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# THE LIABILITY INSURANCE CONTRACT, WITH SPECIAL REFERENCE TO THE INSURABILITY OF THE DAMAGE AND RESTITUTION CAUSED BY BREACH OF CONTRACT

Theses of the PhD dissertation

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# I. The subject and aim of the dissertation

The life of an individual consists of a set of actions that he performs individually or within an organization. The necessary consequence of all action, in fact its content, is the responsibility for the consequences of the action. The possibility of incurring liability for these consequences is a risk for the individual. The nature and extent of the risks imposed on economic operators vary depending on a number of factors, they are influenced by the nature of their activities and their risk-taking attitudes, but they are also significantly affected by changes in the legal environment.

With the entry into force of the new Civil Code significant changes have taken place in many areas of Hungarian civil law, including the area of civil liability. One of the most important and emphatic changes in the new Civil Code – compared to the old Civil Code – is the separation of liability for damages caused by breach of contract (contractual liability) and liability for non-contractual damages (non-contractual liability).[1] As a result, contractual liability has been independently regulated, which, if not completely,[2] is separate from tort rules.[3] One of the main reasons for the separation[4] of contractual and non-contractual liability is the legislator's desire to achieve a better distribution of risks in contractual relations,[5] in particular in the light of the results of foreign solutions[6] and the provisions of the Convention on Contracts for the International Sale of Goods.[7] This is based on the concept that these two responsibilities should be treated differently, as in the case of contractual liability, there is already a contractual relationship between the parties prior to the damage, which includes the rights and obligations

[1] We would like to emphasize that civil liability is broader than liability for damages. Contractual liability generally means liability for damage caused by a breach of contract and covers all its legal consequences. Liability for damages is only part of this. The dissertation here means the liability for damages caused by breach of contract or non-contract. To the topic see also BARTA Judit: A szerződésszegéssel okozott kárért fennálló felelősség. In: Barzó–Papp (szerk.): *Civilisztika II. Dologi jog* – Felelősségtan. Dialóg Campus Kiadó, Budapest, 2019, 415–420.
[2] For more details on the application of tort rules, see: MISKOLCZI BODNÁR Péter: A kártérítési felelősség egyes közös szabályainak mögöttes szabályként való alkalmazhatósága. *Jogtudományi Közlöny,* 2019/6. szám, 241–250.
[3] MISKOLCZI BODNÁR Péter: A jogi felelősség és a polgári jogi felelősség alapkérdései, a Ptk. kártérítési szabályainak rendszere, a deliktuális és a kontraktuális felelősség szétválása. In: Barta – Barzó – Csák (szerk.): *Magyarázat a kártérítési jogról.* Wolters Kluwer, Budapest, 2018, 28.
[4] Examination of the rules of liability in the old Civil Code is not the purpose of the doctoral dissertation, however, we note that under the old Civil Code's auspices the non-contractual and contractual liability were treated in the same way. Despite the fact that the old Civil Code contained separate regulations for these two forms of liability, the § 318 established a connection between them by ordering the application of the rules on non-contractual liability to liability for breach of contract.
[5] MISKOLCZI BODNÁR [2018], 40.
[6] For the relationship between German and French law on the relationship between contractual and non-contractual liability, see: SZALMA József: Felelősség a szerződésszegésért. *Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica,* Tomus XXXIII., 2015, 335–353.
[7] United Nations Convention on Contracts for the International Sale of Goods (Vienna on 11 April 1980), promulgated by the Hungarian Legislative Decree No. 20 of 1987.

of the parties. Harmful conduct constitutes a breach of an obligation under this contract. In contrast, in the case of non-contractual liability, there is "only" an absolutely legal relationship between the subjects of the entities prior to the tort (i.e. due to the general obligation to reside from the tort – neminem laedere)[8] and the tort obligation arises as a result of the harmful conduct.[9]

Among the new rules applicable to contractual liability, the following should be highlighted in terms of the topic of the doctoral dissertation:

a) The § 6:142 of the Civil Code sets strict conditions for exemption from liability for breach of contract. The person who caused damage by breaching the contract shall be relieved of liability if it proves the existence of three conjunctive conditions, such as (i) the damage occurred beyond his / her control, (ii) it was not foreseeable at the time of entering into the contract, and (iii) there had been no reasonable cause to take action for preventing or mitigating the damage.[10]
b) The § 6:145 of the Civil Code law formulates a non-cumul principle, according to which, if an event of damage can be judged on both a contractual and a tort basis, the claimant can only assert his claim in accordance with the rules of contractual liability.[11]
c) Finally, we consider the predictability clause, which is essentially a matter of case law,[12] to be extremely important in terms of the scope of the obligation to pay compensation, according to which *„the amount of damages for the loss caused by non-performance in the obligee's property, including lost income, is such sum as the obligee is able to verify that the loss, as the potential consequence of non-performance, was foreseeable at the time of the conclusion of the contract."*[13] Based on this, the rightholder is obliged to compensate for the damage caused to the property – in addition to the damages affecting the object of the service – only if he / she foresaw it.

[8] For an analysis of the general prohibition of injury, see: TŐKEY Balázs: A károkozás általános tilalmára vonatkozó szabály jelentéséről. In: Lamm – Sajó (szerk.): *Studia in honorem Lajos Vékás.* HVG-Orac, Budapest, 2019, 309–317. In his work, the author analyzes the question of whether an absolute infringement is indeed a precondition for establishing liability for damages (or rather, whether there can be liability for damages without prejudice to absolute law).
[9] VÉKÁS Lajos: Az új Polgári Törvénykönyvről. *Jogtudományi Közlöny,* 2013/5. szám, 235.
[10] FAZAKAS Zoltán: A szerződésszegéssel okozott károkért való felelősség. In: Barta – Barzó – Csák (szerk.): *Magyarázat a kártérítési jogról.* Wolters Kluwer, Budapest, 2018, 177–178.
[11] SÁRKÖZY Tamás: Fordulat a magyar kártérítési jogban. *Magyar jog*, 2013/9. szám, 539.; LESZKOVEN László: Gondolatok a felelősségtan köréből. *Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica*, Tomus XXXV., 2017, 342.; PUSZTAHELYI Réka: Igényhalmazatok a szerződésszegési jogkövetkezmények rendszerében, különös tekintettel a Ptk. 6:145. §-ára. *Pro Futuro*, 2016/2. szám, 64.
[12] FAZAKAS [2018], 174.
[13] Vö.: Ptk. 6:143. § (2) bekezdés.

For a detailed explanation of all three changes and to examine them in the light of the topic of the doctoral dissertation in Chapter IV.

Regarding the topic of the dissertation, the legal institution of the restitution [§ 2:52 of the Civil Code], which appears as a subjective sanction for violations of the privacy rights, can be considered as another important change.[14] Restitution can also arise as one of the legal consequences of an individual's liability in the event that the infringing conduct violates a person's right to privacy.

The aim of the dissertation is to present one of the possible ways of managing individual liability as a risk, namely the rules of Hungarian law on risk management based on a liability insurance contract and its practical legal issues. The rules of a liability insurance contract are inseparable from the provisions on civil liability, because of the mechanism of operation of liability insurance, although they are well separable at the legal and regulatory level. Tamás Lábady, in connection with the development of the legal institution of liability insurance, states that it was determined by the development of the rules of civil liability, saying that [liability insurance] „*has always carried the column of civil liability, which keeps it on track."*[15] According to Novotni, the basis for the existence of liability insurance is civil liability for damages, without which it cannot exist.[16] Insurance, especially liability insurance, is an accompaniment to modern liability systems, without free liability insurance, at least the legal system could be difficult to operate.[17] This means, among other things, that not only the change in the rules on liability has affected insurance, but that the development of insurance law, in particular the institution of liability insurance, has also had a significant impact on the application of liability rules.[18]

By putting the rules on breach of contract on a new footing, the risks to economic operators have increased, leading to a growing need for risk-sharing under the liability insurance contract. However, the change in the regulatory concept raises a number of problems with the inclusion

[14] LÁBADY Tamás: A deliktuális felelősség fontosabb változásai az új Ptk.-ban. *Jogtudományi Közlöny,* 2014/4. szám, 172.
[15] LÁBADY Tamás: *Fejezetek a felelősségbiztosítás köréből.* Szikra Nyomda, Pécs, 1989, 11.
[16] NOVOTNI Zoltán: *A felelősségbiztosítási jogviszony alapkérdései a magyar jogban.* Kandidátusi értekezés, Miskolc, 1981, 34.
[17] CANE, Peter: *Responsibility in Law and Morality.* Hart Publishing, Oxford – Portland, 2002, 226.
[18] CANE [2002], 242.

of contractual liability in insurance coverage, to which the legislator does not respond in specific standards.[19]

The subject of the doctoral dissertation is to examine the effect of the separation of non-contractual and contractual liability and the rules applicable to the latter on the insurability of breach of contract as a risk, especially on the coverage of the liability insurance contract. In this context, we are primarily looking for answers to the following questions:

*1. Can liability insurance cover damages for breach of contract, in whole or in part, and other legal consequences of breach of contract?*

Among the questions, we examine the legal consequences of breach of contract, the most detailed of which is the legal institution of damages and restitution, in the framework of which we seek answers to the questions that

(i) is there a (legal) obstacle to the inclusion of liability for damages established as a legal consequence of a breach of contract?

(ii) whether all potential damages in the event of a breach of contract can be covered by liability insurance, such as the so-called "adhesive damage" and "consequential damage"?

(iii) is there a practice for insurers to cover other consequences of breach of contract, possibly costs, which may be enforceable?

*2. Can all damages caused by the breach of contract and violation of the privacy rights be covered by liability insurance?*

In doing so, we primarily look for answers to the following questions:

(i) what kind of behaviors named in the Civil Code lead to a breach of contract, do they have legal consequences for damages, can they be covered by insurance?

(ii) is there an obstacle or limitation to the inclusion of restitution as a consequence of a violation of privacy rights by breach of contract?

A separate examination of the inclusion of restitution in the liability insurance cover is especially important because the new Civil Code has removed the violation of the individual's

[19] This is despite the fact that Tamás Lábady's proposal for a different assessment of liability for damages arising from breach of contract was formulated by the Civil Law Codification Editorial Board in the concept of the reform of the law of compensation and liability. Vö.: LÁBADY Tamás: Felelősség a szerződésen kívül okozott károkért és a biztosítási szerződés az új Polgári Törvénykönyvben: vitaindító tézisek. *Polgári Jogi Kodifikáció,* 2001/4–5 szám, 53.

rights from the conceptual scope of the damage and defines the restitution as an independent sanction; as compensation and private punishment for the violations suffered. The restitution, although with an ex-post correction of the Civil Code, was also included in the coverage of liability insurance, which raises the question of whether the function of liability insurance has been expanded or modified.

## II. Structure of the dissertation

The doctoral dissertation consists of seven chapters, from which – in addition to the findings made in the introduction and the last chapter, which contains the consequences of the dissertation – the following five main chapters can be distinguished.

(i) The second chapter of the dissertation contains the findings related to the historical development of the legal institution of liability insurance. In doing so, we perform a study in two directions. On the one hand, we examine the international issues of the development of liability insurance, in the framework of which, in the past, risk management methods that can be considered a precedent for liability insurance have been used to alleviate the burden of risks for the individual. The starting point in the historical perspective is the examination of the legal institution of "faenus nauticum" based on Greek foundations but known from Roman law. After that, we examine the medieval development of the legal institution, and with a brief explanation we introduce the second major part of the chapter, the subchapter presenting the development of the Hungarian rules of liability insurance. In the framework of the development of liability insurance in Hungarian law we examine the provisions of the first liability insurance institutions to the necessary extent in the Kt. and the Mtj., as well as the first private law code, the old Civil Code. We are looking for the answer to the question of which consequences of the first liability insurance institutions were created, how, in what direction did it expand, and when appeared the management of the risk of contractual liability by the insurance?

(ii) The subject of the third chapter is the presentation of the legal institution of the liability insurance contract, in the framework of which we not only present the provisions of the new Civil Code, but also analyze the concept, subjects and content of the legal institution, examine its place in the legal system, emphasizing its unique characteristics and distinct, independent legal institutional nature. However, this chapter of the dissertation deals with the purpose, task, functions, mechanism of operation and the most important features of liability insurance. At the end of the chapter, the risks that can be covered by liability insurance are outlined, and emphasis is placed on the examination of the criteria of insurability, which is described in Chapter IV and V of the dissertation.

(iii) One of the important chapters of the doctoral dissertation is the discussion of the insurability of breach of contract in Chapter IV. Chapter. In the framework of this, we present the legal institution of breach of contract, the typical breach of contract practices regulated in the Civil Code, and the insurability of their legal consequences. The guideline of this chapter is to examine whether liability for damages as one of the legal consequences of a breach of contract can be insured and whether full damages can be covered.

In order to complete the research, our goal is to support the issues and problems raised in the dissertation, especially in this chapter, from a practical point of view. As part of this, according to the 2021 yearbook published by the Association of Hungarian Insurers (MABISZ) (which summarizes the development of the insurance market in 2020), we examined the general insurance conditions published online by the five insurers defining the insurance market in 2020 which offer some kind of liability insurance product on the insurance market.

At the end of the fourth chapter of the dissertation, in the light of the problems raised in the previous sections of the chapter, we analyze two liability insurance contracts that cover the risk of contractual liability arising in the legal relations covered by the contract. The subject of our investigation is the analysis of the general liability insurance contract terms sold on the insurance market and available online, which can be used voluntarily, with regard to the liability of the directors and officers [D&O liability insurance]. The other insurance condition examined is a compulsory liability insurance contract for the designers and the contractors.

(iv) Another main chapter of the doctoral dissertation is the examination of the insurability of the restitution. In the framework of this chapter, the legal institution of the restitution is presented, the problems arising in connection with it, as well as special emphasis is given to the restitution that can be enforced in case of a privacy right violation due to a breach of contract. The inclusion of the restitution in the insurance coverage is also analyzed from a practical point of view in the light of the general insurance (contractual) conditions examined in the framework of the dissertation.

(v) In the last chapter of the dissertation, we provide an international outlook in three directions.

In the first subchapter of this chapter, we examine the attempts of the European Union to unify the law of insurance contracts, within which we pay special attention to the liability insurance contract.

In the second and third subchapters, we carry out a comparative legal analysis, in which we examine the rules established in Slovak and Czech law for liability insurance, as well as the insurance conditions applied by insurance companies operating in these two countries and available online. The examination of the insurance conditions, the problematic nature of which we emphasize in the case of the conditions applied by the Hungarian insurers as well, with special emphasis on the liability insurance of designers and contractors.

In the legal literature, the comparison of liability insurance rules with foreign law is usually based on English law in common law countries and German law in continental law countries. However, there is no comparative legal analysis in the Hungarian legal literature that examines Slovak and Czech law. Given that the author understands and speaks both languages, he feels an excellent opportunity to compare the institution of liability insurance in the context of a scientific work or doctoral dissertation, thus filling a gap in the legal literature in this area.

The consequences of the findings made in the doctoral dissertation are deduced in the last part of the dissertation by answering the formulated hypotheses.

## III. Methods used in the research and evaluation of the topic in the literature

The following research methods helped to write the dissertation.

The dissertation focused on the primary sources of law, ie the relevant European Union and national legislation – with regard to the latter, the Civil Code. and Insurance Act – analysis of some of its provisions, in addition to which the relevant domestic and foreign literature and case law were processed. Among the evaluations of the relevant literature, it can be stated that the number of fresh literature closely related to the topic, written in the times following the new Civil Code, is extremely low. Regarding the inclusion of a breach of contract in liability insurance coverage, in particular the separation of non-contractual and contractual liability from an insurance point of view, a limited number of literature was published under the auspices of the former Civil Code. The line of thought of some authors, e.g. Tamás Lábady, Zoltán Novotni and Péter Bodnár Miskolczi helped the author to process the set topic. At the same time, there is a wealth of literature on civil liability, and a number of books, monographs and studies have been published on the subject of breach of contract, in particular the legal consequences of breach of contract, including liability for damages. Insurance law, and in particular liability insurance law, abounds in the literature. At the dawn of the 20th century, we would like to highlight Kornél Sándor Túry, who determined the theoretical foundations of liability insurance. Among the recent literature, In the last quarter of the twentieth century, the works of József Zavodnyik, László Asztalos, Klára Popper, Károly Bárd and Péter Takáts can be highlighted, whose work on the law of insurance contracts was extremely useful for practice and theory of the insurance, and it was unavoidable for the legislator to take it into account when codifying the law of insurance contracts.

The relevant case law is also processed in the dissertation, in respect of which it can be stated that the judicial decisions directly related to the topic of the dissertation are not, but the decisions concerning insurance and liability insurance and breach of contract are already abundant. We tried to process them in the necessary depth and to examine them from the point of view of the set topic.

The second chapter of the dissertation was prepared on the basis of a legal history analysis, during which the old Hungarian insurance literature and the relevant legal regulations were processed, especially the certain provisions of the Commercial Act (hereinafter: „CA", the 1928's Mtj. and the old Civil Code. Our research on legal history has been conducted over an

extremely wide period of time. We began our thinking by examining ancient legal institutions in which certain features of community risk-sharing that characterize an insurance institution could be processed. After that, we examined our historical research on the development of liability insurance in the Hungarian insurance market from the beginning (CA) to the old Civil Code, thus laying the foundations for the examination of the valid law.

In the fourth and fifth chapters of the dissertation, in addition to exploring the theoretical depths related to the central topic of the dissertation, the practice was also examined. As part of this, we also examined the relevant provisions of certain publicly available general liability insurance contract terms and conditions published on the websites of insurance companies operating in Hungary.

The Chapter VI of the dissertation contains the international research based primarily on a comparative method of comparative law, including analysis of legislation and relevant literature. As the chapter of the dissertation with an international perspective can be divided into three major parts, some research methods can be identified separately within this chapter as well. The first sub-chapter examines the rules of the PEICL, which seeks to unify insurance contract law in the European Union, in particular the provisions on liability insurance. We compared these with the rules of the liability insurance contract in Hungarian Civil Code. In view of this, the analysis of the primary legal sources – the official text of the PEICL and the Hungarian Civil Code – were compared. In this context, we also examined, inter alia, whether the PEICL had an impact on the development on the rules on liability insurance contracts in Hungarian Civil Code, whether its individual provisions were taken into account in its formulation, and to what extent they are correlated. The analysis of some of the provisions of PEICL has been supported by a number of foreign language literature, mainly in English, including the book "Principles of European Insurance Contract Law (PEICL)" writen by the autors BASEDOW, J. – BIRDS, J. – CLARKE, M. – COUSY, H. – HEISS, H. – LOACKER, L., who are also internationally recognized experts in insurance law, and work of a professor Helmut HEISS can be highlighted among these authors, who significantly enriches the literature on PEICL. From the Hungarian language literature on PEICL, we drew mainly from the ideas in the studies born as a result of the work of Edit Antal UJVÁRINÉ and Péter GÁRDOS.

The second and third subchapters of the chapter - the analysis of the rules of Slovak and Czech liability insurance law - were prepared using essentially the same methodology. In this chapter

of the dissertation we focused on the analysis of primary legal sources and their comparison with Hungarian legal sources as a legal comparison method. In addition, the relevant Slovak and Czech literature was processed, for which the author conducted research in the libraries of this countries. The problems identified in Hungarian law in the fourth and fifth chapters of the dissertation were also examined in the case of Slovak and Czech law. In the course of this, both judicial practice and insurance practice are processed, in the same scope as the research applied to Hungarian insurance law, we examined the general insurance conditions published online by insurers operating in the Slovak and Czech insurance markets.

Summarizing the research methods of the dissertation, one of the aims of the dissertation was to examine the legal institution of liability insurance based on the available literature, itemized legal practice results in terms of whether it is suitable and capable of the modern challenges of private law and to cover the expectations of practice (such as restitution, damages)? In the course of the research, we also paid attention to the domestic legislative processes and results concerning the liability insurance contract, the available professional materials, and the results of the judicial practice. The basis of the dissertation is the synthesis of these sources, examining, analyzing and systematizing them, colliding and evaluating the emerging individual legal positions and conclusions, and then formulating our own conclusions. In the course of the research, we considered it important to place the examined legal institution in the context of historical development, not to do it for its own sake, but to be able to outline a developmental curve useful for the topic. We used interdisciplinary, comparative, historical, logical, grammatical, and dogmatic methods, performed extrapolation, teleological interpretation, legal analysis, interpretation, systematization, comparison, and segregation, and finally formulated our de lege lata and de lege ferenda proposals.

During the work, not only the legal materials available in printed form were processed, but also the electronic databases were used, and we also collected primary funds in the form of insurance GTCs.

## IV. Summary of the research results and its utilization

Changes in liability standards have had an incentive effect on the formation and development of liability insurance. Although these two legal institutions can be separated from each other, they cannot be completely separated, because after the emergence of liability insurance, these two legal institutions have been embracing each other and following the bumpy paths of legal life.

The doctoral dissertation outlined the historical development of the legal institution of insurance, and in particular property insurance, including the legal institutions of the ship loan and the lex Rhodia de Iactu mercium, which protected traders against the "whims" of the sea. We see these legal institutions as rudimentary solutions to risk sharing that are the germ of modern insurance.

Expanding the threads of this development history, we turned to the development history path of the legal institution of liability insurance, which was enacted from the Commercial Act of 1875 through the Private Law Bill of 1928 to the old Civil Code, or rather the new Civil Code. including the effects of European Community law and accession on insurance law. In the framework of this chapter we examined the development of the liability insurance of the 16$^{th}$ century, the warranty insurance of the then name. We have outlined some forms of private liability, and the attitudes of insurers towards them, and the past possibilities of taking out cover.

The method of liability insurance was introduced by the creation of stricter liability rules related to the operation of certain hazardous plants (mine, railway). In the development curve of liability insurance, it can be observed that it was significantly adapted to the individual liability rules, their formation also affected the liability insurance (e.g. new products appeared in case of tightening employer liability, but the same can be observed in case of changes in professional liability rules).

The risks covered by liability insurance did not include damages for breach of contract for a very long time. The main reason for this was that neither theory nor practice considered insurable risks that the individual had voluntarily assumed and the damage associated with which resulted from the insured's culpable conduct. As a breach of a contractual obligation was classified as such, it was not possible to cover that risk. The assumption of contractual obligations depends on the decision of the insured, and since the insured has a direct influence on the fulfillment of them, the insured must bear the risk arising from the non-fulfillment of them.

A significant milestone in the history of the development of liability insurance is the first private law code (the old Civil Code), which already contained rules on liability insurance contracts. However, due to social circumstances (war, socialist system, and nationalization of insurance), the institution of insurance, especially liability insurance, was not very important. The traditional ideas based on the inclusion of contractual liability in insurance coverage were set out for a very long time after the creation of the old Civil Code. Nevertheless, in the 1980's, both theory and practice were clearly in favor of insuring against damages for breach of contract, and despite the emphasis on taking on the risk of non-contractual liability, there was a need for companies to cover these risks, which also led to the appearance of such products on the insurance market.

Following the change of regime, the development of the insurance market was influenced not only by social and economic changes, but also by the intention to join the European Community and the accompanying need for legal harmonization.

In the third chapter of the dissertation we processed the rules of the new Civil Code on liability insurance contracts. In the framework of this, we analyzed the concept of a liability insurance contract and identified the subjects of the contract. On the other hand, in this part of the dissertation we examined the subject of liability insurance, the insurable interest, so-called liability interest. The essence of the liability interest is that the insured may become liable for damage caused to a third party, the consequences of which, in particular the obligation to compensate for the damage, must be borne. The risk arising from liability has been identified in the fact that the individual is obliged to bear the consequences of his or her actions, and if he or she causes damage in connection with it, he or she is liable for compensation. The risk may arise from both a non-contractual and a contractual legal act, in connection with which a number of legal consequences may arise. At the level of the individual, the burden of this risk is difficult to bear, and so the legal institution of insurance can be called upon to help. In addition to identifying the risk and separating it from the danger, the conditions for covering it have also been scrutinized, as it must meet the conditions for insurability. These were also outlined and then detailed in the fourth chapter of the dissertation in the light of the insurability of breach of contract.

In addition, under this chapter, we have placed liability insurance in the private law system and examined its collateral nature and compared it with a number of other legal institutions that can be considered "similar", such as warranty, assumption of debt, assumption of performance and undertaking a debt, and settlement by third parties and a contract in favor of a third party,

underlining the independent, individual legal nature of liability insurance. We also concluded that the liability insurance contract has a collateral nature.

We have described the functions of liability insurance, of which we consider the reparative function to be primary, but it carries a number of features that justify its preventive and law enforcement functions. We must not forget the inherent protection function of liability insurance, which can be discovered in many rules of the Civil Code and other norms concerning liability insurance.

The central questions of the dissertation, and our initial theses, were the examination of how the changes of the new Civil Code related to liability affect the institution of liability insurance and their insurability. The tort liability regime applied by the old Civil Code for breaches of contract has been replaced by stricter rules on contractual liability, the main aim of which is the fair and efficient sharing of risk between the parties.

In the light of the conditions for the insurability of risks, we examined the inclusion of the risk of breach of contract in insurance coverage. As the first condition of insurability, we have identified the random nature of the risk-generating event, which means that its occurrence is not certain, but uncertain, and in this form is unpredictable. If the occurrence of the insured event is certain and foreseeable, it cannot be covered by the insurance. In our opinion, the only obstacle to insurability is the occurrence of a circumstance leading to a breach of contract at the time of the conclusion of the contract. Thus, if the circumstance of breach of contract is known, but its occurrence is not certain, or if it is not foreseeable at all, it can be insured, it can be the subject of insurance coverage.

The second condition of insurability was defined as the identifiable risk. Accordingly, the liability insurance contract must specify which breach-of-contract conduct the parties consider to be an insured event. Given that the range of these behaviors can be very wide and may vary from contract to contract, it is extremely difficult to identify the risk accurately, so in practice insurers do not determine which breach of contract is an insured event, but which, among the exclusions, they do not consider it. Liability insurance contracts covering the risk of breach of contract are typically covered by professional liability insurance, in which the activity performed in the given profession is designated as an insured event and specified with the help of exclusions. In our view, this is a flawed solution, as not all breaches of contract can be covered by insurance.

The third condition for insurability is that the consequences of the risk can be limited. This means pinpointing the potential legal consequences of the risk. Breach of contract can have a number of consequences, of which, in particular with regard to the concept of liability

insurance, damages and restitution should be highlighted. The exact determination of the damage and restitution arising from the breach of contract that can be covered by the insurance is extremely important, as the insurer must assess the extent of any claims, and it is also important for the insured to know which damages are covered by the insurance. However, this does not mean determining the exact extent of the damage, as it is impossible to predict, but what the insurer considers the damage to be in relation to the risk. As the challenges of economic life break through the "classical" insurance dogmas, insurers are expanding the scope of coverage to suit market needs, which the Civili Code provides by flexible regulation, so it is not just damages in the classical sense that can be included. It has been found that insurers cover not only damages in sense of civil law, but also often "shy away" from it and define the "concept" (content) of the damage independently. In essence, any monetary loss can be considered a loss that may be incurred by the insured on the basis of the fulfillment of a payment obligation to a third party. In view of this, we also examined whether among the damages not typically in the civil law sense, e.g. a contractual penalty or a fine imposed on the insured as a punishment. It has been found that in practice we find an example of such a financial loss being considered as damage in the insurance contract, which dampens the purpose of liability insurance.

With regard to the determination of the damage, we considered it important to examine on a theoretical level whether the insurance cover could cover the adhesive and consequential damages, or only one of them. We took the view that the extent of the damage that serves to satisfy the contractual interest based on the contract concluded by the parties should not be covered by the insurance, as liability insurance cannot be intended to fulfill the contractual obligation instead of the insured. We have established that the contractual interest is served by the adhesive damage, so we have taken the position that only consequential damages can be covered by the insurance. We examined the effect of the rule 6:143.§ (2) of the Civil Code on the extent of damage and thus on insurance coverage, and in the light of this, we have come to the conclusion that the foreseeable consequences do not fall outside the scope of the insurable damages.

The fourth condition for insurability is that the consequence must not be "desirable" for either party. With regard to this condition, we have concluded that if any of the parties' intentions extend to the occurrence of a legal consequence of a breach of contract, this risk cannot be insured.

We also examined how the state of consciousness of the breach of contract is assessed in the context of breach of contract and the effect of this on the liability insurance contract. With regard to the notion of intent, we agreed with the application of the notion of criminal law and take the view that the intentional nature of a breach of contract is the state of consciousness by which it seeks consequences (direct intent) or implicit consent, with the need. Serious negligence, in our view, means a state of consciousness in which the actor knows that his action affecting the contract is not in accordance with the contract, but is indifferent as to whether or not damage occurs, but did not intend to do so in any way. Behavior which results from damage due to carelessness is not considered to be grossly negligent. Examining the terms of the contract used in insurance practice, we found that if they defined the concept of intent, they were based on the criminal law concept, while they did not define the concept of gross negligence, but it is typical that some behaviors are considered as negligent.

Next, we outlined the breaches of contract mentioned in the Civil Code, and the nature of the compensation that can be established as a legal consequence of them, and examined their eligibility for insurance coverage.

We have found that we do not consider liability for breach of the duty to cooperate to be insurable, as we find it difficult to envisage a breach of the duty to cooperate which does not constitute at least gross negligence. There is a theoretical possibility that there may be a slight degree of negligence on the part of the person certifying the conduct with regard to the conduct aimed at violating the obligation to cooperate, however, from a practical point of view we do not consider it feasible to cover the resulting damage.

Although it does not constitute a breach of contract, we also examined whether the damage caused by an invalid contract could be covered by insurance, on which point we had clearly taken a 'negative' position.

We also examined the insurability of damages due to delays. In this context, it has been established that, in general, it is not possible to exclude the coverage of damage resulting from a delay, but in certain well-defined cases, certain damages may be insured, taking into account the cause and circumstances of the delay. We have separated the contracts for the performance of a pecuniary debt and the supply of goods and found that in the case of the former the adhesive damage is not, while consequential damages can be insured, and in the latter case – having regard to the view of the theory that, in the case of damage caused by a delay in the performance of a supply of goods, payment of the damage is not to satisfy the performance interest – we have taken a stand for insurability.

One of the most common breaches of contract is faulty performance (lack of conformity), which can also give rise to liability for damages. With regard to the coverage of damage resulting from defective performance, we have established that the adhesive damage is not, while consequential damages can be insured.

We also examined the insurability of damages incurred in connection with impossibility of performance. In this respect, too, it has been established that adhesive damage is not, while consequential damage can be ensured. Although it is not a factor influencing insurability but the insurer's eligibility, we emphasized that it is very important to examine the insured's state of consciousness in the case of behavior that causes impossibility.

We also mentioned that we do not consider the refusal of performance and the refusal of the legal declaration to be insurable as breaches of contract or the resulting damage.

We also shed light on the theoretical theses related to liability insurance in the light of practice, in the framework of which we examined two liability insurance contracts, the liability insurance of directors and officers and the mandatory liability insurance of designers and contractors. For both insurance products, we have raised a number of practical issues. With regard to the liability insurance of directors and officers, we have found that, although insurers cover the risk of breach of contract, they take full advantage of their insurance regulations and contractual freedom to limit it. The limitation of insurance coverage can also be observed in the case of compulsory liability insurance for designers and constructors, however, the legislation requiring the insurance obligation does not necessarily "react" correctly to certain practical issues of liability of designers and contractors in all cases.

There are apparently few contracts for which we find an insurance product to cover damages, and liability insurance for damages and other related legal consequences is very partial.

In the fifth chapter of the dissertation, we examined the issue of including a subjective sanction for violation of personal rights – the restitution – in the insurance coverage. In the light of the functions of restitution, we analyzed the question of whether there is an obstacle to the inclusion of restitution for breach of contract in the light of the functions of restitution, in particular compensation, reparation and punitive functions. We have found that although the primary function of the restitution is to compensate the injured party, we see no obstacle to insurability. However, we supplement this idea with the fact that we do not see the possibility, either theoretically or practically, of the extent to which the compensatory and punitive functions

prevail in the established restitution, so a sharp line cannot be drawn between these two, at least cannot be clearly established the primacy one or the other.

As a shortcoming of the concept of a liability insurance contract and the provisions on additional liability insurance in the law, we have suggested that the legislator did not take into account the fact that we are not talking about the injured party but a person who has violated his or her right to privacy, so this could be "confusing" in theory. In order to eliminate this, it is proposed to formulate a provision in the regulation of the liability insurance contract according to which the injured party shall also mean a person who has violated his or her right to privacy within the scope of this chapter.

We also examined the practical issues of including restitution in the insurance coverage and found that the insurance terms and conditions contain significant restrictions on damages. In all cases, these restrictions apply to the violated right to privacy which gives rise to the indemnity, namely that only claims arising from a violation of the right to life, physical integrity or health as a right of personality are covered by the insurance. However, it can also be stated that the category of persons entitled to restitution from the insurer is narrowed in several cases, as the insurance only covers the claim for damages of the injured person who has a contract with the insured, and it does not cover e.g. at the request of relatives in the event of the death of the injured party. This should be supplemented by the fact that the restrictions applied in the insurance contract, such as the deductible or the limit amount, may be an additional limit to the amount of the restitution paid by the insurer.

In the last part of the dissertation, which contains an international perspective, we first examined the European efforts to unify insurance contract law, which resulted in the adoption in 2009 of a document entitled "Principles of European Insurance Contract Law" (PEICL), is therefore a non binding Community act. PEICL also contains rules regarding the liability insurance contract, which we have compared with certain standards in the Civil Code. In principle, however, it is hardly possible to standardize liability insurance standards at European level, given the heterogeneity of national liability systems.

In the framework of the international perspective, we examined the liability insurance rules in force in the Slovak Republic and the Czech Republic, which we compared with the new Civil Code. Comparing these three rights, we found that there are a number of differences between the solutions used.

With regard to Slovak law, it can be stated that no major differences can be detected in the regulation of the liability insurance contract compared to the Hungarian legislation. Some

detailed rules show differences, the most important of which is the assessment of the insured's state of consciousness (intent and negligence) that, unlike Hungarian law, the Slovak insurance legislation does not assess gross negligence, but does assess intent more lightly. We see a milder assessment of this issue in the fact that Hungarian law imposes the legal consequence of exemption on intentional and grossly negligent conduct, while Slovak law "merely" provides a recourse for the insurer. For the protection of the injured party, we consider it worthwhile for the Hungarian legislator to amend the exemption rule, similarly to the old Hungarian Civil Code, even in the case of an insurance contract concluded with the consumer, by compensating for the intentional and grossly negligent conduct instead of the injured party. Thereafter, the insurer could enforce against the insured the amount of damages paid. The insurer may otherwise undertake in the contract, e.g. it also performs in the event of gross negligence on the part of the insured.

Among the provisions giving priority to the protection of the injured party, we would like to emphasize that there are several products in the scope of compulsory liability insurance in Slovak law for which the legislator authorizes the injured party to assert his or her claim directly against the insurer.

Regarding the content of the liability insurance cover, there are significant differences between the regulations of the two countries, which result from the differences between the Slovak and Hungarian civil liability liability systems. In Slovak insurance practice, the coverage of damages for breach of contract appears differently, as civil liability is subject to significantly different rules.

In the case of designer and contractor liability insurance, as an insurance product used to ensure the risk of professional, contract-based liability, we can discover significant differences compared to the Hungarian regulations. Of these, it should be emphasized that according to the Slovak regulation, all designers and contractors must have liability insurance during the entire period of their activity, which – based on the examination of the contracts applied in practice – covers a much higher insurance amount than the cover under Hungarian law. We consider the regulations to be much more advantageous for the victims compared to the Hungarian regulations.

Examining the provisions of Czech law on liability insurance contracts and comparing them with Hungarian law, we found that no conceptual differences can be detected in the two legal systems. We have identified an interesting theoretical difference between the regulations of the two countries in the wording of the reporting obligation under the rule on the obligation to report the occurrence of an insured event. Under Czech law, the harmful event and not the

insured event must be reported, with the law emphasizing that the insured (or rather the reporting person) does not necessarily know whether the insured event specified in the contract has occurred or not, since it is primarily for the insurer to assess this issue. Another difference is that the deadline for fulfilling the notification obligation is determined by Czech law in an abstract way compared to Hungarian law, with the obligation to comply with it without delay. The reason behind this rule is that the insurer should be given the opportunity to investigate the circumstances of the claim as soon as possible. Another significant difference in the scope of the notification is that the CsPtk. its novelty is that it can be reported to the insurer by anyone who has a legitimate interest in the performance of the insurer.

We also find a discrepancy in the rules for the insurer's claim for compensation in the event that the insured event occurred due to the insured's conduct and the insured was under the influence of alcohol or other addictive substances. In Hungarian law, as a general rule, this case would result in the insurer being released, while in Czech law, as a rule prioritizing the protection of the injured party, the insurer is still obliged to claim compensation from the injured party. The legislative proposal for the same rule of Slovak law could also mentioned here.

In the course of the examination of the compulsory liability insurance of Czech designers and contractors, we found that in practice the contract is concluded for a very low sum insured, due to the fact that the relevant legislation does not stipulate a minimum coverage requirement. In view of this, such an insurance contract does not provide real protection for either the insured or the potential injured, so in our view, liability insurance cannot play its role properly. The restrictions applied in the insurance contracts are basically in line with the “general practice”. Compared to Hungarian and Slovak law, the fact that we can find an extremely low deductible in the insurance contract can be assessed as a positive difference in favor of Czech practice. We consider the so-called so-called A "provision in force" to maintain the term of the insurance contract – bearing the risk – until the limitation period for claims arising out of the pursuit of the activity.

Taking into account the legal provisions on liability insurance in Slovakia and the Czech Republic, as well as the practical solutions for liability insurance for designers and contractors, the following de lege ferenda proposals are formulated for the Hungarian legislator with regard to liability insurance for designers and contractors.

We recommend that the legislator should consider that, given the nature of the activity, the extent of the damage that may be caused and the serious consequences it may cause in the social circumstances and life of the injured party, the Hungarian legislator should extend the

compulsory liability insurance for designers and contractors. for the entire duration of the activity.

In order to enforce the protection of injured parties, it is also proposed to stipulate in general terms, but at least in the case of contracts with the consumer, that injured parties may apply directly to the insurer for a faster and more efficient settlement of their claim. To this end, the legislator may make it mandatory to provide the customer with information on the insurance cover, including the identity of the insurer and the amount of the insurance cover.

In addition, it is justified to set the amount of insurance coverage at a higher amount than at present, taking into account practical experience. In order to protect both the insured and the injured (property), we also consider it necessary to prescribe at the legislative level the extension of the term of the insurance contract to the period obligatory termination of the activity, at least until the limitation period of claims.

## V. List of publications related to the dissertation

1) CERTICKY Mário: Szerződésszegéssel okozott kár és a felelősségbiztosítás. In: Barta Judit (szerk.): Biztosítás több szem-szögéből. Ünnepi kötet Újváriné dr. Antal Edit c. egyetemi docens 65. születésnapja tiszteletére. Miskolc-Budapest, Patrocinium Kiadó, 2019, pp. 173–192.
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3) CERTICKY Mário: Kockázat és biztosítás. Studia Iurisprudentiae Doctorandum Miskolciensium – Miskolci Doktoranduszok Jogtudományi Tanulmányai, 2020/2. szám, pp. 7–18.
4) CERTICKY Mário: A biztosítási jogviszony alanyai a biztosítási érdek tükrében. Erdélyi jogélet, 2020/1. szám, pp. 22–35.
5) CERTICKY Mário: A felelősségbiztosítási szerződés szabályai Magyarországon és Szlovákiában - összehasonlító jogi elemzés. Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica, 2020/1. szám, pp. 293–310.
6) CERTICKY Mário: A felelősségbiztosítási szerződés főbb szabályai a Cseh Köztársaságban és Magyarországon – összehasonlító jogi elemzés. Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica, 2020/2. szám, pp. 167–186.
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8) CERTICKY Mário: Innovatív digitális megoldások és ezek hatása a biztosítás intézményére. In: Certicky, Mário (szerk.): Innovatív magánjogi megoldások a társadalmi-gazdasági haladás szolgálatában. Tanulmánykötet. Szeged, Magánjogot Oktatók Egyesülete, 2020, pp. 112–117.
9) CERTICKY Mário: A biztosítási szektor felügyelete és kockázatai. Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica, 2019/1. szám, pp. 390–406.
10) CERTICKY Mário: A biztosítás alapgondolatának fejlődési irányai. In: Szabó Miklós (szerk.): Doktoranduszok fóruma: Miskolc, 2018. november 22.: Állam- és Jogtudományi Kar szekciókiadványa. Miskolc, Miskolci Egyetem, 2019, pp. 11–16.

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