

Obligations in foreign currency (Art. 1278, 1279 Civil Code)

«The exchange rate and the damage from default in obligations in foreign currency» maintains that exclusive reference should be made to the exchange rate on the due date according to article 1278 Civil Code, whilst the damage from default should be indemnified by the interest and any greater damage from the exchange rate in the event that the creditor proves that according to the *id quod plerumque accidit*, he would have exchanged the currency inferred in the obligation or paid in *facultate solutionis* into another, which was going up compared to the former.

In «The obligations in foreign currency, the exchange rate and the greater damage from default» also emphasised that the liquidation of the greater damage from the exchange rate depends on the proof that the creditor can give that he would normally have exchanged the currency that he had promptly been given into another, which would have shown an increase (this is the case for example of a creditor resident abroad).

The possible decrease of the foreign currency due with respect to that of legal tender should also be indemnified if the person who should have received the former had changed it into the latter (for example a creditor resident nationally).

The same conclusion is also valid for the damage from default in the obligations in foreign currencies with «effective exchange rate».

Following the currency deregulation, the author published «The damage from default in obligations in foreign currency in the current discipline of currency deregulation», in which he maintained that it must be excluded that the creditor can claim the difference of the exchange rate, on the basis of a mere programme of investment adopted afterwards and not on the *quod interest* according to the *quod plerumque accidit*.

The dominant opinion in legal literature and in case law is that which takes as reference the exchange rate on payment; in this sense Court of Cassation, 16th March 1987, no. 2691.

In «On liquidation of the damage of a foreigner», the author maintains that tort damage caused to a foreigner in our country, should be liquidated with the currency that is legal tender which any difference in the exchange rate of the foreign currency in which the damaged party would have changed it could be claimed, only by way of damage from default.

The author, disagreeing with Court of Cassation, Labour Division, 16th may 1981, 3239, in «If the credit of a foreign-resident worker has to be re-valued under article 429, section 3, Code of Civil Procedure» excludes that this can be practised.

The various articles have had some echo in legal literature as can be seen from the bibliography indicated alongside each one.

Lastly, to make up for a legislative gap concerning the absence of determination of legal interest of an obligation in foreign currency, the author put forward in the 10th legislation at the Senate of the Republic, bill no. 2812, in which it coincided with the official rate of discount of the currency considered.

It was presented again in the 11th Legislature with bill no. 50 to the Senate of the Republic and no. 1235 to the Chamber of Deputies.