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**Title:** Naruszenie zobowiązania pieniężnego jako podstawa odstąpienia od umowy i domagania się kary umownej / Violation of a pecuniary obligation as a basis for rescission of contract and demanding a contractual penalty

**Source:** Kwartalnik Prawa Prywatnego ("Quarterly of Private Law")

**Year:** 2022, vol. XXXI, number 2, pages: 227-251

**Keywords:** rescission of contract, contractual penalty, pecuniary obligations, compensation for failure to perform the contract

**Discipline:** Private Law

**Language:** Polish

**Document Type:** Article

**Publication order reference:** University of Łódź [[mwojewoda@wpia.uni.lodz.pl](mailto:mwojewoda@wpia.uni.lodz.pl)]

**Abstract:**

The author analyses the possibility of stipulating in contracts (which are subject to Polish law) contractual penalties concerning the rescission of the contract if the reason for rescission is the breach of a pecuniary obligation. The dominating view of the legal doctrine and jurisprudence holds that such penalties are impermissible due to the wording of Art. 483 §1 of the Polish Civil Code. The provision in question requires that a contractual penalty be related only to cases of "non-performance or improper performance of a non-pecuniary obligation". Consequently, when the basis for contract rescission is failure to pay monies, the contractual penalty is against the law and should be considered void.

Although the above view has been recently supported by the resolution of the Supreme Court of 20th November 2019 (III CZP 3/19), it raises certain doubts and reservations. Contractual penalties applicable in the case of contract rescission are very popular in business practice. The contractors stipulate them usually without paying attention to the type of an obligation whose breach entails the rescission. The author points to the usefulness of such penalties and invokes arguments in favour of adopting a more flexible approach in their assessment. In his opinion, a functional interpretation of Art. 483 §1 of the Civil Code is permissible and advisable. Rescission of the contract should be seen as a factor that cuts the link between the contractual penalty and the pecuniary nature of the breached obligation. This link is only of secondary importance and should not lead to the conclusion that the penalty is inconsistent with the law. At the same time the author underlines that such functional interpretation does not mean a general abandonment of the contractual penalty model as

adopted in the Civil Code and, what is even more important, it does not pose any threats to fair trade or the security of transactions.