

INTERPRETATION OF TERMS IN INSURANCE CONTRACTS. UNFAIR TERMS

*Assistant Professor phd Andreia DOBRESCU**
Romanian-American University, Bucharest, Romanian

Abstract:

The paper is structured in three parts. In the first part I treat interpretation of the terms of the insurance Romanian Law. In the second part we discussed the interpretation of insurance contracts clauses in the law of other European countries. Finally, we analyzed a controversial issue, namely unfair terms in insurance contracts.

Keywords: Interpretation, unfair terms, clause manuscript, P.A.D.

1. Interpretation of terms in insurance Romanian law

Interpretation, as a legal institution is "the logical-rational operation that sets the exact meaning of contractual terms. It is of particular importance as it constitutes an operation indispensable in the performance of contractual obligations and in the event of a dispute".

Interpretation includes a set of rules necessary for determining the real intention of the legislature.

If the insurance principle applied is that of strict interpretation of contract. The meaning of any term of the policy will be interpreted in the sense of basic, naturally, used by people with normal intelligence.

The nature of the insurance contract requires a strict interpretation of the terms. The risk must be well defined, as to avoid further confusion or misunderstandings caused by a possible different interpretation or incorrect parts. In the case of ambiguous terms, unclear, apply the provisions of the Civil Code which states that where there is doubt, in case of doubt, or due to the possible uses of a term inappropriate or unclear expressions of a term, the interpretation will be in favor of the authorization.

Interpretation of a contract means clarifying assembly itself constitute policy documents to determine the true meaning of obscure clauses by using techniques such rendering common intention of the parties.

Insurance contract is a contract of adhesion, the specific rules for the interpretation of terms default. In case of inconsistency between a clause expressly established between the parties (manuscript) and one default, the former prevails.

With regard to this rule, in theory considered that sometimes the default clause can only have a role model, given that the parties may express their real intention by express handwritten clause which derogates in some way to model default clause. Default clauses whose insertion in the contract is exceptional, it must be expressly accepted by the insured. The exceptional nature of these clauses can be given that they establish special

* e-mail dobrescu_andreia@yahoo.com

rights for the insurer, or extremely onerous obligations secured rights and obligations normally not found in the contents of the insurance contract.

Whatever type of insurance contract in case of default clauses ambiguous, they are construed against the insurer.

According to art. 978 of the Civil Code, questionable clauses shall be construed to produce legal effects. This rule applies to insurance contracts.

For clauses with two meanings, apply all the provisions of the common law, interpreting it in the sense of producing the same effects and not produce any. If both meanings of the clause lead to efficiency measure, but the consequences are different interpretation is in that fits best with rare nature of the contract of insurance.

If some categories of risks are excluded under general terms, by the terms of these manuscripts are covered, which are designed to supplement or derogate from the general ones.

In conclusion, as shown in our legal literature, it is doubtful whether a default clause, the contract will be interpreted under art. 983 of the Civil Code in favor of the insurer and not against it, since the insurance contract, it has the quality of ordinary debtor. When printed clauses are obscure or ambiguous, the contract will be interpreted on the basis of art. 1312 par (2) Civil Code, against the insurer (*Contra proferentem*) because he is the one who formulated and dictated standardized conditions and therefore imputed his mistakes or ambiguities, and the insured that he simply accepted.

2. Interpretation of terms in insurance contracts right in European states

The French doctrine was established that if obscurity, ambiguity or any other defect of expression is a result of bad faith or fault of the person who is obliged to show intent, the interpretation is made against him. Thus under policies prerredactate, who drafted the contract (the insurer) is the one who provides and who adheres to the contract (the insured) is the contracting requirement. In most cases the insurer, the initiator of the contract must make all efforts for the insured to be able to perceive the meaning of the limits of the law and its obligations are contract terms and also to check the understanding and assimilation of contract clauses.

Regarding the Belgian Civil Code, which restricts the interpretation of rules similar way the French Civil Code? The vast majority of European legal systems, principles of interpretation of contracts apply to contracts of insurance.

Under Swiss law should be considered common intention of the parties and determine the conditions that led to conclusion. In Switzerland, Germany and Italy, obscure general conditions shall be construed against the insurer, which would have had to draw clear and subject to good faith of the insured. Italian Civil Code provides that the particular conditions prevail over general conditions.

In English law, the contract clearly is interpreted in a way which gives efficacy and contractual terms must acquire a meaning consistent with its subject. Adhesion contracts concluded between parties with unequal economic power are usually interpreted against the person who wrote them.

3. Unfair terms in insurance contracts

Insurers need to develop their own insurance conditions, conditions that we will encounter in terms of insurance contracts.

Often, insurers, get higher profits can insert into the insurance contract clauses abusive.

The practice of the Court of Cassation and Justice, unclear or ambiguous terms in an insurance contract shall be construed against him who has stipulated that in the insurer.

Article 4 of Law no. 193/2000 provides that the insurer is required to submit a contractual term which has not been negotiated directly with the consumer (policyholder), it will be regarded as unfair if, by itself or together with other provisions of the contract shall, to the detriment of the consumer, the insured and contrary to the requirements of good faith, a significant imbalance between the rights and obligations of the parties.

Thus, a contractual provision will be deemed to be negotiated directly with the consumer (policyholder) if it is determined not to enable the insured to influence nature, such as pre-formulated standard contract.

The following provisions of the contract may be considered abusive clauses:

a) Require the policyholder to fulfill contractual obligations even when the insurer has not met on its own;

b) Entitle the insurer to automatically extend a contract for a specified period by the tacit consent of the insured;

c) give the insurer the right to modify unilaterally the terms of the contract, without having a reason specified in the contract and accepted by the insured by signing it;

d) Require the policyholder to submit to contractual terms which had no real opportunity to get acquainted with the signing of the contract;

e) Give the insurer the exclusive right to interpret the terms of the contract;

f) Require the policyholder to pay some amount disproportionately high if it fulfills its contractual obligations in comparison to the damage suffered;

g) Give the insurer the right to cancel the contract unilaterally;

h) Restrict or prohibit the insured's right to terminate the contract.

The effects of unfair terms contained in the insurance contract and held either personally or through authorized bodies will not affect the insured, and the contract will continue to run after their removal.

If the contract can no longer be effective after their removal, the policyholder may terminate the contract, may request, as appropriate and damages.

REFERENCES

1. E.M. Minea, Conclusion and interpretation of insurance contracts, CH Beck Publishing House, Bucharest, 2006;

2. Cosmin Iliescu, Contract insurance of goods in Romania, All Beck Publishing House, Bucharest, 1999;

3. Irina Sferdian, Property insurance contract, Lumina Lex Publishing House, Bucharest, 2004;

4. Andy Pușcă, Insurance contract, Romanian Academy Publishing;

5. Radu N. Catana, Insurance Law, Legal Sphere Publishing, 2007;

6. Law no. 193/2000 on unfair agreements between insurers and consumers, Annex. The list of terms considered to be unfair;

7. Annex 3 of Law no. 32/2000 on insurance undertakings and insurance supervision (Official Gazette Nr. 148 of 10 April 2000) as amended several times, most recently by Law no. 201/2005.