

Insurance Contract, Just Compensation as Result of Insurance

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Abstract

History of Insurance Contract development, taking into account National and International aspects.

The main features of the contract of insurance, according to Albanian legislation. The main subjects of the contract and in particular the Insurer as a legal person.

Remuneration of damage that comes from insurance contracts and reinsurance contracts.

Events which may be provided by the Albanian legislation.

Albanian judicial practice in dealing with problems which are related to insurance considering unifying decisions of the United Colleges of Supreme Court.

Nature of Insurance Contract

The insurance agreement is currently a very important contractual relationship in the civil law. The insurance market has developed significantly over the past decades in terms of both quantity and quality. During this time legal rules on insurance contracts have developed significantly through various amendments. For one to grab the significance that an insurance agreement has nowadays in the life of a national community more than just a description of its essential features should be given, by giving a narrative of the evolution of such changes that are related to the social aspects and parties of the relevant contractual agreement. Over the past decades the insurance market has developed both quantitatively—the increasingly bigger number of voluntary policyholders—and qualitatively—the introduction of insurance intermediaries, who provide the best possible conditions for insurance contracts.

Insurance contracts in Albania started to be regulated with the emergence of the Albanian State; its first legal regulation, however, was made with the adoption of the Albanian Commercial Code in 1932. After World War II, Albanian insurance contracts were regulated with Law 2359 of 1956, and later with Decree 4209 of 1967. The 1981 Civil Code introduced a number of provisions governing insurance contracts.

Insurance contracts are regulated by Article 1113 of the Albanian Civil Code, which provides that, **“Under a property or personal insurance contract, one party (the insurer) shall pay to the other party or a third party to whose benefit the insurance**

contract has been concluded the claims within the amounts specified in the contract and the insurance amount specified in the contract if the event covered by the contract has been proved and verified.”

Insurance can be found in numerous areas of human activity, in the form of a consequence of a defined event, which, in the doctrine, is called ‘the insured event’. Insurance contracts are characterized by transparency regarding the information the insurer provides to customers (the insured). The information has to be clearly and accurately formulated, because the insurance contract is a template contract with terms and conditions having been drafted by the insurer. Insurance contract beneficiaries can be the insured, but can also be third parties.

Under Civil Code Articles 1124-1126, insurance contracts should cover a specified period of time during which they produce effects and for which the insured party should pay an insurance premium. In cases when the covered period is more than ten years, upon the expiration of that period both parties are entitled to withdrawing from the contract by providing the other party with a written six-month notice, unless an agreement to the contrary has been made. With the exception of life insurance, insurance contracts can be extended once or several times, with each extension not being for periods longer than two years.

Types of Insurance

Civil Code provisions on insurance contracts cover voluntary insurance, the basis of which is the contractual will of both parties (Article 1133 of the Civil Code), while mandatory insurance (as related to vehicle insurance) is regulated by special legal provisions, including President of Republic’s Decree No 295 of 15 September 1992 **“On Mandatory Motor Third Party Liability Insurance”** and Law No 8729 of 18 January 2001 **“Amendments to Law No 7641 of 1 December 1992 “On the Adoption of the Amended Decree No 295 of 15 September 1992 ‘On Mandatory Motor Third Party Liability Insurance’”**.

Under the Civil Code, voluntary insurance includes **asset insurance** and **personal insurance**.

Under Article 1134 of the Civil Code, asset insurance requires, as an essential element, the existence of economic interest, because the absence of such a condition leads to the invalidity of an insurance contract. The insured amount cannot be greater than the value of the asset. Where only a portion of an asset value has been insured the insured amount cannot be greater than the value of the asset part. Where the insured amount is smaller than the value of the insured asset, the claim payment is determined according the insurance amount/insured asset value ratio, unless otherwise agreed by the parties in the contract.

If the insured asset is transferred to a third party, the insurance contract does not have any legal effects for the new owner and is terminated (Article 1144 of the Civil Code). The insurance premium the asset owner (the insured) has paid is refunded by the insurer on a pro rata basis calculating the remaining term of the insurance contract.

Under the Civil Code, personal insurance contracts can be concluded in relation to verifiable events that have to do with the insured person's life and capacity to work. The contract is also valid when a third person's life has been insured (Article 1152 of the Civil Code).

Life insurance is related to a person's longevity. This does not imply any event in one's life, but only those events that are directly related to it and lead to the application of the contract.

Life insurance involves two cases: 1. **death**, in the event of which the insurer is obliged to pay a certain amount of money upon the policyholder's death. 2. **life**, under which the insurer is obliged to pay a certain amount of money after a specified date as of which the policyholder is still alive.

Life insurance is different from asset insurance in that it does not purport to pay claims of damages but to provide support. Life insurance is designed to insure someone's old age support or to insure someone's relatives in case of death. The verification of the insured event (e.g. death or vesting age) is enough for a claim obligation to arise for the insurer. No other evidence of proof is required in these cases. One widespread type of insurance, both globally and in Albania, is the life insurance in favour of a third party, e.g. life insurance that a husband does in favour of his wife or parents' life insurance in favour of their children (Article 1153 of the Civil Code). In case of death the insurer is obliged to pay to the third parties the amount specified in the life insurance contract.

Mandatory insurance is regulated by the Presidential Decree No 295 of 15 September 1992 and Law No 8729 of 18 January 2001.

Under the abovementioned provisions, a vehicle owner has to buy from an authorized insurer a TPL insurance contract that covers death, injury and economic damages caused by the use of the vehicle. The Minister of Finance Ordinance No 11 of 25 March 2005 sets the mandatory insurance premium that vehicle owners have to pay for TPL insurance, which varies for different vehicles.

Form of Contract

Under Article 1114 of the Civil Code, the insurance contract is a formal written agreement. The written paper is called the "Insurance Certificate", also known as the "Insurance Policy". The written requirement is included for the sake of proof. In practice, the insurance contract is a template contract that is concluded by signing

readymade forms the insurer gives to the insured and which state the general terms and conditions of the contract. The insurer is obliged to provide the insured with the "Insurance Policy".

The Insurance Policy should include the following elements:

- insurer's name;
- insured person's name in the case of personal insurance contracts, or asset name and location in the case of asset insurance;
- the insured event the verification of which obliges the insurer to fulfil the obligation it has undertaken under the contract;
- insurance contract begin and end date (insurance period);
- the time at which the insurer's liability begins;
- an evaluation of the asset where this is required for certain types of insurance;
- insurance premium and premium payment arrangements.

Parties to the Contract

The parties to the contract are called the insurer and the insured. An insured person can be a natural person or a legal entity of Albanian or foreign citizenship or without citizenship. Under Article 1113 of the Civil Code insurers are special entities. It can be a government legal entity (e.g. INSIG prior to its privatization) or a privately owned legal entity (which is the case of all private insurance companies currently operating in Albania, e.g. Sigma, Sigal, Atlantik, Intersig, Eurosig, InterAlbanian etc.). Insurance companies in Albania are regulated by Law No 8081 of 7 March 1996 "On Activities of Insurance and Reinsurance", Law No 9267 of 29 July 2004 "On Activities or Insurance, Reinsurance and Insurance and Reinsurance Intermediation", and Regulation No 1 of 23 January 2006 of the Insurance Supervision Authority under the Council of Ministers.

The provisions of Law No 8729 of 18 January 2001 "**Amendments to Law No 7641 of 1 December 1992 'On the Adoption of the Amended Decree No 295 of 15 September 1992 'On Mandatory MTPL Insurance'**" specify the method of operation of the Albanian Insurance Bureau, which is a public entity. The Albanian Insurance Bureau is a not-for-profit legal entity the mission of which is to cover the liabilities deriving from the circulation of uninsured vehicles and other liabilities related to accidents in Albania or abroad involving foreign or Albanian vehicles. It is supervised and audited by the Ministry of Finance. By default its members include insurance companies that are authorized by the Insurance Supervision Commission to operate as MTPL providers. Its management structures are the General Meeting of Members and the Board of Directors.

A new entity that has recently contributed to the smooth operation of the insurance contract is the insurance agent. Insurance agents' operation is regulated by the Council of Ministers Decree No 192 of 25 March 2005 **"On the Criteria and Procedures of Licensing Insurance Agents and the Rules of Supervising."** Under the law, an agent is a natural person that has been licensed by the Insurance Supervision Authority and authorized by the insurance company to provide intermediation for insurance services on behalf of, and in account for, the insurance company. An agent company is established as an anonymous company (joint-stock company—TN) by local or foreign natural persons or legal entities in compliance with the Company Law, and the intermediation activity is carried out on behalf of the company by the agents that have been licensed by the Insurance Supervision Authority.

Insurance agents can also be natural persons or legal entities that provide other services, provided that their insurance intermediation is carried out on their behalf by agents that have been licensed by the Insurance Supervision Authority. Such services include: banking; travel agents' activities; real estate services; foreign exchange services; postal services; vehicle service activities; and financial services

Insurance agents and insurance agent companies operate as intermediaries on behalf of one insurance company only, unless otherwise specified in the contract they have concluded with the insurance company. The fee that insurance agents receive from an insurance company cannot be more than 10% of the mandatory insurance contract risk premium.

Another important element of the insurance contract is the reinsurance, which is regulated by Law No 8081 of 7 March 1996 **"On Insurance and Reinsurance Activities,"** Law No 9267 of 29 July 2004 **"On Insurance, Reinsurance and Insurance and Reinsurance Intermediation,"** and Guideline **"On Reinsurance of Insurance Company Liabilities and Reinsurers' Security."** **Reinsurance** is the transfer of a portion of the risk from the insurance company to the reinsurance company under a reinsurance contract. Reinsurance companies are legal entities residing in the Republic of Albania that have been licensed as reinsurers by the Insurance Supervision Authority under the abovementioned laws. Reinsurance is regulated by a reinsurance agreement, which is an agreement concluded between the insurance company and the reinsurance company, specifying the terms and conditions pertinent to the insured risks.

Under the Albanian law there can be no direct insurance and reinsurance with a foreign company that resides outside the Republic of Albania, of a risk that relates to a person, asset or responsibility in the Republic of Albania, unless otherwise specified in international agreements to which the Republic of Albania is a party. This does not apply to maritime and air transport risk insurance.

Classification of Major Insured Events

In accordance with Law No 9267 of 29 July 2004 “**On Insurance, Reinsurance and Insurance and Reinsurance Intermediation**” insurance activities are carried out under the following classes:

1. **Accident insurance.** This type of insurance includes industrial injury and occupational disease. It provides immediate payment in cash of the agreed amount to compensate for the damage; instalment payment in cash of the agreed amount to compensate for the damage; and a combination of the above, and the payment of claims against injury, health problems, or death of passengers.
2. **Health and disease insurance.** This type of insurance provides: fixed financial incomes in case of health incapacity of the insured; reimbursement of hospital treatment expenses, and a combination of the above.
3. **Motor vehicle insurance.** This type of insurance includes:
 - 3.1. **Land vehicle insurance.** This type of insurance includes vehicles other than those moving on rails. This type of insurance provides payment of claims from: Motor land vehicles and non-motor land vehicles.
 - 3.2. **Freight of goods insurance.** This type of insurance covers goods, luggage and all other types of assets. It provides payment of all claims of damage to, or loss of, goods in freight or loss of luggage regardless the method of their transportation.
4. **Insurance of rail vehicles.** This type of insurance covers damage to, and loss of, rail vehicles.
5. **Aircraft insurance.** This type of insurance covers damage to, and loss of, aircraft.
6. **Ship insurance.** This type of insurance covers damage to, and loss of: sea vessels; lake, river and waterway vessels.
7. **Fire and forces of nature insurance.** This type of insurance covers damage to, and loss of, assets caused by: fire; explosion; storm; forces of nature; nuclear energy; landslide; hail; frost and any other events that is not included above, such as theft, etc.
8. **Liability insurance.** This type of insurance includes:
 - 8.1. **Insurance of civil liability deriving from use of vehicles.** This type of insurance covers all liabilities deriving from the use of land vehicles, including carrier liabilities.

8.2. Insurance of civil liability deriving from use of aircraft. This type of insurance covers all liabilities deriving from the use of aircraft, including carrier liabilities.

8.3. Insurance of civil liabilities for water vessels. This type of insurance covers all liabilities deriving from the use of ships or boats (small ships) sailing in seas, lakes, rivers and waterways, including carrier liabilities.

9. Loan and security insurance. This type of insurance includes:

9.1 Loan insurance. This type of insurance covers the risk of default due to insolvency or other circumstances; export credits and other risks associated with exports, trade and investment in the country and abroad; loans that are repaid in instalments; mortgage loans; agricultural loans and other loans.

9.2. Security insurance. This type of insurance covers direct and indirect security.

10. Insurance of various financial losses. This type of insurance covers financial losses caused by employment risk; lack of adequate incomes; bad weather; loss of incomes; unexpected general expenses; unexpected commercial expenses; loss of market value; loss from rent or incomes; indirect loss from trade, other than the abovementioned; financial losses (other than commercial ones) and other types of financial losses.

11. Insurance of legal aid. This type of insurance covers expenses for legal aid and court expenses.

12. Insurance of assistance. This type of insurance covers assistance given to people cannot travel alone or assistance given to people when they are away from their home or permanent residence.

13. Life insurance. This type of insurance provides insurance of survival to a specified age, insurance of death, insurance of survival to a specified age or premature death, and insurance of life in the form of refunding the reinsurance premiums.

14. Marriage and birth insurance. This type of insurance covers expenses associated with marriage or birth of children.

15. Investment-fund-related life insurance. This type of insurance covers life insurance related to investment fund shares, where the insurer assumes the risk of investment associated with the value of shares or other types of securities.

16. Insurance of collective fund management. This type of insurance provides: insurance of individuals who unite for the purpose of capitalizing their contributions and distributing their assets related to the accumulated funds among persons who

have reached a specified age (survivors) or insurance beneficiaries in the case of death of the insured persons.

17. Insurance of payment funds. This type of insurance provides life insurance based on actuary calculations according to which, in return for a previously agreed single or periodical payment, the insured receives compensation for the specified period and relevant amount.

Contents of the Contract

Insurance contracts are bilateral agreements, which mean that they contain obligations for both contractual parties. Such obligations are provided for in Articles 1117-1154 of the Civil Code.

- The insured is obliged to pay the insurance premium. The premium is an amount of money that is paid to the insurer. The insurance premium can be paid in full or in part in accordance with what the parties have agreed to.
- The insured has to inform the insurer about all the circumstances he is aware of which are essential to determining the nature and degree of risk, at the moment of concluding the contract. All the circumstances the insurer has been informed about by the insured are essential. If a contract has been concluded contrary to the above is null and void.
- While the contract is effective the insured has to inform the insurer about all changes in the circumstances he is become to be aware of after the insurance contract was concluded and which can have an impact on the risk. If the insured fails to submit the abovementioned notification the insurer has the right to change the insurance premium, insurance amount, insurance period or terminate the contract as of the time when the risk changed. If the insured party does not accept the changes to, or termination of, the contract he can file a lawsuit.
- If the insured event has been verified, the insured party is obliged to inform the insurer about that within the deadline specified in the contract. If the insured party does not submit the abovementioned notification, the insurer has the right to not paying any compensation or the insured amount.
- The insured party or third party that is the beneficiary of the insurance contract is obliged to submit proof of the insured event or, in the case of asset insurance, submit proof of the amount of damage, and notify the insurer of that upon insurer's request. The insured or third party have to provide the insurer with any information about the insured event they posses. If this condition is not met then the insurer has the right not to pay any compensation or insured amount.
- The insured party has to take good care of the insured asset under the fire protection provisions, agronomical provisions and veterinary provisions. The

insurer has the right to inspect the insured asset and ask the insured party to take measures for preserving the asset and eliminating any found irregularities. A violation of the abovementioned obligation gives the insurer the right to terminating the insurance contract.

- When the insured event is verified the insured party has to take all measures he can to salvage and preserve the insured asset in order to prevent further damage or mitigate actual damage. The insurer is not obliged to pay any compensation for the damage caused by the insured party's failure to take the measures he could have taken to salvage and preserve the insured asset. The insurer is obliged to pay for the measures required to salvage and preserve the insured asset regardless whether they have achieved the intended goal, unless the insurer verifies that the means used and expenses incurred are employed or made without due care. The insurer is responsible for material damage to the insured assets caused by the means employed by the insured party for avoiding further damage or mitigating damage in the insured event, unless it can prove that such means were used carelessly and redundantly.
- If the insured party has covered the same risk with several separate insurance contracts with different insurers, he has to inform each insurer of those contracts. If the insured party deliberately fails to provide the abovementioned notification the insurers are not obliged to pay any submitted claims. When the insured event is verified, the insured party has to inform all insurers. The insured party has the right to ask each insurer to compensate the damage in accordance with the relevant contracts provided that the aggregate amount of compensations does not exceed the value of damage.
- The insured party can include a condition in the insurance contract specifying that if he dies the insurance amount be paid to a member of his family, another person, the government or another public legal entity.
- During the term of the insurance contract the insured party has the right to change the beneficiary of the insurance amount. For this he has to submit a written notification and proof of insurance to the insurer together with the necessary notes.
- If the insured event occurs the insurer has to pay the insured party the insurance compensation in accordance with the conditions specified in the contract.
- The insurer is not liable if the insured party's death or incapacitation and loss of, damage to, asset has been directly caused by war unless otherwise specified by the contractual parties in the insurance contract.
- After paying the insurance compensation the insurer has the right to ask for reimbursement of the paid amount from the persons who are responsible for the damage.

- The insurer is discharged of its obligation to pay the insurance compensation if the insured event has been caused deliberately or due to grave negligence in behalf of the insured party or the insurance beneficiaries. In the case of asset insurance, the insurer is discharged of its obligation to pay the insurance compensation also when the insured event has been caused deliberately or due to grave neglect by legally capable members of the insured party's family.
- The insurer who has paid the claim has the right to regress vis-à-vis the rest of insurers with the purpose of sharing the insured amount in accordance with relevant contracts. If one of the insurers is insolvent its portion is shared by the rest of the insurers.

Just satisfaction

The Albanian Civil Code provides in its dispositions of articles 1128 and further, just satisfaction as a result of insurance.

The insurance can be obtained in cases when the event for which the insurance is done, happens. The price should be paid not to the insurer, but to the third party in its favor is established the insurance contract. The compensation can not be higher than the value of the insured property. When only a portion of the property value is insured, the insurance price can not be higher than the value of the insured property. When the insurance price is lower than the value of the insured property, the compensation is settled in proportion with insurance price and the value of the insured property, unless the contract specifies differently.

It is with great interest in civil law the insurance relationship and the damage compensation in the cases of traffic rules violation (criminal offense provided in Article 290 of Albanian Criminal Code). The damage compensation in the above case derives from the mandatory insurance contract (TPL for vehicles). This particular case is examined thoroughly from Albanian jurisprudence as well, where the Unified Decision No. 12, date 14.09.2007 of the Joint Colleges of the Supreme Court could be mentioned.

In substance, Article 608 of the Civil Code and the Article 18 of the Decree no.295, date 15.09.1992 of the President of the Republic of Albania provide the protection from the illegal actions of the third parties with regard to human rights (absolute or relative), in connection with personality, property (real), as the right of life, personality, dignity, family, privacy, property and so forth. In case of violation of these rights from the illegal actions, the person injured is entitled to ask for extra-contractual compensation.

According to the abovementioned Supreme Court Decision, based in articles 608 and 643/a of the Civil Code, closed family members of the dead person that lost his life due to a illegal fact, enjoy the right to ask for pecuniary damages and the all expected

profits as if the event would have not occurred, not as an entire compensation, but also as a economic support for the family in the future.

The Decision has specified some elements like the **health damages (biologic)**, that in substance is related to the health, to physical an mental integrity of the person; **moral damages (non-pecuniary)**, that is emotional disturbance for a certain period of time, spiritual suffer and related forms; **general damage**, that disturbs the everyday life and the activities of the person, by decreasing the quality of life and by changing the balances of personal and family life.

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