



**„NICOLAE TITULESCU” UNIVERSITY OF BUCHAREST
FACULTY OF LAW
DOCTORAL SCHOOL**

PhD THESIS

**COMPULSORY MOTOR THIRD PARTY LIABILITY
INSURANCE CONTRACT**

SUMMARY

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I.WORK PLAN

INTRODUCTORY REMARKS

CHAPTER I. THE FRAMEWORK INSURANCE CONTRACT. GENERAL ASPECTS

SECTION 1. CONCEPT OF INSURANCE. BRIEF HISTORY OF INSURANCE. PRINCIPLES, FUNCTIONS AND CLASSIFICATION OF INSURANCE

§1. Concept of insurance

§2. Short history of insurance

§3. Principles of insurance

§4. Insurance functions

§5. Insurance classification

5.1. Legal criterion (provided by Law 237/2015 in Annex I)

5.2. The criterion consisting in the manner in which the legal insurance relationships are realized

5.3. Insurance domain criterion

5.4. Criterion of the type of relationship between the insured and the insurer

5.5. Territorial criterion

SECTION 2. DEFINITION AND REGULATION OF THE INSURANCE CONTRACT

§1. Definition of insurance contract and national regulation

§2. Regulation at European level

SECTION 3. LEGAL CHARACTERS OF THE INSURANCE CONTRACT

§1. Named contract

§2. Contract for pecuniary interest

§3. Consensual contract

- §4. Random contract
- §5. Synallagmatical contract
- §6. Adhesion contract
- §7. Contract with successive performance
- §8. *Intuitu personae* contract

SECTION 4. FORMAL CONDITIONS OF THE INSURANCE CONTRACT

SECTION 5. ESSENTIAL CONDITIONS FOR THE VALIDITY OF THE INSURANCE CONTRACT

- §1. General conditions of validity of the insurance contract
 - 1.1. Ability to contract
 - 1.1.1. Insurer's capacity to contract
 - 1.1.2. The insured's capacity to contract
 - 1.2. Consent of the parties
 - 1.3. Object of the insurance contract
 - 1.4. Cause of the insurance contract
- §2. Special conditions of validity of the insurance contract
 - 2.1. Insurance premium
 - 2.2. Risk
 - 2.3. Insurable interest
 - 2.4. Sum insured

SECTION 6. COINSURANCE. MULTIPLE AND CUMULATIVE MULTIPLE INSURANCE. REINSURANCE.

- §1. Coinsurance
- §2. Multiple and cumulative multiple insurance
- §3. Reinsurance
 - 3.1. Concept and regulation

- 3.2. Types of reinsurance
- 3.3. The effects of reinsurance

SECTION 7. PARTIES TO THE INSURANCE CONTRACT

- §1. The insurer
- §2. Insured. The Contractor
- §3. Insurance beneficiary
- §4. The injured third party
- §5. Insurance intermediary

SECTION 8. FORMATION AND INTERPRETATION OF THE INSURANCE CONTRACT

- §1. Contract formation
 - 1.1. Information obligation
 - 1.2. Good faith in the insurance contract
 - 1.3. Insurer's obligation to conclude the contract
 - 1.4 Time and place of conclusion of the contract
 - 1.5. Duration of the contract. Period of insurance
 - 1.6. Unfair terms in the insurance contract
 - 1.7. Nullity of the insurance contract
- §2. Interpretation of the insurance contract
 - 2.1. Restrictive or strict interpretation
 - 2.2. Interpretation according to the real will of the parties
 - 2.3. Systematic interpretation
 - 2.4. Interpretation *ambiguitas contra stipulatorem*
 - 2.5. Other interpretation rules

SECTION 9. EFFECTS OF THE INSURANCE CONTRACT

- §1. Rights and obligations of the insured before the insured risk occurs
 - 1.1. Rights of the insured until the occurrence of

insured risk

1.2. Obligations of the insured until the insured risk occurs

§2. Rights and obligations of the insurer before the insured risk occurs

2.1. Rights of the insurer prior to the occurrence of the insured risk

2.2 Obligations of the insurer prior to the occurrence of the insured risk

§3. Rights and obligations of the insured after the occurrence of the insured event

3.1 Obligations of the insured after the occurrence of the insured event

3.2. The insured's rights after the insured event has occurred

§4. Rights and obligations of the insurer after the occurrence of the insured event

4.1. Rights of the insurer after the insured event has occurred

4.2. Obligations of the insurer after the occurrence of the insured event

SECTION 10. TERMINATION OF THE INSURANCE CONTRACT

§1. Reach the term of the insurance contract

§2. Occurrence of the insured event

§3. Unilateral termination of the contract

§4. Avoidance of the contract

CHAPTER II. COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE CONTRACT

SECTION 1. CONCEPT AND LEGAL FRAMEWORK. LEGAL CHARACTERISTICS.

§1. Concept and legal framework

§2. Legal character

SECTION 2. CONCLUSION OF THE COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE CONTRACT

§1. General conditions of validity

- 1.1. Capacity to contract
- 1.2. Consent of the parties
- 1.3. Subject matter of the MTPL contract
- 1.4. The cause of the MTPL contract

§2. Parties to the MTPL contract. Persons obliged to conclude the MTPL contract

§3. Contents of the MTPL contract

§4. Proof of RCA contract

§5. Duration of the MTPL contract

SECTION 3. OBJECT AND SCOPE OF INSURANCE

§1. Object of insurance

§2. Scope of insurance

- 2.1. Scope of liability of the MTPL insurer
- 2.2. Insured risk
- 2.3. Cases of exclusion of liability of the MTPL insurer

SECTION 4. FORMAL CONDITIONS OF THE COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE CONTRACT

SECTION 5. INSURANCE PREMIUM AND LIMITS OF THE LIABILITY OF THE LIABILITY INSURER

§1. Insurance premium

- 1.1. Setting the insurance premium
- 1.2. The bonus malus system

- §2. Minimum limits of liability covered by MTPL insurance
- §3. Territorial limits of coverage

SECTION 6. SUSPENSION, TERMINATION AND RENEWAL OF THE COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE CONTRACT

- §1. Suspension of the RCA contract
- §2. Termination of the MTPL contract
- §3. Renewal of the RCA contract

SECTION 7. MULTIPLE INSURANCE

SECTION 8. DIRECT SETTLEMENT

SECTION 9. EFFECTS OF A COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE CONTRACT

- §1. Obligations of the insured
- §2. Obligations of the insurer

CHAPTER III. PROCEDURE FOR DETERMINING AND OBTAINING COMPENSATION FROM THE MTPL INSURER IN THE EVENT OF MOTOR VEHICLE ACCIDENTS ON AN AMICABLE BASIS

SECTION 1. SETTLING COMPENSATION OUT OF COURT

- §1. Notice and damage assessment
 - 1.1. Damage assessment
 - 1.2. Ascertainment of damages
 - 1.2.1. The report
 - 1.2.2. Amicable accident report
- §2. Documents needed to establish compensation

§3. Conditions for determining compensation

SECTION 2. DETERMINATION OF COMPENSATION ACCORDING TO THE DAMAGE CAUSED BY THE ACCIDENT

§1. Method of determining compensation for damage to vehicles

1.1. Damaged vehicles

1.2. Total economic damage

1.3. Compensation for loss of use of the vehicle

§2. Determination of compensation in the event of injury or death

2.1. Persons entitled to be compensated by the MTPL insurer

2.2. How compensation is determined in the out-of-court procedure

§3. Animal injury or loss

§4. Damage to or destruction of other property

SECTION 3. PAYMENT OF COMPENSATION

§1. Method and time limit for payment of compensation

§2. Procedure for granting late payment penalties

§3. Cases in which the MTPL insurer may recover the compensation awarded

§4. Claims representative

§5. Bureau of Motor Insurers in Romania

5.1. Tasks of the Bureau as a compensation paying agency

CHAPTER IV. SETTLEMENT OF CLAIMS ARISING OUT OF THE COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE CONTRACT THROUGH ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

SECTION 1. LEGAL FRAMEWORK AND SCOPE

§1. Legal framework

§2. Domain of application

SECTION 2. ADR MECHANISMS

- §1. Common aspects of the proposal and imposition procedures
- §2. Proposing a solution
- §3. Imposing a solution
- §4. Limitation and prescription periods

SECTION 3. PROCEDURAL ASPECTS

- § 1. Court competent to hear and determine applications for annulment of decisions and decisions of ADR entities
 - 1.1. Material competence
 - 1.2. Territorial competence
- §2. Legal standing
- §3. Timing of the application for the annulment of decisions and orders issued by ADR-FIN
- §4. Appeal against the judgment on the application for annulment of the judgment or decision of the ADR- FIN

CHAPTER V. DETERMINATION OF DAMAGES ARISING FROM THE COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE CONTRACT BY THE COURT

SECTION 1. ACTIONS AVAILABLE TO THE INJURED PERSON

- §1. Direct action and action in subrogation
- §2. Competent court
- §3. Legal standing
 - 3.1. Active procedural standing
 - 3.2. Standing as a passive procedural defendant
 - 3.3. Forced intervener
- §4. Procedural aspects of bringing a civil action in criminal proceedings
- §5. Prescription of the substantive right of action

§6. Procedure

SECTION 2. THE PROCEDURE FOR DETERMINING COMPENSATION BY JUDICIAL PROCEEDINGS

§ 1. Procedure for establishing material damages in court. Evidence given

§2. How to establish moral damages in court

2.1. The case-law criteria taken into account by the courts in order to determine moral damages

2.1.1. Case-law criteria taken into account for quantifying non-material damages in personal injury cases

2.1.2. Case-law criteria taken into account for the quantification of moral damages awarded to rebound victims in case of death of the direct victim

2.2. The case law of the E.C.H.R. on moral damages awarded in connection with motor accidents

2.3. Jurisprudence of the C.J.E.U. on non-material damages awarded in connection with motor accidents

2.4. Comparative law aspects regarding the amount of moral damages awarded in the event of a vehicle accident

2.5. Setting the payment deadline

CHAPTER VI. ROLE OF THE INSURED'S GUARANTEE FUND IN OBTAINING COMPENSATION UNDER THE COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE CONTRACT

SECTION 1. PROCEDURE FOR MAKING PAYMENTS BY THE I.G.F.

§1. Entitled persons

§2. Procedure for opening the damage file

§3. Determining and assessing compensation

§4. Conditions under which payments are made by the I.G.F.

SECTION 2. CHALLENGING THE DECISION ISSUED BY THE I.G.F.

§1. Competent court

§2. Procedural framework

§3. Timing of the application

§4. Jurisprudential aspects relating to compensation awarded by the I.G.F.
Concept of insurance claim

§5. Procedural standing of the I.G.F. in criminal cases in which a civil action
has also been brought

GENERAL CONCLUSIONS AND PROPOSALS FOR LEGE FERENDA

ANNEXES

BIBLIOGRAPHY

II.RESEARCH TOPIC AND ITS SCIENTIFIC IMPORTANCE

In the doctoral thesis entitled *The Compulsory Motor Third Party Liability Insurance Contract*, the main characteristics and legal effects of this contract, which is regulated by Law no.132/2017¹, and by ASF Rule no.20/2017², were analyzed from a theoretical, but especially jurisprudential point of view. The importance of this contract, both from an economic, social, but also from a legal perspective, required research into the circumstances that led to the emergence of the concept of insurance, but also the first regulations.

Insurance is now one of the most widely used contracts. As the economy and the movement of people have developed, the need for such contracts has become increasingly important. Although, as technology and science have developed, man has become increasingly able to control nature and its unpredictable phenomena, the effects of certain disasters or phenomena, such as drought, hail, earthquakes, floods, cannot be avoided.

¹ Law no. 132/2017 on compulsory motor third party liability insurance for damage to third parties caused by vehicle and tram accidents, in force since July 12, 2017

² Rule no. 20/2017 on motor insurance in Romania, in force from August 01, 2017

Moreover, certain accidents, whether caused by human conduct or beyond human control, can cause significant damage, such as explosions, fires, road accidents, etc.

Thus, in view of the threat that has always loomed over human beings and their assets, society has sought effective defenses to be able to stop or at least limit and counter the losses generated by such accidents or calamities. One such method has been the conclusion of insurance contracts in more and more areas.

As we have shown throughout this paper, the emergence of insurance was a natural consequence of people's need to prevent significant financial losses as economic relations developed and the financial component of life became more important to everyone's well-being.

The importance of the insurance contract in general, and of the compulsory motor civil liability insurance contract in particular, is also apparent from the way in which they have been regulated by the legislator over time. It can be concluded from the legislative development that the legislator has paid particular attention to insurance. In the case of the compulsory motor civil liability insurance contract, with G.E.O. no.54/2016, it began to have its own regulation, distinct from other insurance contracts, an aspect that once again emphasizes its importance in the field of insurance and beyond.

Several scientific research methods have been used in the elaboration of this paper in order to make the analysis complete. First of all, we have used the historical method to present the legislative history of the insurance contract, both internationally and in our country. Subsequently, using the systematic and teleological method, as well as the comparative method, I have tried to present in a coherent and integrated manner the main characteristics of the compulsory motor civil liability insurance contract, through the prism of the relevant national and international doctrine and case law.

III.RESEARCH AIMS AND OBJECTIVES

The field of insurance is vast, so the purpose of this paper was not to analyze it exhaustively, such a desideratum being doomed to failure, but to bring to the attention the jurisprudential and doctrinal divergences regarding the contract of compulsory motor civil liability insurance. If we consider only the entire procedure for authorizing insurance companies or the existing control and supervision mechanisms in this area, we could say that insurance law is one of the most complex branches of law, so that even intentionally we did not want to cover the entire legislation or case law in this area.

At the same time, if we take into account the fact that the insurance phenomenon encompasses both a legal and a technical perspective, but especially an economic one, we can conclude that the insurance issue combines elements from several fields, each with its own particularities.

In this paper we aimed at analyzing the recent judicial practice taking into account the latest national legislative changes, but also at EU level, regarding the compulsory motor civil liability insurance contract, as well as analyzing certain characteristics of the insurance contract (risk in the insurance contract, duration in the case of the insurance contract, interpretation *ambiguitas contra stipulatorem* in the case of the insurance contract, etc.), by comparing the national regulations with the Spanish regulations. At the same time, as it is relevant for tracking the dynamics of insurance contracts, we wished to present the latest available statistical data on the number and causes of car accidents occurring in Romania, as well as on the fluctuation of insurance contracts concluded in our country.

Also in this paper I wanted to present all the ways in which the injured third party can obtain compensation from the compulsory motor third party liability insurer of the person responsible for the accidents, namely, amicably, through alternative dispute resolution mechanisms or by the court, emphasizing the advantages and disadvantages of each procedure.

Also, because moral damages awarded in vehicle accidents account for a very large share of the total damages awarded, we have carried out a comparative law analysis of how the courts determine the moral damages awarded to third parties injured in motor vehicle accidents.

Also relevant for the quantification of moral damages, Order 1/2.293/2022³, was analyzed in terms of its legal effects and its application over time.

Given the role of the Insurers' Guarantee Fund in obtaining compensation by third parties injured in vehicle accidents, this paper has analyzed the way of contesting the decisions issued by it, according to the latest legislative amendments, namely the amendment of Article 13 paragraph (5) of Law no.213/2015 by G.E.O. no.102/2021.

With the *lege ferenda* proposals, I wanted to highlight certain legislative gaps or ambiguities that need to be filled or removed.

³On determining the compensation of the injured party in case of injury to bodily integrity or health resulting from vehicle accidents on the basis of the traumatological score established by the National Institute of Forensic Medicine "Mina Minovici" Bucharest

IV.STRUCTURE OF THE PAPER

The work is structured in 7 chapters, each chapter comprising sections and subsections.

In the first chapter, for a better understanding of the contract of compulsory motor third party liability insurance, we have analyzed the general aspects of the framework insurance contract, and presented a brief history of insurance. The principles and functions of insurance were also presented, as well as the classification of insurance according to several criteria (legal criteria, the way in which the legal insurance relationship is realized, the scope of insurance, the type of relationship between the insured and the insurer, the territorial criteria).

Next, because, similar to other contracts, the legal character of the framework insurance contract is essential, the thesis analyzes this aspect, presenting the relevant judicial practice, as well as the opinions of the specialized literature, highlighting possible doctrinal and jurisprudential divergences.

Naturally, the thesis analyzes the formal and substantive conditions essential to the validity of the insurance contract, including special conditions of validity characteristic of this contract and not found in other contracts, such as insurance premium, risk, insurable interest and sum insured.

Given the specificity of the insurance field, it was imperative to analyze the institutions of co-insurance, multiple and cumulative multiple insurance, as well as reinsurance.

The parts of the framework insurance contract, as well as how to form and interpret it, are presented in a concise but complete way, and the particularities of the contract are captured.

Because the effects of the framework insurance contract are of major importance, both for the parties and for certain third parties, the thesis has analyzed in detail, in a whole section, the rights and obligations of the parties both before the occurrence of the insured risk, and after this moment.

The section on how the insurance contract can be terminated (expiry of the insurance contract, occurrence of the insured event, unilateral termination of the contract, avoidance of the contract) closes the chapter on the framework insurance contract.

In the second chapter we analyzed the contract of compulsory motor liability insurance, the subject to be deepened in the thesis, the chapter starting, in the first section, with the presentation of the concept, the legal framework, but also the legal characteristics of this contract.

In the second section of this chapter, both the general conditions of validity of the compulsory motor third party liability insurance contract and the parties, content, proof and duration specific to this type of legal act were analyzed.

The subject matter and scope of the insurance, including the scope of the liability of the motor civil liability insurer, the insured risk and the cases of exclusion of the insurer's liability, have been analyzed in the following section, indicating the relevant legal provisions.

The formal conditions of the compulsory motor liability insurance contract, as well as the particularities of the insurance premium and the limits of the insurer's liability have been analyzed in separate sections, due to the importance of each of these elements. Suspension, termination and renewal of the MTPL contract are also presented in order to reveal the specifics of the contract from this perspective as well.

In the last sections of the second chapter, the institutions of compulsory motor liability multiple insurance, direct settlement and the effects of the compulsory motor liability contract are presented, thus analyzing all the essential aspects.

The thesis then presents, in separate chapters, precisely because of the major importance of the subject, the procedure for obtaining compensation from the motor liability insurer by all three methods available to the injured party, namely: amicable, alternative dispute resolution mechanisms or judicial. These chapters consider recent judicial practice, comparative law aspects of the method of awarding moral damages as well as relevant doctrinal opinions. Certain inconsistencies or gaps in the law are also highlighted, which are then analyzed in the proposals for *lege ferenda*.

Thus, ***the third chapter*** analyzes in detail the procedure for establishing and obtaining compensation from the motor civil liability insurer, out of court. In the sections relating to this chapter, we have analyzed both the procedure to be followed in order to obtain compensation and the way in which compensation is determined according to the damage caused in the accident (damage to vehicles, injury to body or health or death, injury or loss of livestock, damage to or destruction of other property).

The last section of this chapter is dedicated to the relevant aspects regarding the payment of compensation, including a presentation of the Romanian Motor Insurers' Bureau.

The fourth chapter contains the analysis of the determination of damages under the compulsory motor third party liability insurance contract through alternative dispute resolution mechanisms, it being necessary to bring forward this method of dispute resolution, which is too little used in our country. The sections of this chapter present the legal framework and scope, as well as alternative dispute resolution mechanisms.

Obviously, the most important procedural aspects when challenging acts issued by alternative dispute resolution entities, such as competent courts, standing, time-barring of claims and possible appeals, are also highlighted.

In the fifth chapter we analyzed the last way of establishing compensation arising out of an accident, namely through the courts. It would be preferable for the parties to use this method only when the other two methods have failed. In practice, however, the parties to a dispute choose to skip the alternative dispute resolution stage and go directly to court. In the sections of this chapter we have looked at the remedies available to the injured party and the procedural aspects of such remedies, as well as how the courts go about determining the damages awarded. Particular importance has been attached to the analysis of divergences in case law, which are not to be neglected in this area. The relevant case law of the Court of Justice of the European Union and the European Court of Human Rights is also taken into account.

The sixth chapter is dedicated to the Insurers' Guarantee Fund, a well-deserved attention, one might say, considering its role in the vast field of insurance, all the more important in the recent period when a significant number of insurance companies have gone bankrupt. In the two sections of this chapter we have analyzed the procedure for making payments by the Insurance Guarantee Fund, as well as the way in which the decisions issued by the Fund can be challenged. Also in this chapter we have highlighted the most important current jurisprudential divergences on the notion of *insurance claim*.

The last chapter is dedicated to conclusions and proposals for *lege ferenda*, emphasizing, once again, the importance of the compulsory motor civil liability insurance contract, but also the need for consistency and clarity of the legislation in this area.

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