

## **SUMMARY OF THE DOCTORAL DISSERTATION**

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The subject of the doctoral dissertation: **The legal essence of a typical insurer's subrogation against the background of the institution of recourse in civil law.**

Institution of a typical insurer's subrogation and changing rules for its application caused numerous controversies and disputes both in terms of the insurance doctrine and court jurisdiction, which have not been fully eliminated. This state of affairs prompted the author to try to determine the issue of placing this legal claim among the legal institutions currently operating under the civil law. The work attempts to precisely illustrate the legal nature of a typical insurer's recourse by presenting important aspects related to its functioning. The main purpose of the study is to justify the thesis according to which this claim does not fall into the category of recourse claims in terms of civil law.

In order to fully achieve this goal, the study presents the legal nature of the analyzed institution, scope of its application, functions and importance in the non-life insurance system. A typical insurer's subrogation was analyzed in an interdisciplinary manner referring both to the legal aspects, their effects on insurance practice, as well as economic and social issues. The work retains the theoretical character based on both the repealed and currently applicable normative acts, the developed positions of representatives of jurisprudence and doctrine, as well as the author's professional experience.

Due to the lack of a legal definition of a typical subrogation claim as well as the lack of a unified position as to its legal nature, the linguistic and logical method was repeatedly used in the work, which made an attempt to precisely locate the analyzed institution in the structure of other legal institutions, as well as to characterize it as comprehensively as possible. In individual chapters of the work the historical method was used to show the process related to the development of both the recourse institution, the typical and atypical form of insurers subrogation, or insurance contracts. In order to present the analyzed institution as fully as

possible, the comparative method was also used to show the general principles of functioning of a typical subrogation claim in Great Britain, Canada, Germany, France, Russia, the United States, Australia, China and in so-called the Principles of European Insurance Contract Law (PEICL).

The study contains information and views on the subrogation claim *sensu largo* and *sensu stricto*, approving and rejecting the concept of recognizing a typical insurer's subrogation claim as a recourse claim. On the one hand, this claim has features common to the widely understood institution of recourse, such as ancillary nature resulting from the necessity of the existence of the principal claim, the same moment of materialization of the claim, which depends not on the occurrence of damage, but on the fulfillment of the basic obligation, the occurrence of the so-called tripartite legal relationship, or the amount of the claim dependence on the content of the original obligation and the paid amount. The aim of both institutions is also similar, which is to enable the recovery of the paid amount, which should ultimately impose the entity responsible for the creation of the original claim. However, some representatives of the doctrine are against qualifying the insurer's subrogation to the recourse category. As a justification for rejecting the concept of treating recourse *sensu largo*, arguments are provided in the form of the lack of independence of subrogation claim consisting only in a subjective transformation and the fact that the essence of recourse is both the satisfaction of the receivable and the repartition of financial benefits resulting from the acceptance of a given payment, and the essence of insurance subrogation is only the transfer of debt. Importantly, the term "*insurance subrogation*" is a formulation developed on the basis of insurance doctrine and jurisprudence.

This formulation, in the context of the legal nature of the analyzed institution, was not used in the Civil Code establishing an institution generally recognized as insurance subrogation, or in any other act setting out the rules of its functioning. Additionally, under Art. 828 of the Civil Code upon payment of the indemnity only the insured's claims against the perpetrator of the damage event are transferred to the insurer. The claims of other persons are not transferred under this provision. The situation is different in the case of Art. 518 § 1 point 4 of the Civil Code which does not provide any restrictions in this respect.

In the author's opinion, the key argument justifying the thesis posted in this work is the fact that the insurer, by providing the insurance benefit, repays its own debt resulting from the warranty liability. This does not involve the acquisition of a new claim, but only the transfer of an already existing claim originally due to the insured entity. Thus, upon settlement of the

debt no new independent claim arises. We are dealing here only with a subjective transformation within the limits of the same claim.

The analysis carried out in the dissertation confirmed the thesis that a typical subrogation claim by insurers should not be included in the catalog of recourse claims within the meaning of civil law. The fact that this claim is not a new claim, but exactly the same claim that was originally due to the injured party, affects the correct determination of the limitation period, as well as the determination of its starting point.

Due to the differences occurring in the context of the discussed institution, author puts forward in the dissertation a *de lege ferenda* postulate to regulate the issue of placing a typical subrogation of an insurance company in the structure of already existing legal institutions by introducing its legal definition. In the author's opinion, this could take place through an amendment to Art. 828 § 1 of the Civil Code introducing the content of that provision proposed in the dissertation.