ABSTRACT

The insurance contract is an important legal construction in all European legal systems. From this point of view, neither Romanian law, or Albanian law, did neglect this variety of the civil legal act, being preoccupied with the regulation and analysis of its elements, from the earliest times of the development of the legal system in these countries.

Insurance has emerged as a necessity to protect people against natural events that, once produced, would inflict many damages. The first types of insurance have occurred in ancient times, and the development of legal insurance relations has experienced a real boom with the emergence of organized labor and industrialization of the states. Construction of buildings and the emergence of new economic activities determined ones interest to recover damages if they have been affected.

Modern insurance companies have begun to register and participate in legal relationships from the first part of the nineteenth century. They were the object of specific insurance operations. Through them insurance activities are born and conducted.

This study is of interest in at least two main aspects. First, the Civil Code of Romania came into force in 2011 introduced the new unification of commercial law with civil law. Previously treated as two distinct branches of private law, due to the particularities considered by the doctrine as being present in each case, currently the legislature vision has campaigned for inclusion in civil law of the commercial law specific legal relations.

The legislation went from a special law regulating issues related to the insurance contract, to the regulatory framework provision in the Civil Code in this matter, the general law. The importance of this new vision is born, including the interpretation of legal norms incidence, because as it is about general rules, the interpretation criterion will be one more permissive.

The profound commercial nature of the insurance contract, virtually abolished by the new regulation, is still apparent across the regulation provided in the Civil Code and in particularly one of its parts. Thus, the insurer is always a company that is the object of such operations, basically distancing itself from the purely civil contract, once it is signed exclusively in consideration of this activity.

The second element that justifies this doctrinal approach addresses the novelty of the presentation that covers the main aspects related to the insurance contract both in Romanian and Albanian law. We consider that until now there have not been developed such comparative law opinions between the two legal systems.

It is also noteworthy that while concentrating on analyzing features of the insurance contract in Romania and Albania, the paper introduces and reviews the doctrine observed by French law and the British common law. In this way it retains the merits of national rules, in relation to supporting arguments of other recognized authors.

The importance of considering the issues concerning the insurance business focuses on the legal features of the insurance contract and the circumstances related to its conclusion and application. Through a permanent jurisprudential reporting, presenting the necessary criticism against court rulings, this study

analyzes those main elements that give birth to the rights and obligations specific to each party of the insurance report.

The insured and insurer are parties to the insurance contract, and they exercise their rights and fulfill the responsibilities which mainly are established by law and also those specific set by the contract.

A proper knowledge of the specific elements of the insurance contract, including the risk insured, the limits of the obligation of compensation of the insurer, the duty to inform the parties in this type of contract, issues relating to the beneficiary of the insurance, helps the legal analyst to correctly establish an interpretation that gives efficiency to intention of the legislature.

The comparative law aspects of the Albanian legislation are also discussed form a jurisprudential point of view, by surprising some cases of great importance in this system of law.

The paper is structured in four chapters that overlap on the main ideas of the study of this matter, which are added to the introduction and a final section of conclusions.

The first chapter entitled “History on the insurance activities” deals first with the history of the occurrence of insurance activities and their subsequent regulating.

The second chapter entitled “The concept of insurance and its specific elements” reviews the doctrinal views on the concept of insurance and the elements that compose it. On this occasion the similarities regarding the interpretation of specific Albanian notions are captured.

The third chapter of the book is the actual analysis of the insurance contract, as it provided the Romanian legislation, compared with the Albanian law. In this part of the study they both personal interpretation of national legislation, based on the general one and completed by the special one, and analysis on the elements of the insurance contract law are provided. The rights and obligations of contracting parties are distinguished by their position and the importance that the law gives them.

The fourth and most extensive chapter of this paper is entitled “The different categories of insurance contracts”. In it the most important insurance contracts are analyzed, as shown in their prevalence in the two systems of law: property insurance contract, contract of personal insurance and liability insurance contract.

The paper ends with a concluding section in which the main elements analyzed are reviewed. Also, in this part of the study the future legislation propositions of the author are expressly reiterated, along with considerations on jurisprudence solutions that can support the development of this matter.

The entire study presents in a systematic approach, the elements that revolve around the concepts of insurance and insurance contract until the new legislation was issued, the differences between them, and later exemplified in order to support proposals to improve the legislation, by reference to another system of law, unknown by the Romanian doctrinarians, in an approach that has not been introduced in Romanian legal writings so far.

The study proposed for your consideration gravitates around the need to form a unitary opinion regarding the interpretation of the notions of legal elements specific to insurance law.

Starting from the idea that both Albanian and Romanian law had as the main source of inspiration the correlative provisions of French law system, a point of view that puts together the two regulations is required.

Insurance law in Albania benefits from a strong Italian influence, which should only support the idea of rallying to the provisions of Romanian law in the matter, more so since in the context of the manifestation of the will of Albanian Republic for membership of the European Union it is also required that the regulations in this area of law to be reformed.

The importance of studying this matter is currently still valid for the same reasons that have determined the historical birth of the insurance activities. Since the elements from which the insured persons seek to protect themselves are fully present to this day, the legal study of insurances provides the occasion for a better knowledge and interpretation of specific legal provisions.

We consider that a particular importance in this matter is developed based on the rights and obligations of insurance relations. This study focuses on analyzing the appropriateness of providing for certain rights and reciprocal obligations of such. Of particular importance is the obligation to inform the insurer of the risk insured and the legal protection offered to the insurer in this regard.

In the Romanian legal system, the jurisprudence has sometimes interpreted wrong the specific elements of the insurance contract, and the relation between them.

In this regard we consider that a jurisprudence discipline is necessary in terms of case law enforcement specific to insurance companies more in the spirit of the law and less in its exact wording. It is widely recognized that the law cannot explicitly acknowledge all legal interactions that occur in society. Just considering

this aspect courts must have regard to the purpose for which the legislation was enacted and also to the purpose envisaged by the parties at the signing of the contract, and not a restrictive interpretation of legal norms, especially since at the current time, due to the inclusion of insurance contract provisions in the civil Code, the criterion of interpretation can be an extensive one.

The central aspect of this paper, the insurance contract, could not be addressed only in relation to various institutions and concepts started in the field of commercial law and cemented in that of the civil law.

Regarding legislative proposals, these have been extensively described in the content of this study by taking into account, first of all, the cases of nullity of the insurance contract, the interpretation of the provisions of the insurance contract and its legal specifications.

Also, given that the study deals with the peculiarities of this matter in the Albanian legal system, it also captures some of the specific curiosities of the latter, including the apparent solemn understand that Albanian legislation gives to such a contract. The opinion of the author is a critical one that starts from the rationale of the law.

The novelty of the subject is highlighted by the analysis of the Albanian legislation in relation to the one in Romania, with infiltration of doctrinal opinions from the French law and the British common law system.

Another important aspect treated by the thesis is the jurisprudential analysis of the applicability of the rules governing insurance contracts of goods, of persons and of civil liability. These three categories of contracts are, in fact, the most common insurance matters, both in Romania and Albania.

The subject of this paper is a mixed one, as it emerges from historical times and is developed originally in the commercial law field, it currently finds its practical affirmation in the private civil law unified with the commercial law after the entry into force of the new Civil Code. This interdisciplinary justifies the interest for this subject, as it is obvious that such situations often affect more and more categories of the natural and legal persons.

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