Contractual penalty and its moderation by the court

Abstract

The purpose of this rigorous thesis is to analyse the contractual penalty and its judicial moderation, focusing on developments and changes in the concept of moderation of contractual penalties in the context of the Supreme Court's judgment of 11 January 2023, file no. 31 Cdo 2273/2022, which adopted a new concept for assessing the (un)reasonableness of a contractual penalty. This rigorous thesis aims to introduce the new concept of moderation of contractual penalties and to determine how it differs from the previous concept. A secondary objective of the thesis is to use an analysis of court decisions to describe how courts apply the new concept, how the adopted changes affect their decision-making, and what the consequences of the change in the concept of moderation of contractual penalties are for legal practice. The rigorous thesis is composed of two main parts.

The first chapter presents the approach to the moderation of contractual penalties before the issuance of the landmark judgment, focusing on defining the individual phases of the court's decision-making process on whether to use its right of moderation, as well as the individual aspects of a contractual penalty that are key for assessing its unreasonableness, all of which is supplemented by examples from court decisions. Furthermore, the thesis identifies the shortcomings of the previous concept of moderation of contractual penalties that led to the need for its change.

The second chapter of the rigorous thesis is dedicated to the new approach to the moderation of contractual penalties, focusing on the reasons that led to its adoption, with reference to the regulation of moderation of contractual penalties contained in European unification projects of contract law. Furthermore, this chapter provides a detailed definition of the new concept of moderation of contractual penalties and analyses the decisions of Czech courts applying the new concept of moderation. The second chapter also examines the concept of judicial moderation of contractual penalties in German law and its potential influence on the new domestic approach. The conclusion of the chapter focuses on identifying the practical implications of the new approach and the potential pitfalls of its application.

Key words: moderation of contractual penalties, concept of moderation, circumstances justifying reduction