ABSTRACT

Central point of the thesis at hand is the effort to clarify legal consequences arising out of the conclusion of the usurious contract. Its primary aim is to determine whether the usurious contract is voidable or rather null and void and whether it is possible to uphold the usurious contract either by applying the concept of partial invalidity or by judicial balancing of the grossly disproportionate considerations arising out of the usurious contract. This thesis is structured into two parts. The first chapter of the first part briefly introduces paradigms of the rules related to the usury. The second chapter analyzes individual characteristics of the usury. In the third chapter author argues for the possibility to review the contracts (showing the disproportion of considerations, defects of the abused’s will and the element of abuse, however, not fulfilling all the characteristics of the usurious contracts due to narrow definition of the usury) by the good-manners-test. Second part of this thesis is divided into three chapters. The first chapter analyzes consequences resulting from the violation of the usury prohibition and their impact on the usurer’s and the abused’s legal position. This chapter also deals with the difficulties in terms of interpretation of rules governing invalidity of legal act, incidental to the change of the concept of invalidity in the new Civil Code. Furthermore, the emphasis is put on the possibility of reduction of amount of pecuniary compensation for the impoverished person, in case the restitution of a subject of unjustified enrichment is not possible, with regard to the grounds of invalidity of the contract and the purpose and function of the rule setting out the invalidity of such contract. The practical use of the maxim nemo turpitudinem suam alegare potest is stressed out as well. The matter of damages caused by the breach of the prohibition of the usury or caused by the invalidity of the usurious contract is not omitted. Second chapter stresses out the specifics of the review of the disproportionate contract concluded with the consumer with the emphasis on the particularities resulting from the Act on the consumer credit. The third chapter analyzes the premises for review of the validity of the disproportionate contract concluded by the entrepreneur (within the scope of his business) in the position of the weaker party.