

RESUMÉ

CONTRACTUAL PENALTY AND LATE CHARGES ACCORDING TO THE COMMERCIAL CODE

As the topic of this thesis indicates, it looks at two institutes of private law, namely contractual penalty and late charges.

A number of **reasons** led me to the decision to choose this topic for my thesis. Firstly, both contractual penalty and late charges are exceptionally common institutes that appear in many private-law relationships. The duty to pay late charges is a legal consequence of the debtor's delay with the payment of monetary debt. The creditor's right to late charges arises under statute if their monetary claim falls due and the debtor does not pay it. In relationships regulated by the Commercial Code the parties may agree upon the rate of the late charges but even without such an agreement, the creditor is entitled to late charges at the rate determined in the civil law regulations. On the other hand, the legal grounds of contractual penalty are in an agreement between the creditor and the debtor. Still, the contractual penalty has a very extended use in commercial relationships and it is frequently used in contracts as a securing instrument. Secondly, since the contractual penalty may secure any obligation arising out of a contract, there are cases where it secures that the debtor duly pay their monetary debt. This means that the debtor's delay with the payment of their monetary debt may be sanctioned twice – with an obligation to pay late charges and at the same time with an obligation to pay the agreed contractual penalty. Thirdly, the legal regulation of contractual penalty and late charges is very succinct. This fact results in many questions about the legal regime of late charges and contractual penalty.

The aim of the thesis is not to provide an in-depth theoretical explanation of contractual penalty and late charges; instead the chosen **method** is comparison. The thesis is focused on the above-mentioned situations where contractual penalty secures due payment of a monetary debt (i.e. situations already sanctioned by late charges) and attempts to determine their relationship and find out about the advantages and drawbacks of each of the analysed instruments.

The thesis is accordingly divided into **chapters**. After a brief look at the past and present legal regulation of contractual penalty and late charges and at their functions in the first two chapters, it continues with chapters 3 to 13, each one of them discussing a different aspect of the analysed institutes, comparing them from this perspective and thus concluding which one of the instruments is more advantageous for a creditor willing to secure their monetary claim. Aspects of contractual penalty and late charges investigated in these chapters include: (i) legal cause of the creation of obligations to pay contractual penalty or late charges, (ii) liability principle, (iii) formula of contractual penalty and late charges, (iv) scope of their applicability, (v) person obligated to pay them, (vi) their forms, (vii) consequences of agreeing upon an inadequately high or low amount/rate of contractual penalty or late charges, (viii) extent of dependence of these institutes on the primary debt, (ix) consequences of a default with their payment and (x) limitation of the right to contractual penalty or late charges. Eventually, the last chapter outlines how courts distinguish between contractual penalty and late charges in cases where the parties to the contract failed to properly and unambiguously name the instrument they had intended to agree upon. In those cases it is up to the court to decide whether what they have contracted is contractual penalty or late charges.

The comparison of the two institutes led to a **conclusion** that the legal regime of contractual penalty has more advantages for the creditor than late charges. Firstly, it offers more options, e.g. the possibility to put a person different from the primary debtor under the obligation to pay the contractual penalty, or to agree upon a contractual penalty in a non-monetary form. More importantly, should the parties agree upon a contractual penalty at an inadequately high amount, this may not constitute the invalidity of the agreement (like it would in the case of an inadequately high rate of late charges); instead it may only lead to the reduction of the amount by the court. Creditors should prefer contractual penalty also because of the possibility to claim late charges from the amount of contractual penalty that has not been paid duly and in time (contrary to the impossibility to claim these from the amount of late charges with the payment of which the creditor is in default) and because of a more advantageous regime of limitation of the right to contractual penalty.