

## **STUDY ON THE JURIDICAL NATURE AND THE EFFECTS OF INSURANCE POLICIES**

The main purpose of the present work is focused on the research of the juridical nature and the effects of insurance contracts in contemporary world. In this respect, we consulted the representative specialty works in our country and abroad, which allowed us to establish the current degree of knowledge and debate in the insurance field. We also carried out a survey focused on the population's interest and opinion regarding the insurance domain in Romania, which represents a distinct chapter of the thesis. The gathered data helped us compose a coherent and unitary image of the insurance field and to establish all the conditions and juridical implications of the insurance contract.

Although the need for insurances and for all the practices associated to it have appeared a long time ago, commonly due to human concerns for preventing damages and due to their persuasion to bear the costs of damages occurred during unexpected happenings and events, the institutions and all the other necessary organisational structures, as well as the different concepts related to the role of insurances in the social life, emerged especially during the XXth century.

The necessity of *being insured* is indispensable for the present day individuals, because they must protect themselves and their goods against unexpected events. Certain consequences of these ill-fated circumstances might be avoided through vigilance (for ex., fire, stealing), others cannot be avoided despite any effort (for ex., earthquakes, hailstorms, thunders), while others cannot be avoided due to the limited human existence (for ex, death). Natural disasters, revolutions, wars and the growing number of terrorist attacks at the beginning of this century throughout the globe (Israel, New York – 2001, Iraq – 2003-2004, Madrid – 2004 a.o.) have amplified both the human state of uncertainty and the need for a more secure environment, where to feel protected and safe. The more this feeling of insecurity grows, the more the conscience or intent of being insured is stronger and more deliberate.

Different research papers have showed that the origin of the insurance pact might be traced back in antiquity. Certain documentary research also proved that, in our country, there were incipient insurance forms long before the XIXth century. Accordingly, a rudimentary form of animal insurance was revealed, known as „hopșă”.

The development of the economic activity in Romania at the end of the XIXth century and the beginning of the XXth has determined the organisation of insurance services as well, these being considered a progress factor for our society.

The optimal functioning of the insurance market in Romania depends on a series of factors: economic, social, educational, political, moral-traditional, psycho-social and legislative. The present legislative environment generally regulates all insurance activities, but, taking into consideration the future Romanian integration into the E.U., our insurance legislation needs completion and improvement, so that it can be in total agreement with the existing legislations in other European societies.

In order to create a balance in the insurance field, we must take into account all economic, social, political and climatic evolutions and trends throughout the globe, where we can encounter different negative phenomena, such as: an excessive rate of unemployment, the depreciation of the dollar, stock-market fluctuations, an unexpected increase of the petrol price, conflicts in the Middle East. The world we live in is not only a world of protection and order, but also of uncertainty and disorder, of unexpected natural outbreaks. In order to protect themselves against risks, people must conclude insurance contracts for their life and goods, with the help of insurance consultants.

In a world where order and disorder coexist, the full coverage for all risks only by the insurance company is practically impossible. Knowing the evolution of all social, economic, political, financial, cultural and climatic phenomena at a planetary scale implies not only a statistical analysis, but also decoding the general, particular, regional and national trends; all these factors force insurance companies to establish special departments of professionals, capable of undergoing scientific research and making credible previsions.

The development of the economic activity in Romania at the end of the XIXth century and the beginning of the XXth has determined the organisation of insurance services as well, these being considered a progress factor for our society. Accordingly, a series of insurance companies emerged in different domains and compartments of the Romanian economy, such as: *Transilvania* (1866), *Dacia* (1871), *România* (1873), *Naționala* (1882), *Generala* (1887), *Agricola* (1906), *Urania*, *Patria*, *Banca Generală de Asigurare* (1911) a.o. In 1881, the *Dacia-România* company was established after the merger of the *Dacia* și *România* companies and in 1909 it took over *Patria*, as well.

Statistical and historic data show that, in 1930, there were 44 national or foreign insurance companies in Romania. The competition among them and the economic crisis led to a reduction of their number to a half. For example, in 1936, there were only 23 insurance companies left, with a total banking capital of 400 million lei and 2.2 billion in reserves. Starting with 1940, due to the political and geo-political factors and in the context of the beginning of WWII, Romania faced a massive penetration of German capital through the following companies: *Victoria*, *Vatra Dornei*, *Allemania*, *Dacia-România*, *Naționala*, *Steaua României*, *Transilvania* etc.

After WWII, as a result of the Soviet communist influence, the entire portfolio of the Romanian insurance companies was overtaken by what was called *The Romanian-Soviet Joint-Stock Insurance Company – Sovromasigurare*. In 1952, the Administration for State Insurance (A.D.A.S.) was established, the state having total control over insurances for almost five decades.

After the revolution in December 1989, the Romanian society faced an institutional restructuring and reorganising process, which also included the insurance market. Consequently, the state monopoly disappeared.

The optimal functioning of the insurance market in Romania depends on a series of factors: economic, social, educational, political, moral-traditional, psycho-social and legislative. The present legislative environment regulates, generally, all insurance activities, but, taking into consideration the future Romanian integration into the E.U., our insurance legislation need completion and improvements, so it will be in total agreement with those existing in other societies on our continent.

According to art. 9 of Law no. 136/1995 on Romanian insurances and reinsurances, the insurance contract is the specific contract in which „the insured must pay a premium to the insurer and the insurer must pay the insured a compensation or the insured sum (also called an allowance) in case a certain risk occurs, according to the agreed limits and terms”.

Due to its synalagmatic nature of the contract, the insurance offers rights and obligations to both parties engaged, with the mention that some refer to the period prior to the occurrence of the insured case, others to the period following the event.

The effects of the insurance contract refer to all subjective rights and obligations involved, which are modified or ended by such an act; this is, actually, the content of the contract. Accordingly, the effects of the insurance contract take place when the insured event happens.

When this event occurs, the insured has a right to ask for compensations. These can be granted by the insurance company in accordance with the expert evaluation and a mutual agreement; in case they do not reach an agreement, a court trial may follow.

In order to establish the juridical nature of the contract, two criteria must be taken into account:

- the juridical nature of the contract; according to this criterion, contracts are commercial, civil or mixed;
- the complexity of the contract.

The insurance contract is, normally, of commercial nature, because it is the juridical expression of the insurance economic activity, which is a commercial activity, according to the objective criterion, but subjective as well, because one of the involved parts (the insurer) is always a commercial enterprise.

The insurance contract is of mixed nature (trade deed for one of the parties and civil for the other, so it is a commercial as well as civil contract) because this contract is always commercial, from the insurer point of view, as the insurer is always a commercial enterprise. From the insured point of view, the insurance contract is, sometimes, of mixed nature because it has a civil character. Art. 3, lines 17 and 18 of the Commercial Code, clearly stipulate that insurances are objective commercial matters.

A juridical act or an operation may be considered a commercial matter for both parties involved in a juridical relation. Accordingly, the act or operation involving both parties may be an objective or subjective commercial matter, or the same matter may represent a subjective commercial matter for one party and objective for the other.

For the insurer, the insurance is a subjective commercial matter as well, because it involves a commercial enterprise and because the juridical contract is not of a civil nature according to it or to the law. So, for the insurance company, the operations are always, subjectively and objectively, commercial matters, governed by commercial laws.

Personal insurances are always of civil nature for the one being insured, even if he/she is representing a commercial enterprise, because the personal insurance contract refers only to the natural person, without taking into account his/her activity. The goods insurance has a civil nature for the one being insured when the insurance contract doesn't refer to objects or commercial establishments, including the liability of the trader.

If the insurance policy is of commercial nature only for the insurer and of civil nature for the one insured, this insurance relation is mixed, representing a commercial matter only for the insurer and a civil matter for the one insured.

If the insurance relation is of mixed juridical nature, it will comply with the commercial regulations for both parties, even if for one of the parties the relation is of civil nature.

So, for the insurance company, the insurance operations are always commercial matters while, for the insured, they are civil ones, excepting the cases when the object of the insurance is represented by goods or commercial establishments. Nevertheless, the Commercial Code stipulations will affect both parties involved.

The insurance contract, as a juridical act regulating the intent of the parties to sign an insurance policy, takes a written form and includes:

- the name and address of both parties;
- the object of the insurance policy: goods, persons or civil liability;
- the risks being insured;
- the starting and ending moments of the insurer's liability;
- the insurance premium;

- the insured sums;
- other elements regulating the rights and obligations of the parties.

In Romania, the insurance activity is represented by the obligatory and facultative insurances, as well as by re-assurance operations, made by commercial insurance – re-insurance enterprises and by commercial re-insurance companies, also called insurers and re-insurers.

Since *the Law nr. 136/1995 on insurances and re-insurances* came into force, all insurances have become contractual, the insurance companies being obliged to pay the insurance allowance when the allowance credit proves the existence of the valid insurance contract at the time of the consumed insured case.

There are two types of insurance contracts:

- facultative insurances
- obligatory insurances

The facultative insurance represents the type of insurance in which one of the parties, called the insured-contractor, has to pay the other party, called the insurer-contractor, a certain sum of money as insurance allowance, and the insurer, when the insured case occurs, has to pay the insured or the third party the insurance sum according to the terms of the contract.

According to their object, the facultative insurances may be:

- Goods insurances
- Insurances for persons
- Civil liability insurances

According to the stipulations of *the Law nr. 136/1995 on insurances and re-insurance*, the only obligatory insurance policy is represented by the civil liability insurance for damages produced in car accidents. Until *the Law nr. 136/1995 on insurances and re-insurances* came into force, other insurances for goods and persons had been obligatory. Only insurance companies authorised by *the Office supervising the insurance and re-insurance activity* practice the obligatory insurance. The authorised insurers must conclude contracts only if they issue an evidence script of the insurance.

In the case of car civil liability insurances, there are no insurance contracts, only a released ticket as a proof of insurance allowance payment.

In order to get a better understanding of the insurance services usage, we have conducted a survey among the population of Craiova between the 1st and 3rd of July 2004. We used an administrated questionnaire, which was filled in by students as interview operators. This research was conducted in cooperation with the professionals of the Social Institute Craiova and of the University of Craiova.

The purpose of this investigation was to analyse the degree of utilization of insurance services by the population; the research area was constituted by a number of 423 persons over 18 years old

from Craiova. We mention that, according to the March 2002 census, Craiova has a population of 302601 inhabitants (146491 men – 48.4% and 156110 women – 51.6%).

The research served a double purpose: to reveal the population's level of knowledge over insurance services and to compare the ways insurances are used at local and national levels.

For this survey we presented the most important insurance companies and types of insurance policies in Romania. The final results included details on the percentage of those who use insurance services, as well as data regarding the population's satisfaction degree over the insurance services they use.