ASSIGNMENT OF THE CONTRACT. A SPECIAL CASE IN THE MATTER OF THE INSURANCE CONTRACT

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Abstract

Special situations may arise in the relations between the contracting parties, which may lead to a substitution of the party in the insurance relations - the assignment of the insurance contract

With regard to the assignment of the insurance contract, each party may substitute a third party for its insurance relations. The general provisions on assignment, namely those provided by Art. 1315 and Art. 1316 of the Civil Code and those of Art. 1566-1586 Civil Code on the assignment of debt, the special provisions of Art. 2212 Civil Code in the matter of the insurance contract, together with the provisions of the special legislation, such as Law no. 190/1996 on the mortgage contract for real estate investments, provide the regulatory framework necessary to carry out the operation.

In terms of insurance, in accordance with the provisions of Art. 2212 of the Civil Code – "Assignment of insurance", the insurer may assign the insurance contract only with the written consent of the insured.

The doctrine has shown that the assignment contract inserted in an insurance contract can be consensual, but it is necessary, ad probationem, that the agreement of the other party regarding the assignment take the written for

The concrete legal conditions under which the assignment of the insurance contract may occur will be analyzed subsequently, with various solutions of the courts being commented upon in context.

Keywords: *assignment of insurance, insurance contract, insurance indemnity, written consent, substitute a third party*.

1. Introduction

The purpose of this work is to provide an overview of the institution of the assignment of the contract.

The general and special legal provisions governing the institution of the assignment of the contract and the insurance allowance, the legal nature of the assignment operation, the formal conditions of the contract and legal conditions such as the inalienability clause or the need for the indemnity beneficiary s consent, will be reviewed and commented on.

Some of the particularities of judicial doctrine and practice will be brought up in a predominantly jurisprudential approach.

Finally, without the pretence of exhausting the subject, some conclusions will be drawn, based mainly on the judicial practice analyzed.

1.1. Gouverning rules

In carrying out this legal operation, general provisions regarding the assignment will have to be taken into account, respectively those provided by Art. 1315-1316 of the Civil Code (assignment of the contract), those of art. 1566-1586 of the Civil Code (assignment of debt), as well as the special provisions regarding the insurance contract included in Art. 2212 of the Civil Code - provisions, which restate and reinforce some of the already in force provisions in general matters regarding the assignment.

Under the provisions of Art. 1315 of the Civil Code on the assignment of a contract, a party may substitute a third party in the relations arising from a contract only if the services have not yet been fully performed, and *the other party agrees* to it. There are exempted specific cases provided by the law. The assignment contract must be concluded in the form required by the law for the validity of the pre-existing legal act. (art. 1316 Civil Code).

The assignment of the debt is regulated, as a general rule, by the provisions of Art. 1566-1586 of the Civil Code.

In terms of insurance, in accordance with the provisions of Art. 2212 of the Civil Code – "Assignment of insurance", the insurer may assign the insurance contract *only with the written consent of the insured.*

In what follows we ll referr to som proof for and form of assignment contracts, some courts decided that, in the absence of a receivable assignment contract effectively concluded, other documents may not stand for such agreement. Such documents may have the effects of a contract on behalf of a third party beneficiary but, in the absence of a specification of such *de jure* ground for an action, courts may not exceed the limits of their mandate. At the same time, the filing of an indemnity claim in which the indemnity beneficiary specifies the payment manner is not equivalent to o receivable assignment, since there is no legal relationship between the service unit and the insurer. The (partial) payment by the beneficiary indicated in the indemnity claim can be equivalent to a receivable assignment. If the receivable assignment is a liberality, it must meet the requirement of authentic form. If the receivable assignment is a sale and purchase operation, in order to be valid, it should have been performed in exchange for a price set in money. Otherwise, the

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contract is absolutely null, at least in terms of the sale and purchase, since it lacks an essential element in relation to which the parties need to reach an agreement (Art. 1295 of the 1864 Civil Code).

1.2. Legal nature. Assignment or subrogation?

In the doctrine, in a relatively recent study on the assignment of a debt, it was highlighted that the valences of the conventional subrogation clauses inserted in an insurance contract represent a controversial aspect[1]. Taking some opinions previously expressed in the doctrine, it has been shown that, in addition to the legal subrogation, the insurer can agree with the insured that a conventional subrogation is made, even before the payment of the indemnity[2]. On the other hand, it has been disputed that such an agreement concluded prior to the payment of the indemnity would have the value of a conventional subrogation, and it has been argued that such a legal act is, in fact, an assignment of a debt[3]. Finally, it was concluded that such a stipulation, which occurred prior to the payment, could only constitute a *possible assignment of a debt or a promise of subrogation*[4].

In the judicial practice it was considered that the legal nature of the agreement concluded by the plaintiff and the intervener, prior to the promotion of the action, is a subrogation agreed by the creditor, under Art. 1594 para. 1 of the Civil Procedure Code. It has thus been stated, by case-law, that the plaintiff, being the beneficiary of the insurance under the subrogation agreed by the creditor, is the one entitled to compensation as a result of the occurrence of the insured event, a solution justified also by the fact that the transferee mentioned that he had no longer a reason to appeal to the policy transferred in his favour, communicating to the transferor a notification by which he had agreed to subrogate it to his rights in respect of the collection of the insurance indemnity[5].

1.3. The condition of the written form

In the case of the insurance contract, its conclusion by simple agreement of will is valid, but *the written form* of the contract is required *ad probationem*.

Starting from this legal reality, the doctrine has shown that the assignment contract inserted in an insurance contract can be consensual, but it is necessary, ad probationem, that the agreement of the other party regarding the assignment take the written form[6].

1.4. Assignment of the contract by the insurer

The assignment of the contract by the insurer is possible under the conditions of Art. 2212 of the Civil Code, respectively only with the written consent of the insured.

The insurance contract was concluded by the insured, who had the option of choosing the insurer, an option that he must keep and whose modification depends on the consent of the insured. Therefore, the provision of Art. 2212 of the Civil Code - in the meaning of the need for the written consent of the insured to operate the assignment - is fully justifiable.

The exception to the rule is contained in the provisions of Art. 2212 para. 2, in the sense that the written agreement is not required when an assignment of insurance portfolios occurs between insurers, an operation subject to special regulations.

1.5. Assignment of the contract by the insured

According to the content of Art. 2112 of the Civil Code - special provision in the matter of the insurance contract - there is no possibility of the assignment of the insurance contract by the insured.

In relation to the general legal provisions on the assignment of the contract, however, the operation is possible in the event of a written agreement of the contracting parties in this regard. The written agreement is claimed by the corroborated provisions of Art. 1315 and 1315 of the Civil Code, which impose the double condition that the services have not been fully executed, and that the other party consents to the transfer.

Although not expressly provided for in the Civil Code in the matter of the insurance contract, the institution of the assignment of the insurance contract at the initiative of the insured is stipulated in other special legal provisions[7].

Thus, Art. 16 of the Law no. 190/1999 on the mortgage loan for real estate investments stipulates that, in case of mortgaging a building, the borrower (the insured - in our case) will conclude an insurance contract covering all its risks, a contract in which the lender will appear as the beneficiary of the insurance policy. The rights of the insured arisen from the insurance contract will be assigned in favour of the mortgagee for the entire period of the loan for real estate investments, following that, if the compensations granted exceed the amount of the remaining mortgage to be repaid and the other amounts due to the lender, the difference is granted to the beneficiary of the loan or his heirs. In accordance with the provisions of Art.

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[1] Laura Retegan, *"Cesiunea de creanță în raport cu alte operațiuni juridice triunghiulare",* study published in Studia Universitatis Babeș-Bolayi Jurisprudentia" no. 3/2009, July-September 2009.

[2] C. Alexa, V. Ciurel, A.M. Mihăilescu, *Asigurări şi reasigurări în comerţul internaţional*, All Publishing House, Bucharest 1992, p. 107.

[3] I. Sferdian, *Subrogaţia asigurătorului în drepturile asiguratului*, in „Dreptul" no. 12/2002, p. 71-72.

[4] J. Flour, J.-L. Aubert, É. Savaux, *Droit civil. Les obligations. 3. Le rapport d'obligations*, Sirey, Paris 2007, p. 269.

[5] In this regard, Decision no. 666/24.04.2015 delivered by the Bucharest Court of Appeal, 5th Civil Section. The court decision is available on www.rolii.ro.

[6] Elena-Cristina Savu, "Contractul de asigurare", C.H. Beck Publishing House, Bucharest, 2018, p. 164.

[7] See in this regard "Dreptul contractelor civile și comerciale. Teorie, jurisprudență, modele", authors Vasile Nemeș and Gabriela Fierbințeanu, Hamangiu Publishing House, version 2020, p. 714.

18 of the same regulatory document, the insurance contracts provided for in Articles 16 and 17 shall be concluded with an insurance company, and the lender shall not have the right to impose on the borrower a specific insurer.

Regarding the issue of taxation of the insurer, the judicial practice, with some exceptions, seems to make the provisions of the above-mentioned Art. 18 effective. Thus, in judicial practice it was also decided that the clause contained in a loan agreement, according to which the borrower has the obligation to conclude an insurance contract with an insurance company approved by the bank, is not abusive. The Borrower had challenged the validity of that clause, stating that it violated the provisions of Art. 18 of the Law no. 190/1999, the law forbidding the bank to impose on the borrowers the insurance company, all the more so to choose it. The borrower also claimed that, given that a party of the insurance contract is the debtor, as well as that all insurance costs are borne by him, he must freely choose his insurance company.

In a broader comment on that judgment[8], it is stated that the court asked to examine the validity of the clause found that "that clause - a clause contained in *an insurance of credit, guarantees and financial risks* - is only the application of the legal text provided for by Art. 16 of the Law no. 190/1999. Thus, according to Art. 16 para. (1) of the Law no. 190/1999, "*in case of mortgaging a construction, the borrower will conclude an insurance contract covering all the risks related to it. The insurance contract will be concluded and renewed, so as to cover the entire duration of the credit*". Next, para. (2) of the same article states that "*The rights of the insured arising from the insurance contract provided for in para. (1) shall be assigned in favour of the mortgagee for the entire period of validity of the mortgage loan agreement for real estate investments.*" The court also found that "the provision of Art. 12.2 of the contract does not violate the provisions of the Law no. 193/2000 and is not abusive, as it does not impose an excessive obligation on the consumer. This is because the plaintiffs have a legal and contractual obligation to conclude *an insurance policy*, and it is assigned to the Bank precisely in order to benefit from any sums of money that would be paid in case of a *force majeure event* that would lead to the destruction or serious damage of real estate. *The mortgage loan agreement* without securing the mortgaged real estate by concluding an insurance policy, would no longer have the same efficiency for the protection of the only guarantee received by the Bank. In the event of a possible accident, the amount collected by the transferee insured (bank) will take the place of the real estate, and, in case of non-payment, it will go to the insured amount in order to satisfy the guarantee. The court dismissed the arguments of the parties regarding the abusive nature of this contractual rule, as the debtor's lack of a guarantee was irrelevant in this situation. Under loan agreements, the bank's obligation to hand over the amount of the borrower exists and is executed even from the beginning of the contract, and, therefore, there is also the risk of non-payment by the borrower. This is also the reason for establishing the guarantees in the borrower's patrimony, respectively the recovery of the borrowed money. The contractual balance referred to by the plaintiff must also be related to the specifics of the *mortgage loan agreement*. Thus, the plaintiff states that she does not benefit of any protection in the event that the insured risk occurs, the bank benefiting entirely from the insurance, even though the plaintiff pays the insurance premium. It is true that, in this situation, the bank benefits from the insurance, but the court must take into account the very contract concluded between the parties, namely the mortgage loan contract. Under this contract, the lender lends the borrower *only* as a result of securing the contract by mortgaging a real estate. Or, if that real estate is destroyed, then the guarantee remains without effect. This is precisely the reason why the bank is required to conclude a real estate insurance contract. It is the lender's method of securing the investment as best as possible"[9].

The solutions are not yet uniform, and there is a practice to the contrary. Thus, in a case involving *credit insurance, guarantees and financial losses*, the court gave effect to the insured's claim and found the abusive nature and the partial *nullity* of the clause included in the credit agreement regarding the borrower's obligation to conclude an insurance contract with a company approved by the bank[10].

1.6. Assignment of the insurance indemnity

Pursuant to the provisions of Articles 1566-1586 of the Civil Code regarding the assignment of a debt, in the absence of a clause expressly stipulated in the insurance contract prohibiting such assignment or making it conditional on compliance with a certain procedure for exercising the rights arising from the assignment, the assignment of rights carried out by the insured may occur. The provisions of Art. 1568 paragraph (1) of the Civil Code stipulate that the assignment of the debt transfers to the assignee all the rights that the assignor has in relation to the assigned debt as well as the guarantee rights and all other

[8] Art. 12.2 of the respective contract provided the following: "The insurance policy will be assigned in favour of the Bank and its original will be deposited at the Bank's office mentioned in the first paragraph of the Contract. The assignment can be made by mentioning by the insurance company of the expression "*full assignment in favour of the Bank*" on the policy or by written notification from the Insurer certifying the assignment".

[9] In this regard, see the Civil Decision no. 17519 of December 8, 2014 delivered by the Timișoara Court, Second Civil Section, available on idrept.ro.

[10] For such a solution of judicial practice see Civil Decision no. 309 of February 16, 2017, delivered by Bucharest Court of Appeal, the 5th Civil Section, published on idrept.ro, a practice solution quoted also in "Civil and Commercial Contract Law. Theory, Caselaw, Models", authors Vasile Nemeș, Gabriela Fierbințeanu, Hamangiu Publishing House, version 2020, p. 673.

accessories of the assigned debt, the legal procedure for the assignment of this debt being notified to the defendant for payment. Pursuant to Art. 1570 of the Civil Code, the assignment that is prohibited or limited by the agreement with the debtor does not produce effects regarding the debtor, unless: a) the debtor has consented to the assignment; b) the interdict is not expressly mentioned in the document establishing the debt, and the assignee did not know and should not have known the existence of the interdict at the time of the assignment, c) the assignment regards a debt that concerns a sum of money. In the event of an assignment of a future debt, the document must include the elements enabling the assigned debt to be identified. The debt shall be deemed to have been transferred from the time the assignment contract is concluded (Art. 1572 of the Civil Code).

1.7. The agreement in the case of insuring the good that is subject of a mortgage loan agreement or a leasing contract

In the case of assignment of rights from the insurance contract to the mortgagee, the payment of compensation to the insured is conditioned by the agreement of the bank, a provision that is usually found as a standard clause in property insurance contracts.

The legal practice has confirmed that, in the case of a clause for the assignment of rights regarding the compensation, in order to legitimize its legal standing and, at the same time, to be able to obtain the compensation for himself, the insured must present the written consent of the beneficiary regarding the right to compensation arising from the contract.

Thus, in a solution of judicial practice it was noted that, "as long as the insurance contract provides for a beneficiary designated by the insured to receive the compensation, the respondent may not pay any compensation without the express written consent of the beneficiary .... Since the written agreement of the banking unit in favour of which the compensation rights are assigned has not been submitted to the case file, it cannot be argued that in this case C.B. appropriated the action of the insured plaintiff ..... Given that the plaintiff has not proved her legal standing in this case, even if she is a party to the invoked insurance contract, the rights arising from it are assigned in favour of C.B., so that the court will reject the appeal declared by the judicial liquidator"[11].

However, there have also been contrary solutions, considering that "the insertion of the bank into the insurance policy as beneficiary gives active procedural legitimacy to claim compensation only to it and not to the plaintiff in the case in question (the insured), even if there were notifications, submitted to the case file, concerning the bank's agreement to pay the plaintiff directly. As the legal conditions provided for in Art. 36 of the new Code of Civil Procedure for bringing this action to court were not met, the courts of first instance and appeal, in relation to the statements from the insurance policy, and the general conditions of the contract, held that the plaintiff did not have legal standing in the case, the beneficiary of the payment being expressly indicated as U.C. T Bank and dismissed the action on this plea"[12].

1.8. Status of assignment of mortgaged and privileged debts – except insurance agreement

A case in which the validity of the assignment of rights arising from the credit insurance contract for real estate investments is not conditioned by the will of the contracted insurance company, is that of the assignment provided by the provisions of Art. 24 of the Law no. 190/1999. Art. 24 of the Law no. 190/1999 on mortgage credit for real estate investments regulates the possibility of assigning mortgaged and privileged debts, from the portfolio of an institution authorized by law, to another financial institution authorized to operate on the capital markets. The assignment will only concern the mortgaged debts in the portfolio held, which have common features regarding their nature, origin and risks. The notification of the assignment will be made for opposability and not for its validity. As a result of this operation, the transferee acquires, in addition to the mortgage right related to the mortgage loan for the real estate investments, also the rights arising from the insurance contract for the property that is subject to this mortgage. The opposability of the assignment of the rights arising from the insurance contract is carried out, towards third parties, by registration in the Electronic Archive for Security Interests in Movable Property, and towards the insurer, by letter with acknowledgement of receipt or through bank collecting officers agent or legal receivers.

1.9. Inalienability clause. Case-law approaches

In judicial practice, the courts have been referred to in countless cases with sue petitions in which the compensation was requested by the transferee. Specifically, the insured, who was the holder of a casco insurance contract, proceeded to assign the debt to the service unit repairing the vehicle damaged in a car accident and for which the insurance company had opened a claim for damages file and owed compensation.

To the extent that in the insurance contract there was a contractual provision regarding the prohibition of the assignment of the debt or its conditioning by the agreement of the insurer, the solutions of the courts varied.

1.10. The conditions provided by Art. 1570 paragraph 1 of the Civil Code. Interpretation

The judicial practice has also stated that the situations inserted in the content of Art. 1570 para. 1 of

[11] In this regard, see the Civil Decision no. 13 of 13.01.2015 delivered by the Cluj Court of Appeal, second Civil Section, available on www.rolii.ro.

[12] In this regard, see the Civil Decision no. 43 / 04.02.2015 delivered by the Iași Court of Appeal, the Civil Section, available on www.rolii.ro.

the Civil Code are independent, and do not constitute conditions that must be met cumulatively. Consequently, although the assignor carried out the assignment without first seeking the debtor's consent, it was stated that the assignment would produce effects in respect of the debtor. In that case[13], regarding the inalienability clause, it was shown that the provisions of Art. 1570(1)(c) of the Civil Code are applicable, so that the assignment produces effects towards the debtor, since at issue is a debt that concerns sums of money. The situations inserted in the content of Art. 1570 para. 1 are independent, not constituting conditions that must be fulfilled cumulatively. Consequently, although the assignor has made the assignment without first seeking the debtor's consent, the assignment will produce effects with respect to the debtor, according to the above-mentioned legal grounds. In that case, the provision of Art. 38.1 of the Insurance Conditions regarding the interdict of assignment, does not constitute an inalienability clause as set out in Art. 1570 of the Civil Code, because in the light of the latter article, the legislator establishes which are the three cases/situations that are not subject to the inalienability clause of the debt. In other words, the given situation involves the assignment of a debt, which consists of a sum of money that the insured assignor sends to the assignee and has to collect it from the debtor (insurance company and defendant in this case). Thus, from the interpretation of the wording of Art. 1570 para. 1, it results that the assignment of debt produces effects towards the debtor and is valid, because it fits perfectly in one of the conditions/situations laid down in Art. 1570 of the Civil Code (respectively in the one set out in letter c) and is opposable to the debtor. It is also shown that the legislator, by art. 1570 of the Civil Code, does not establish conditions but establishes cases, situations or, more precisely, exceptions from the rule of non-enforceability of the assignment prohibited or limited by the agreement of the assignor with the debtor. In order to be able to speak of cumulative conditions, the legislator had to expressly provide for this, using the phrase: "unless the following conditions are cumulatively met: (...)" ... The debtor may have an interest in maintaining contractual relations with a particular creditor, by inserting in the contract, for this purpose, a clause of inalienability of the debt or stipulating limits of the assignment. However, the assignment of debt is an extremely important mechanism in a modern economy, through its ability to promote the movement of capital and, therefore, limiting the effects of such an inalienability clause is not only natural, but also necessary. According to the concept of the new Civil Code, inspired by the Unidroit Principles (art. 9.1.9), the transfer of the right of claim may be opposed by the assignee to the debtor, even in the presence of non-assignable or conventional limitations, if the debtor has consented to the assignment or if the prohibition or the limitation, which does not appear in the text of the ascertaining document, could not and should not have been known by the assignee at the time of the assignment. Also, the inalienability clause does not produce effects towards the assignee, if the assignment concerns a pecuniary claim, regardless of whether or not it was recorded in the ascertaining document. The law, thus, gives preference to the need for credit and the use of monetary claims as a tool for financing economic activity. In this regard, the Timiș Tribunal also ruled, by the civil decision of 26.03.2013, in a similar case, following the verification of the legality and validity of another decision delivered in a case settled by the Timișoara Court. By this decision, the Tribunal found the defendant's appeal versus the respondent to be groundless, and consequently found legal and valid the decision by which it was obliged to pay the compensation that was the subject of the assignment contract concluded with its insured. In relation to all these arguments, the appellate court ruled that the provisions of Art. 38.1 of the Insurance Conditions, do not constitute an inalienability clause as provided for in Art. 1570 Civil Code, because in the light of the latter article, the legislator establishes which are the three cases/situations that are not subject to the inalienability clause of the debt".

1.11. Requirement for the indemnity beneficiary's consent in case of an inalienability clause

In other cases, it has been decided otherwise, in the sense that the assignee could not receive the indemnity, because the provisions of the insurance contract, which prohibited the assignment of the right to indemnity without the insurer's consent, were not observed. Following an examination of the case documents and works, the court decided that the objection raised to the plaintiff's lack of standing capacity to sue was founded, based on the following reasons: "According to the provisions of Art. 36 of the new Civil Procedure Code, the standing capacity results from an identity between the parties and the subjects of a litigious legal relationship, as referred to the court. Hence, the standing capacity to sue requires an identity between the person of the plaintiff and that of the holder of the right referred to the court. In the case, the plaintiff vested the court with a claim based on an optional insurance contract for fire and other risks concluded between the parties. According to the "Special Provisions" clause of the insurance policy "Insurance rights are assigned in favor of Raiffeisen Bank. The property (stocks, equipment etc.) subject to insurance is mortgaged in favor of Raiffeisen Bank SA. The amounts due as insurance indemnity will be paid to a separate bank account opened with Raiffeisen Bank in the name of the policyholder, an account that will be available to Raiffeisen Bank". According to clause 6.5

[13] In this regard, see the Civil Decision no. 351/22.04.2013 delivered by the Timiș Tribunal on appeal. The court decision is available on www.rolii.ro.

of the insurance contract " (1) In the case of insurance contracts concerning assets mortgaged or pledged in favor of a creditor, the rights/receivables set forth by the insurance contract will be assigned by the policyholder to the relevant creditor up to the concurrence of the value of its right, by notifying the policyholder in writing about this, while the policyholder will receive only the difference. (2) Based on the express consent of the creditor, the indemnity may be paid to the policyholder". Based on these contractual provisions, the court established that the right of the policyholder-plaintiff to indemnity deriving from the insurance contract on which its claim is based was assigned in favor of a third party beneficiary - Raiffeisen Bank. As a result, even though, under the insurance contract, the plaintiff is the policyholder, due to the fact that the policy beneficiary is a third party, only the latter may request for the indemnity payment. Based on the aspects mentioned above and on the fact that the consent of the insurance third party beneficiary was not proven, in order to enable the indemnity payment to the plaintiff (the policyholder), the court will admit the objection raised to the lack of standing capacity to sue and, as a result, will dismiss the sue petition as being filed by a person lacking such standing capacity to sue" [14].

1.12. Requirement regarding the existence of a serious reason for a payment refusal

In some cases, courts decided that an indemnity may be granted to the receivable's assignee. They established that, even though the general conditions of the CASCO insurance contract stipulate that the policyholder is expressly prohibited to transfer its rights and obligations arising from the contract in the form of a receivable assignment, the sanction being that of refusing to pay the indemnity to the third party, yet, the sanction does not consist in an invalidation of the receivable assignment contract. This is and remains validly concluded. Moreover, it is also binding on the other party because it has been notified to the latter. The court also established that the provisions of Art. 1570 para. 1 item c of the Civil Code, under which: „ (1) *An assignment that is prohibited or limited by an agreement between the assignor and the debtor does not produce effects for the debtor unless:* ***c)*** *the assignment concerns a receivable the object of which consists in a money amount.",* were applicable in the case. The sanction established by the parties for non-observance of the provisions of Art. 47 para. 1 of the General Terms of the CASCO insurance contract consists in a refusal to pay the amount to the third party assignee, but the insurer failed to justify, based on a well-grounded and unequivocal reasons, its refusal to pay. Hence, in the absence of such reason, the court cannot apply the above-quoted contractual provisions"[15].

1.13. The particular situation deriving from Art. 4 para. 1 item b of Law no. 213/2005

In a different case decision, the supreme court established that, in a particular situation where the court acknowledges the applicability of the provisions of Art. 4 para. 1 item b) of Law no. 213/2005, the category of beneficiaries of indemnity paid through the guarantee fund will include only policyholders, insurance beneficiaries and prejudiced parties. The law does not prohibit the conclusion of legal documents whereby an insurance creditor transfers the insurance receivable held by it, but this situation is not applicable in the relevant case, in which the assignment concerns a receivable arisen under a collaboration agreement, not an insurance contract, and the assignor (the service unit) did not act as insurance creditor. The current legal framework does not include such express provision, as the lawmaker has understood to restrict the category of beneficiaries of compensations paid to policyholders through the guarantee fund.[16]

Form of the assignment contract and proof for its conclusion. In this respect, the opinions of courts were also diverging :

1.14. Assignment versus contract on behalf of third party beneficiary. Requirement regarding the existence of an effectively concluded assignment contract

Some courts decided that, in the absence of a receivable assignment contract effectively concluded, other documents may not stand for such agreement. Such documents may have the effects of a contract concluded on behalf of a third party beneficiary but, if such legal basis is not indicated for the action, the courts of first instance and the courts adjudicating in appeal may not exceed the limits with which they were vested. In this context, the courts established that a receivable assignment required an assignor, an assignee and an assigned debtor and that, in order to deal with a receivable assignment, there should be an agreement, whereby the vehicle owner transfers its receivable right held against the assigned debtor (the MTPL policyholder – the appellee-respondent) to the assignee service unit. The court established that such agreement was not proven in that case, because the indemnity claim relied upon by the appellant-plaintiff included only the agreement of the owner (the presumed assignor) and not that of the service unit (the presumed assignee). At the same time, the indemnity claim was filled in on a form prepared by the assigned debtor and, as it results from its content, was addressed precisely to the debtor. Therefore, this indemnity claim did not

[14] See for this purpose Civil Decision no. 998/11.04.2019 rendered by the Sixth Civil Division of Bucharest Tribunal, involving an obligation to comply. The court decision is available at www.rolii.ro.

[15] See for this purpose Civil Decision no. 639/08.05.2018. The court decision is available at www.rolii.ro.

[16] See for this purpose Decision no. 2852/2019 of 29-May 2019 rendered by Bucharest High Court of Justice-Administrative and Tax Litigation Division. The court decision is available at www.rolii.ro.

contain the agreement of the vehicle owner, in its capacity as assignor, and of the service unit, in its capacity as assignee, in order to be assimilated to a receivable assignment. By this indemnity claim, the policyholder indicated the insurance beneficiary, and, as a result, the legal relations arisen this way fall under the scope of a *contract on behalf of a third party beneficiary* mechanism, based on the following reasoning: the policy owner, through a proxy, acts as policyholder, and requests the promissory party (the MTPL policyholder – the appellee-respondent), which owes the indemnity to the policyholder, to pay it in favor of a third party beneficiary (the service unit). This agreement was valid only between the policyholder and the promissory party, i.e., between the owner's proxy and the MTPL policyholder. The service unit is a third party to this legal relation, and this is the reason why the indemnity claim does not even contain its consent. Through this mechanism, the parties sought to extinguish two legal relations, namely the obligation of the MTPL policyholder to pay the indemnity to the owner and the obligation of the owner to pay the value of repairs to the service unit. By using a contract on behalf of a third party beneficiary, one gets to a situation where the MTPL policyholder would pay directly to the service unit, extinguishing this way both obligations and simplifying the legal relations between the parties. The fact that the MTPL policyholder has paid part of the indemnity is not proof for the receivable assignment but for the performance of the obligation undertaken towards the owner through the agreement that includes a third party beneficiary. Through the mechanism of a contract on behalf of a third party beneficiary, the right arises directly in the estate of the third party beneficiary, which can make use of it, but not through other legal means, but precisely by relying upon the contract on behalf of the third party beneficiary. However, the court established that, in the case at hand, the plaintiff did not invoke as ground for its action a contract on behalf of a third party beneficiary, but the existence of a receivable assignment contract, which, as established previously, was not proven in the case. In conclusion, the admission of the plaintiff's action on a ground other than the indicated one would be a violation of the principle of party disposition, which governs the civil proceedings, being equivalent to a change in the ground for the sue petition (the ground consisting in the legally qualified situation). Since both the court of first instance and the one adjudicating the appeal are bound to the limits of their mandate, including in terms of the ground for the sue petition, and the court established that the existence of a receivable assignment contract between the owner and the service unit had not been proven in the case, it finally established that the plaintiff lacked the standing capacity to sue.[17]

1.15. Absence of a legal relationship between the insurer and the service unit

Other courts have decided in a similar way, in the sense that they have not considered that an assignment had taken place, because the filing of an indemnity claim, in which the indemnity beneficiary specifies the payment manner, is not equivalent to a receivable assignment. Moreover, there is no legal relationship between the service unit and the insurer: "the appellant-plaintiff claimed that its standing capacity to sue was justified for all claim files... These claims of the plaintiff are unfounded, since, as mentioned before, the filing of such indemnity claim, in which the indemnity beneficiary specifies the payment manner, is not equivalent to a receivable assignment. Given that the plaintiff must justify its standing capacity to sue on the date when it files the action, and through the documents lodged with the case file, the plaintiff failed to prove the existence of assignee's indemnity rights deriving from all claim files as of the action registration date, the court believes that the court of first instance correctly dismissed the objection raised to the lack of the plaintiff's standing capacity to sue for claims in an amount of RON ..., deriving from a number of 20 claim files, because there is no legal relationship between the service unit and the insurer, as the latter is not a party to the insurance contract. In fact, under the sue petition, the plaintiff's claims were based on the provisions of Art. 9 and Art. 20 of Law no. 136/1995, which refer to the obligation of insurers to pay the indemnity to the policyholder, the insurance beneficiary or to the prejudiced third party, under the terms of the insurance contract, as well as on the provisions of Art. 969, Art. 989 and Art. 1073 of the 1864 Civil Code. Yet, the plaintiff-appellant does not have the capacity as policyholder, or as insurance beneficiary or as prejudiced third party, and it may sue the respondent for the payment of owed compensations only in cases of a receivable assignment, subrogating itself in the rights of the assignor-indemnity beneficiary. Or the plaintiff unquestionably proved that it had the capacity as assigned party and, therefore, had the standing capacity to sue only for receivables deriving from six claim files".[18]

1.16. Absences of consent to receivable transfers and of proof for price payment

The considerations of other final court decision,[19] also rendered by the Sixth Civil Division of Bucharest Tribunal, plea in favor of the same aspects mentioned above. In this last decision, the court states extremely

[17] See for this purpose Civil Decision no. 364/24.01.2014 rendered by the Sixth Civil Division of Bucharest Tribunal, which is available at www.rolii.ro.

[18] See for this purpose Civil Decision no. 202/03.03.2015 rendered in extraordinary appeal by the Sixth Civil Division of Bucharest Tribunal, which is available at www.rolii.ro.

[19] See for this purpose Civil Decision no. 133/10.01.2014 rendered by the Sixth Civil Division of Bucharest Tribunal, which is also available at www.rolii.ro.

rigorously and convincingly from the perspective of a logical and legal reasoning as follows: "In its extraordinary appeal application, the appellant-plaintiff relied upon a presumed receivable assignment concluded between it and the respondent policyholder, but this assignment was not proven either in front of the first instance or of the court adjudicating the appeal. The fact that, through its indemnity claim, the policyholder requests that this indemnity be paid to the account of the appellant- plaintiff (the service unit having repaired the policyholder's vehicle) is not equivalent, in any case, to the conclusion of a receivable assignment contract. The policyholder's request could be based on other economic reasons and on other relationships existing between it and the appellant. Neither the existence of an agreement regarding the receivable transfer from the policyholder to the appellant-plaintiff nor the price assignment have been proven in the case. The indemnity claim did not amend the insurance contract in terms of the indemnity beneficiary, as claimed by the appellant. The mechanism used in this case is frequently used in insurance relationships, as insurers often pay the value of repairs directly to the account of service units. However, this does not give rise to any right to file an action against the insurers in favor of the service unit. Also, the court believes that the first instance correctly established that the provisions of Art. 9 and Art. 20 of Law no. 136/1995 (in force as of the insurance contract conclusion date) are not applicable in the case, since the obligation to pay the insurance indemnity is regulated basically through the insurance contract and only for the parties indicated by the above-mentioned provisions (the policyholder, the insurance beneficiary or the prejudiced third party), and the appellant-plaintiff does not fall within the category of such parties. Referring to the appellant's claim that, through the partial payment made, the appellee admitted its standing capacity, the court establishes that the payment made to the appellant's account is not proof for the assignment recognition, as claimed by it, but for the fact that the appellee made the payment to the account indicated by its policyholder through the indemnity claim, such payment being made however for the policyholder. There is no legal relationship arising from the insurance contract between the parties in this case. In conclusion, the court establishes that the appellant-plaintiff has failed to prove its capacity as policyholder, insurance beneficiary or prejudiced third party or as their successor in title and, therefore, has failed to justify its standing capacity to sue in this case.

1.17. Valences of indemnity claims signed by indemnity beneficiaries

Contrary to the decision above, some courts stated that, since from the documents lodged with the case file it resulted that the plaintiff and the policy owner concluded a receivable assignment contract, the indemnity claim signed and stamped de by the owner confirming this way the conclusion of a receivable assignment contract. They established that the assignment had been validly concluded based on the parties' agreement and had been mentioned in the indemnity claim signed by the indemnity beneficiary, by expressly specifying that the indemnity would be paid to the plaintiff's account. Moreover, based on the indemnity claim, a partial payment was made to the plaintiff' account. Under the circumstances, the court considered that the requirement to notify the assignment had also been met, since through the indemnity claim, the respondent was asked to make the payment directly to the service unit's account. The respondent also accepted the assignment, a fact proven by the direct payment made to the assignee's account. The conclusion of the relevant court was that the right referred to the court was precisely the right to compensations deriving from the conclusion of an optional insurance contract and from the assignment contract[20].

1.18. Effects of a partial payment. Acknowledgment of the capacity as beneficiary

In another case, the court established that the assignee who took over the right to sue for compensation from the assignor through an assignment contract could receive the indemnity, since through the partial payment made directly to the appellee-assignee's account, the latter's capacity as indemnity beneficiary and, therefore, as author of the recourse action taken over from the assignor under the assignment contract, was acknowledged. The court established that the assignee took over the circumstances of the assignment of the right to sue for compensation exercised by it in the case at hand for the indemnity difference. It considered that the legal act consisting in the partial payment made directly to the assignee's account was of essence in the case, because, this way, its capacity as indemnity beneficiary and, hence, as author of the recourse action taken over from the assignor under the assignment contract, were acknowledged to it. Even though the court vested with the recourse action did not deem itself entitled to examine the cumulative requirements for the assignment validity, it did establish however that this payment confirmed the validity of the legal operation named receivable assignment and highlighted at the same time that a summary examination of the assignment contract revealed the fact that it was an onerous contract, and that it could not be deemed a donation in disguise as long as the assignee undertook to pay the value of the services to the service unit. [21]

[20] See for this purpose Civil Decision no. 437/29.01.2014 rendered by the Sixth Civil Division of Bucharest Tribunal. The court decision is available at www.rolii.ro.

[21] See for this purpose Civil Decision no. 512/03.02.2014 rendered by the Sixth Civil Division of Bucharest Tribunal. The court decision is available at www.rolii.ro.

1.19. Inexistence of an assignment contract. Contract form flaws

For situations where, as a result of form flaws of the contract, the existence of an assignment contract has not been confirmed in a case, the considerations of a recent court decision are also relevant, as the court established as follows: "A receivable assignment is an agreement whereby a creditor transfers a receivable held by it to another person. A receivable assignment is a consensual agreement and, therefore, is validly concluded at the time when the parties reach an agreement. However, to the extent that a receivable assignment represents a donation, it will have to meet the form requirements set forth for it, meaning that it must be in an authentic form, according to Art. 813 of the 1864 Civil Code, applicable to the case, and to Art. 5 of Law no. 71/ 2011. In the case referred to the court, the court established that no receivable assignment contract had been concluded between the appellant-plaintiff and the leasing company. First of all, the court established that, if the receivable assignment relied upon by the appellant was a liberality in favor of the leasing company, it should have met the requirement of authentic form, which is not the case here, as the relied upon documents are deeds under private signature. Secondly, the court ascertained that, if the receivable assignment relied upon by the appellant was a sale and purchase operation, in order to be valid, it should have been performed in exchange for a price set in money. Otherwise, considering that the price setting in the form of a money amount is of essence for sales, the contract is absolutely null, at least in terms of the sale and purchase, since it lacks an essential element in relation to which the parties need to reach an agreement (Art. 1295 of the 1864 Civil Code). On the other hand, the fact that the appellee-respondent was requested to make the payment directly to the appellant-plaintiff's account cannot represent proof for a receivable assignment, as the will of the leasing company is not a univocal one in the meaning claimed by the plaintiff company. Consequently, the court established that the appellant-plaintiff failed to prove the existence of any contractual legal relation with the appellee-respondent, and that the first court correctly admitted the objection raised to the lack of the appellant-plaintiff's standing capacity to sue and dismissed the sue petition as being filed by a party lacking the standing capacity to sue".[22]

1.20. Effects of a payment request submitted by the assignor policyholder's judicial liquidator

Last but not least, in situations where the plaintiff company is subject to insolvency proceedings, it has been decided that the plaintiff company's attempt to be admitted in the list of creditors with the indemnity value is justified, even if the bank unit appears as indemnity beneficiary according to the specification in the insurance policy. Under the circumstances, the court decided that a request sent to insurers by a plaintiff, through its liquidators, in relation to the payment of an insurance indemnity can be qualified as termination of the provisions of the insurance contract regarding the insurance assignment in favor of the bank, the indemnity payment not being made by that date to this beneficiary, so that the objection raised to the lack of the standing capacity to sue is not justified in such case, as the debtor, through its judicial administrator, is entitled under the provisions of Art. 86 para. 1 of Law no. 85/2006 to request the insurers to pay the insurance for the purpose of paying its receivables included in the final list of creditors.[23]

2. Conclusions

We believe that, to the extent that damages caused to an insured asset do not lead to a total economic loss of it, and the policyholder has paid the installments to date, the consent of the indemnity assignee (the bank or the leasing company) will produce effects in the sense of legitimizing the policyholder's standing capacity to sue (in order to obtain the indemnity through judicial means) and the indemnity award/payment directly to the policyholder.

In our opinion, this solution validates an insurance functioning mechanism under which the freedom of parties to agree between themselves who should benefit from the indemnity should prevail.

On the other hand, the proposed solution is in accordance with the opinion expressed in practice, under which, in case of an *assignment affected by a precedent condition requiring the payment of installments to date*, until the fulfillment of this condition, the assignment does not produce effects and, therefore, the Bank's consent is not required. In the case at hand,[24] the court established that the bank had a receivable created for guarantee purposes, regulated by Art. 6 – Title VI ("Legal Status of Security Interests in Real Property") of Law no. 99/1999, which has as effect the creation/preservation of rights resulted from an insurance contract intended to secure the performance of an obligation (the loan contracted by the plaintiff), being about an assignment affected by a condition precedent: non-performance of obligations under the loan agreement. Therefore, until the condition fulfillment, the assignment does not produce effects. The plaintiff has the standing capacity to sue, so the Bank's consent to the filing of an action on its own behalf is not required, and the decision issued by the court of first instance in respect of the objection

[22] See for this purpose Civil Decision no. 786/19.02.2014 rendered by the Sixth Civil Division of Bucharest Tribunal. The court decision is available at www.rolii.ro.

[23] See for this purpose Civil Decision no. 451/20.11.2015 rendered by Suceava Court of Appeals Second Civil Division. The court decision is available at www.rolii.ro.

[24] See for this purpose Civil Decision no. 40/27.04.2012 rendered by Bacău Court of Appeals Second Civil Division. The court decision is available at www.rolii.ro.

raised to the lack of its standing capacity to sue is unlawful. However, we specify that this case concerned a partial loss caused to an insured asset, and the insured company, which was a debtor under the loan agreement, had remedied the loss caused by the insured event with its own financial resources.

At the same time, as long as the insured asset has not been completely destroyed, and the indemnity is affected by the asset repairs, the policyholder – which proves the bank's consent to cash the indemnity and/or to initiate a court action to obtain it – is the one to whom both the standing capacity and the interest must be recognized, since it is the one, not the bank, who will repair the asset in the future.

Our position in respect of the matter brought into discussion is also validated by the practice of the supreme court, which, in a case decision, paid more importance to the standing capacity of the Bank, an institution that, all along the proceedings, claimed its right to request the payment of compensations by the policyholder and claimed that the whole procedure for obtaining compensations from the insurer rested on policyholders. The court stablished also that [25] the mortgagee could claim only an amount equal to the debt owed by the borrower on the date of the indemnity receipt, and only within the loan validity period, while the remaining amount owed by the insurance company would belong to the borrower who was the owner of the insured assets. Only the right to indemnity related to the insurance policy was assigned and, therefore, the appellee-plaintiff continued to be a party to the insurance contract, as such capacity was not taken over by the assignee.

The same reasoning can be found also in another court decision, in which the court, in deciding on an objection raised to the lack of standing capacity, acknowledged that the policy assignment operated only in case of non-performance of obligations by the plaintiff and only within the limits of the receivable held by the bank against it[26].

In another case, in which the caused loss was also partial, the court established that under the policy insurance assignment contract, the ownership right over the crane was not transferred, and that the insurance policy represented only a guarantee for the bank under the loan agreement for a case in which the purchased asset that was bound to guarantee the loan repayment would perish.[27]

The situation would be completely different in case of total destruction of an insured asset, where the indemnity is meant to replace in the bank's estate the value of the insured asset by which the repayment of the granted loan has been guaranteed.

The bank will have all the more a standing capacity in situations where the parties have concluded an insurance contract under the third party beneficiary procedure, doubled by a receivable assignment to the same beneficiary. Thus, in a particular case, the policyholder agreed with the insurer, acting as promissory party, to conclude an insurance contract under a third party beneficiary procedure, whereby it was established that, on the date of the insured risk occurrence, the owed indemnity would be paid to the third party beneficiary (C.R.S. Bank), the right of claim arising in its estate under each of the two insurance contracts concluded between the two litigating parties in this case, under the precedent condition of acceptance by the beneficiary of the contract on behalf of the third party beneficiary pursuant to the provisions of Art. 1286 of the new Civil Code, in force as of the date of the agreement conclusion. In the case, the third party beneficiary mechanism was doubled by a receivable assignment to the same beneficiary (Banca C.R. Suceava) in relation to a policy of 2011. Hence, even though the plaintiff had paid the insurance premiums as he had undertaken under each of the two contracts, the insurance indemnity was not due to it, because it had been stipulated to the creditor institution, Banca C.R., Sucursala S. The specificity of the insurance contract confers a right to third party beneficiary Banca C.R. to collect the insurance indemnity, a right generated by the conclusion of the insurance policy, but which is affected by the condition precedent of the insured risk occurrence until the full repayment of the loan granted by the bank. Practically, the contracting parties understood to conclude those insurance policies under the third party beneficiary procedure based on the interpretation and application of which the plaintiff-policyholder undertook to pay, and paid, the first insurance premiums in favor of the respondent-promissory party, which, in turn, had an obligation to provide the service in favor of the third party beneficiary at the time of the insured risk occurrence, under the terms and clauses agreed and assumed by the contracting parties, which were binding on the latter and mandatory in light of the principles of autonomy of will and on the relative nature of contract effects governing the contractual liability area, as correctly claimed also by the respondent. In other words, third party Banca C.R. Sucursala S., as beneficiary of the insurance policies, a capacity acquired by the loss by the plaintiff of its capacity as creditor of the respondent, has also the capacity as holder of the right to collect the insurance indemnity stipulated in its favor, claimed by it in its capacity as author of a the action for damages, a case in which, the applicability of the objection raised to the lack of the

[25] See for this purpose Civil Decision no. 3933/03.10.2018 rendered by the High Court of Justice Second Civil Division, a court decision that is available at www.rolii.ro.

[26] See for this purpose Civil Decision no. 2084/14.12.2015 of Bucharest Court of Appeals, citată in the High Court of Justiceţs Decision no. 86/12.04.2016. The court decision is available at www.rolii.ro.

[27] See for this purpose Civil Decision no. 1118/01.03.2012, rendered by the High Court of Justice Second Civil Division, menționată în Civil Decision no. 2810/25.09.2013 of the High Court of Justice. The court decision is available at www.rolii.ro.

plaintiff's standing capacity to sue was correctly established by the court adjudicating the appeal.[28]

In a different case, the High Court of Justice validated the legal reasoning of the court adjudicating the appeal, stating that the latter correctly interpreted the legal provisions in relation to the leasing contract and to the insurance policy, by establishing that the plaintiff did not have standing capacity under circumstances where the financier, which, according to the provisions of the leasing contract, "was the insurance policy beneficiary" – *did not assign its rights deriving from the contract* and *did not empower the plaintiff to file an action for damages* against the insurance company, the financier being the beneficiary of the insurance policy and the author of the action for damages.[29]

In an atypical case, in which the insured event occurred on a date when the asset was owned by a legal entity – the leasing company, and after this moment, a transfer of the ownership right took place, the considerations presented in another court decision[30] are relevant, considerations from which it results that the user can also have standing capacity and interest in particular situations. Punctually, the court vested to settle the case stated as follows: the court justly noted that the claims to indemnity derived from an insurance contract concluded on a date when BT Leasing IFN S.A. was the owner of the insured asset and, therefore, the policyholder. The insured event occurred at a time when the asset was owned by this company. However, after this moment, there has been a transfer of the ownership right over the asset in favor of the initial user, namely of the appellee company, which filed the sue petition. Of course, this is an atypical situation, in which the concepts of policyholder and of holder of the insured interest do not have the same valences at the time of risk occurrence and at the time when claims were raised in respect of the indemnity. Starting from the definitions of the concepts of policyholder, contracting party and indemnity (policyholder = "a natural person or legal entity having concluded an insurance contract with the insurer and who is the holder of the insurable interest; when the policyholder is one and the same person with the contracting party, the concept of policyholder includes also the content of the concept of contracting party"; "contracting party = "a natural person or legal entity other than the policyholder who signs the insurance policy, undertakes to pay the policyholder's insurance premium and to comply with the obligations resting on it under the contract", "indemnity = the amount owed by the insurer to a holder of an insurable interest in case of an insured event occurrence"), the court correctly established that, together with the transfer of the ownership right over the vehicle from the financier to the appellee user, the appellee, who also paid the insurance premium, became the holder of the insured interest and could validly claim the indemnity. Independently from the existence of a receivable assignment contract between the asset's owner at the time of occurrence of the insured risk and the user, who became the asset owner prior to the finalization of the litigious situation, the court considers that the theoretical right to be a holder of the insured interest at the time when the sue petition was filed, in the person of the former user, is sufficient to justify its processual legitimacy, and this theoretical right derives from the particularities of insurance relationships when an insured asset is held under a leasing regime, when the user undertakes the obligation to pay the insurance premiums, even though the capacity as policyholder belongs to a different person, after which, during the performance of the insurance contract, the ownership is transferred in favor of the user. Contrary to the aspects claimed by the appellant, its obligation to pay the indemnity, contractually assumed, was not exclusively to the policyholder but to the holder of the insurable interest, and, at the time when the sue petition was filed, such holder was the appellee company. The standing capacity to sue results from the substantive law legal relationship referred to the court, and at the time when the sue petition was filed, such litigious legal relationship between the appellant insurance company and the holder of the insured interest and the appellee company included an assessment of the standing capacity to sue, which was correctly conducted by the court adjudicating the appeal. The provisions of Art. 1 and Art. 12 of Government Ordinance no.51/1997 relied upon by the appellant cannot lead to a different conclusion. The provisions of Art. 1 provide for a possibility to transfer an ownership right over an asset at the end of the leasing period, but do not regulate in any way the possibility of realizing a receivable as indemnity when the risk occurs before the date when the transfer of the ownership right over the asset in favor of the user takes place. However, the absence of a regulation in this norm is not equivalent to an impossibility for the former user of the asset to obtain the indemnity. On the other hand, the rights conferred by Art. 12 of Government Ordinance no. 51/1997 to the user relate to the period while the leasing relationship is under progress, but the provisions of Art. 12 do not regulate other rights that can be exercised by the former user after it loses such capacity, namely after it becomes holder of the ownership right over the asset. At the same time, the provisions of Art. 6.7 of the insurance conditions, under which the policyholder's liability ceases on the date of transfer of the ownership over the vehicle to a third party, except for leasing contracts under which the ownership is transferred to

[28] See for this purpose Civil Decision no. 250/29.01.2015 rendered by the High Court of Justice. The court decision is available at www.rolii.ro.

[29] See for this purpose Civil Decision no. 77/12.01.2011 of the High Court of Justice. The court decision is available at www.rolii.ro.

[30] See for this purpose Civil Decision no. 313/2019 din 11.06.2019, rendered by Cluj Court of Appeals, Second Civil Division. The court decision is available at www.rolii.ro.

the user, indicated by the court adjudicating the appeal in its decision considerations, are directly applicable in the punctual case referred to the court, contrary to the aspects claimed unjustifiably by the appellant."

Referring to proof for and form of assignment contracts, some courts decided that, in the absence of a receivable assignment contract effectively concluded, other documents may not stand for such agreement. Such documents may have the effects of a contract on behalf of a third party beneficiary but, in the absence of a specification of such *de jure* ground for an action, courts may not exceed the limits of their mandate. At the same time, the filing of an indemnity claim in which the indemnity beneficiary specifies the payment manner is not equivalent to o receivable assignment, since there is no legal relationship between the service unit and the insurer. The (partial) payment by the beneficiary indicated in the indemnity claim can be equivalent to a receivable assignment. If the receivable assignment is a liberality, it must meet the requirement of authentic form. If the receivable assignment is a sale and purchase operation, in order to be valid, it should have been performed in exchange for a price set in money. Otherwise, the contract is absolutely null, at least in terms of the sale and purchase, since it lacks an essential element in relation to which the parties need to reach an agreement (Art. 1295 of the 1864 Civil Code).

References

- Laura Retegan, "Cesiunea de creanță în raport cu alte operațiuni juridice triunghiulare", a study published in Studia Universitatis Babeș-Bolayi Jurisprudentia" no. 3/2009, July-September 2009;
- C. Alexa, V. Ciurel, A.M. Mihăilescu, "Asigurări şi reasigurări în comerţul internaţional", All Publishing House, Bucharest, 1992;
- I. Sferdian, "Subrogaţia asigurătorului în drepturile asiguratului ", in „Dreptul" no. 12/2002;
- I. Sferdian, "Dreptul asigurărilor", edition 3, C.H. Beck Publishing House, Bucharest, 2019;
- J. Flour, J.-L. Aubert, É. Savaux, "Droit civil. Les obligations. 3. Le rapport d'obligations", Sirey, Paris 2007;
- Elena-Cristina Savu," Insurance Contract", C.H. Beck Publishing House, Bucharest, 2018;
- Vasile Nemeș, Gabriela Fierbințeanu, "Dreptul contractelor civile și comerciale. Teorie, jurisprudență, modele", Hamangiu Publishing House, 2020;
- Judicial practice, source of information www.rolii.ro.