REFORM OF THE HUNGARIAN INSURANCE LAW

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Resume

There is a relevant lawmaking process in Hungary, the codification of the new Civil Code. The Hungarian Ministry of Justice and Law Enforcement and its experts stated, that their work is in final stage, so it's time to talk about the latest tendencies and improvements in a nutshell, focusing mostly on insurance contract law. In this paper I would like to deal only with matter of principles.

There are countries with separate Act of Insurance Contract Law, for example the so called "Versicherungsvertraggesetz" in Germany, but in Hungary the lawmaker chose another way keeping the current dual system of codes: one for the private and one for the public law.

The main goal of the original proposition was to separate consequently private and public rules, but the concept has changed during the codification, to make the Civil Code an abstract act, all rules with secondary importance will be promulgated on a lower hierarchical level.

The Hungarian Civil Code deals only with insurance contracts (characterized by the concept of risk-distribution), and says nothing about insurance associations with legal personality, which has to be revised, because there are insurance legal relationship on the ground of association's membership.

The question of using dispositive or cogent (mandatory) rules is always hard to answer. The principle of freedom of contract is often competes with the principle **of insurer and customer protection**.

There is a trend in the EU to label micro ventures, or rather small and medium enterprises (SME) as customers, but the insurance sector has a promise from the under-secretary of the Ministry of Justice and Law Enforcement to label only natural persons as customers in connection with insurance contract law.

Of course there is a great need to create an effective customer protection but today there is almost a separate civil law of customer's so it's wise to define the requirement's of being customer as precisely as possible.

There are three main areas of one-sided cogency: customer protection, insurance contract law and labour law. In all three legal fields the main goal of the regulation is to protect the weaker party of the legal relationship. The customer, the insured person and the employee are presumed indisputably to be weaker than the other party (insurer, employer etc.) from an economical point of view, but today it's not always true in insurance contracts. The rules of insurance contract law was modelled for community contracts with the State Insurer in 1959, but today in **business to business** (B2B) contractual relationships the insured (legal) persons are often stronger, than the insurers.

This rule sanctions the breaching of the principle of cooperation in the civil law, if the insurer is lazy to answer to the proposal, then the contract will be formed as a consequence, and it's irrelevant, if the proposition disagrees with the custom of trade or with the insurer's **commercial practice**. In that case the assumption of risk in the discrete insurance is in contrast to the principles of insurance mathematic and statistic, so the insurer will probably resign the contract. Of course in the practice the insurer makes the contractual offer, and not the client.

The liability insurance contract evolved firstly to protect the **tortfeasor**, it helps not to be cleared out in case of small negligence and high amount of damage, but today it protects the aggrieved person at least so much in case of the tortfeasor's ability or will to pay is missing.

There is much to do with the codification, and of course it's hard to choose the correct solutions acceptable by both insurers and – especially customer – insureds too. Their direction is unquestionable good, and I hope that their self-sacrificing work will be successful, and call forth a well-working Civil Code.

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