practice and jurisprudence

must continue in solving many contentious issues of the contractual penalty. Nevertheless, it may be concluded that the contractual penalty retains its position as a traditional and frequent legal institution of private law.