

THEORETICAL ASPECTS RELATED TO THE INSURANCE CONTRACT IN KOSOVO

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Abstract

The compulsory insurance in Kosovo is more developed, whereas the voluntary one is less developed but with the development of economic-social life, the social and state policies on the insurance (health and other types of insurances) that are necessary also increase for a normal development of social life which our country was and still is in lack of. In this respect, more work and dedication are needed for the economic development of our country in order to bring about other compulsory insurances for the society. This is so due to the fact that the more developed economically the country is the more developed the insurance in that country.

Keywords: insured case, insurance policy, prime insurance, insurance company, motor vehicle, liability, insurance.

JEL Classification: K33, K34

1. Introduction

Through an insurance contract the policyholder undertakes to pay an insurance premium or contribution to the insurance agency, and the insurance agency undertakes in the event of a development entailing an insurance case to pay out the insurance payout or compensation to the policyholder or a third person or do something else.³ The insurance contract is an agreement of the insured and the insurer aimed at creating a judicial civil agreement of enriching nature. That is an institution of the right to obligations as well as the right to trading. The insurance contract is a mutual judicial act. So, this results from the agreement between the parties which, in return, has particular judicial consequences.⁴ The contract is a legally implementing agreement which contains rights and obligations for the parties. If one of the parties does not fulfil the obligations set forth by the contract without any legal reason people may say the contract has been breached. If the parties, whatsoever, have disagreements over the interpretation of the contract, the issue may be presented before the court for settlement.

Insurance contributes to different levels of economic development through insurance contracts. The insurance contract includes a periodic payment, which in return, offers protection against unexpected loss which may occur in the future. These payments (revenues) among other things, help to avoid large losses, bankruptcy of the businesses or individual assets as well as make it easier for them to get loans⁵. The insurance contracts enable individuals as well as businesses who are afraid of risk to take a greater risk, which in turn would bring them greater benefits, and higher productivity⁶.

2. General knowledge on the insurance contract

Through the insurance contract, a judicial relation between the insurer and the insured is created, by which the insurer assures the insured that it will pay for the amount necessary if the insured case is caused whereas the insured is obliged to pay for the insured prime to the insurer.⁷ The definition of the notion of the insurance contract is also given by the LOR in the article 918 which

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³ Law no. 04/L-077 on obligational relationships (Official gazette of the Republic of Kosovo 16/19 June 2012 Prishtina), article 918.

⁴ Hetemi Mejdi "Detyrimet dhe kontratat" Tiranë, 1998, p. 25.

⁵ <https://bks-ks.org/roli-li-sigurimeve-ne-zhvillimin-ekonomik/>, consulted on 1. 02.2021.

⁶ Ibidem.

⁷ Dauti Nerxhivane "E drejta e detyrimeve (pjesa e përgjithshme dhe e veçantë)", Prishtinë, 2007, p. 413.

specifies that: “through an insurance contract the policyholder undertakes to pay an insurance premium or contribution to the insurance agency, and the insurance agency undertakes in the event of a development entailing an insurance case to pay out the insurance payout or compensation to the policyholder or a third person or do something else”⁸. From the above-cited notions we can say that the contract is a judicial act and there are two parties for it be signed, one party has the status of the debtor whereas the second one the status of creditor (the insurer, the insured). In principle, through the contract on insurance, the insured party as a contracting party may insure property, health and his/her life, third parties on the circumstances where the insurance case may appear, etc.

In order for the contract to be signed, an application for insurance must be filed first. In fact, application represents the proposal or the offer for signing a contract. Insurance as a judicial relation has the following elements: the subjects, the object on the content (rights and obligations of the contracting parties). According to the rule, a party in the contract of insurance is considered the insurance entity (community) and the contracted party of the insurance (the insured).⁹ The insured – shall mean the person, whose possible loss of property and/or non-property is the subject of an insurance contract. In life-insurance contracts, the insured is the natural person whose life is insured. Insurer-shall mean any legal entity licensed to conduct insurance business under the provisions of this law¹⁰.

The community or the entity for insurance is not obliged to accept every insurance application because they will decide themselves on what risk they will cover, conditions and the period. By accepting the application by the insurance community, the insurance contract becomes obligatory and effective. From this moment, judicial relations are created between the insurer and the contracted party of the insurance as well as the third party and the user of the insurance. The contracts are of a particular importance in offering services and it is a judicial basis for transferring the reimbursement for the damage on the occasion of the so-called insured case.

The basic elements of the insurance judicial agreement which are needed to be set by the insurance contract are: the object, insured case, insurance prime, the insured amount, contracted parties and the length of the insurance.

According to the LOS: a development with regard to which an insurance contract is concluded (the insurance case) must be an uncertain future development of the exclusive intention of the contracting parties. An insurance contract shall be null and void if when it was concluded the insurance case had already arisen, was in the process of arising or was certain to arise, or if at that time the possibility of it arising had already ceased.¹¹

The insurance contract is characterized by specific judicial characteristics. The following are its main characteristics: insurance contract is a formal contract, mutually binding and rewarding, allying which is related to mutual trust between the parties.¹²

2.1. The compulsory insurance contract

An insurance undertaking shall be obliged to conclude a compulsory insurance contract pursuant to the provision of this law, the insurance conditions and insurance premium pricelist. An insurance undertaking cannot refuse an application to conclude an insurance contract if the applicant accepts the conditions under which the insurance undertaking conducts such insurance. Insurance conditions are an integral part of the insurance contract and they shall be made available to the insured person in the course of entering into and upon signing the contract.¹³

The obligatory insurance contract can also be found with the notion liability insurance policy

⁸ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2828>, consulted on 1. 02.2021.

⁹ Hetemi Mehdi “E drejta me njohuritë themelore të së drejtës afariste, Prishtinë 2002, fq.54

¹⁰ Law no.05/L-045 on Insurance in the Republic of Kosovo, 2015, article 3, parag.1.31, 1.32.

¹¹ Law no. 04/L-077 on obligational relationships (Official gazette of the Republic of Kosovo 16/19 June 2012 Prishtina), article 919, parag.1, 2

¹² For more, see: E drejta e detyrimeve (pjesa e pëgjithshme dhe e veçantë) Dauti Nergjivane, Prishtinë 2007, p. 414-415

¹³ Law No. 10 076, dated 12.2.2009 on compulsory insurance in the transport sector amended by the law no 10455, datë , 21.7.2011, article 8, parag.1,2,3.

which means the same.

Insurance policy - the insurance contract of liability, respectively the standardized signed insurance certificate signed by the insurer and the insured which assures the contract on providing liability.¹⁴

The insurance policy is only contracted by licensed insurers by the CBK. The insurance policy enters into force exactly from the date and time of its issuance and signing of the contract between the insurer and the policyholder, unless any other date has been set by the parties. The insurance policy ends at 24:00 hours of the deadline set forth in the policy unless otherwise set forth by the contract.¹⁵

Conditions of signing the insurance contract, like in any other contract of the right to obligations and that economic business, need to be fulfilled, such as: working ability of the contracting parties, the consent of the will of the contracting parties as well as the subject matter of the contract.¹⁶

The owner of the motor vehicle should contact the insurance company prior to operating the vehicle in order to cover the damages caused to the third parties in case of death, body injuries, damage to one's health. The owner of the motor vehicle is obliged to sign an insurance contract – insurance policy, so the owner of motor vehicle prior to its use should contact the compulsory insurance on liability in order to cover the damages caused to the third parties.

The insurer may not refuse the request for signing the insurance contract when the applicant agrees to the terms of the contract based on which the insurer abides by this insurance and the insurance conditions are a part of the insurance contract and must be submitted to the insured when signing the contract in which case the insured is issued the vehicle registration document, liability, the authority issues this document only after presenting the insurance policy of liability. The motor vehicle, before moving into traffic and until issued a registration document should be provided with liability insurance and the driver is obliged to have the insurance policy with him or any other proof which proves the provision of liability and show it every time he is asked by the official. In case of an accident, the driver is obliged to give his personal information as well as all the information related to the liability to all the people involved in the accident who may be granted the right to compensation from the basis of this insurance. If the driver does not show a proof that the vehicle was insured, then the traffic police or the official delegated by the police will contact the information center in order to verify whether the vehicle is insured. If it is proven that the vehicle is not insured this will prevent him/her from operating the motor vehicle.¹⁷

The compulsory insurance from liability covers: damages in persons and wealth caused to the third parties in operating from operating the motor vehicle. This also includes damages caused to the third parties from by the things that fall from the motor vehicle or anything else related to the motor vehicle, damages caused to the third parties from the operation of the motor vehicle by the unauthorized driver.¹⁸

The contract is an act between the signing parties where the will exists between them and it can be solved by their will¹⁹. Cease of contract on compulsory insurance- the insurance contract may cease in different cases and situations.

The main ways of ceasing a compulsory insurance contract are:

- Cease of contract with the agreement of the insurer and the insured,
- Cease of contract by abolishing it,
- Cease of contract after its deadline,

¹⁴ Regulation on the general conditions of the liability insurance policy, Bank of the Republic of Kosovo 2012, article 2, parag.1, subparag.1.2,

¹⁵ Law no.04/L-018 compulsory liability insurance of the Republic of Kosovo 2011, article 4, parag.1,2,3 article 5 parag.1,2.

¹⁶ Dauti Nerxhivane "E drejta e detyrimeve (pjesa e përgjithshme dhe e veçantë)", Prishtinë, 2007, p.61. *Apart from the above-cited general conditions, there are specific conditions, too, such as: the form of the contract, signing of the contract and giving consent for signing the contract.*

¹⁷ Law no.04/L-018 on compulsory liability insurance of the Republic of Kosovo, 2011, article 4, parag.1,2,3 and article 7 parag.3-9.

¹⁸ Regulation on the general conditions of the liability insurance policy, Bank of the Republic of Kosovo 2012, article 6, parag.1, subparag.1.1,1.2,1.3.

¹⁹ Skender Gojani & Granit Curri, "E Drejta Kontraktore", Prishtinë 2020, p. 119.

- Cease of contract with its settlement,
- Cease of contract according to the law,
- Cease of contract with denouncement
- Cease of contract for the insurance with cease of possibility for causing risk

2.2. Kosovo Insurance Bureau and compensation fund

Kosovo Insurance Bureau shall be a legal entity established as a nonprofit professional organization. The Government of the Republic of Kosovo shall recognize the status of this institution as a National Insurance Bureau with unlimited powers as a payment and processing Bureau, which shall ensure compliance with all liabilities deriving from the International Insurance card system.²⁰ Through its licensed members (insurance companies), the Bureau is authorized to issue the green card, based on the law provisions and in compliance to the regulations of the green card.

The Bureau shall specify its work and functionality based on its status. The Bureau is monitored by the Central Bank of Kosovo and it reports to it.

Its functionality, the Bureau exercises through its managing bodies as follows:

- General assembly of the members,
- Administrative Board,
- Executive Director.²¹

Within the KIB there are compensation Fund, border security, Insurance Information center and the green card.

The compensation Fund is administered by the Bureau and it aims at paying for the damage in the territory of the Republic of Kosovo for these cases according to LCLI (Law on Compulsory Liability Insurance):

- Compensation from operating an uninsured motor vehicle,
- Compensation from the insured motor vehicle with foreign license plate,
- Compensation for operating unidentified vehicles,
- Compensation in case of liquidation of bankruptcy of the insurer,
- Compensation based on the border security²².

3. Conclusion

The insurance sector in Kosovo is mainly focused on the insurance of the vehicles. Nevertheless, other types of insurance are less developed. People should consider the possibility of buying the insurance policy for the voluntary insurance as well (life insurance, property insurance, health insurance) which are necessary for a normal life, in this modern time us being endangered by everything, be it a traffic accident, work accident, disease or theft and fires at homes, etc. Taking it into account that, in the European countries, insurance is much more developed and the health insurance is compulsory, this makes our country different from the other European countries in this aspect. However, I believe that this issue will be settled in the future.

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²⁰ Law no.04/L-018 on compulsory liability insurance of the Republic of Kosovo, 2011, article 29, parag.1.

²¹ Status of the Kosovo Insurance Bureau, Prishtine, September 2011, article 7.

²²<https://bks-ks.org/static/uploads/documents/Ligji%20per%20sigurimin%20e%20detyrueshem%20nga%20autoperjegjesia.pdf>, consulted on 1. 02.2021.

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