

Treatment in legal and theoretical terms of insurance system

Dr. sc. Arben Agushi

Business College, Pristina, Kosovo

Abstract

In general, the insurance system plays an important role, both in the life of the individual and in the public policies of the country. As such, insurance is mandatory and voluntary. Most insurances are mandatory. The purpose of this paper is to address the legal framework of Kosovo which regulates issues related to compulsory and voluntary insurance and theoretical treatment of insurance as a concept. Explaining the efforts made to regulate the legal framework and harmonization of national legislation with the international one, in the field of insurance in general, focusing attention, especially on the treatment of positive legislation in our country, which regulates this important field of life.

The insurance system in Kosovo, immediately after the war, faced complete chaos and failure, in particular due to the lack of legal infrastructure and the lack of companies that were able to offer these products.

The purpose of this paper is to provide concrete assistance to lawyers, law students, and other individuals who may be subject to this relationship, to have a clear and accurate knowledge and vision of regulated legal concepts and institutes. with this legal framework as well as theoretical concepts in this field, for compulsory and voluntary insurance, as well as in expanding the knowledge for application in everyday legal life, moreover when a study of this type has been lacking in the legal literature.

Keywords: insurance, compulsory insurance, voluntary insurance, insurance contract, insurer, insured, insured event.

Introduction

Nowadays, insurance has become an indispensable part of life. It plays a very important role in creating socio-economic security of the family and the individual. In the face of any unexpected risk, through the insurance institution, it is possible to mitigate the losses suffered and create financial stability of the insured.

Through insurance, insurance companies, providing financial support and reducing potential uncertainties, against unexpected events, create security and increase confidence in doing business.

The first forms of insurance are encountered in the early stages of social organization, as a measure to protect oneself from the unexpected risks that the individual and family could face. As early as the 3rd and 2nd centuries BC, merchants envisaged measures to limit losses in the event of shipwreck, forms which in written form as guarantees are also found in the Hammurabi Code.

In pre-war Kosovo, security relations were regulated by the law on insurance of property and persons, while after the end of the war in Kosovo, some compulsory insurance issues were regulated by UNMIK regulations, which regulated compulsory insurance by auto-liability and that: Regulation 1999/1 of dt. 25.6.1999 on the authority

of the interim administration in Kosovo, Regulation 1999/24 dated. 12.12.1999, on the law applicable in Kosovo, Regulation 1999/05 dated. 12.12.1999 amending Regulation 1999/1 on the authority of the Interim Administration in Kosovo. These mentioned regulations have presented formal legal sources until the adoption of the Law on Compulsory Auto Liability Insurance, no. 04 / L-018, published in the Official Gazette of the Republic of Kosovo, which in a more specific way has regulated the issue of compulsory auto liability insurance, while regarding other types of compulsory insurance, yes as well as voluntary insurance, matters will be regulated by special law.

In accordance with the regulation for the implementation of the laws in force in Kosovo, which was quoted above, in addition to the mentioned regulations, as legal sources of security, present other laws and acts, which were implemented in Kosovo until 22.03.1989, whether they complied with international standards and if they were not discriminatory to the parties.

What are insurances?

Human life, throughout its periods has faced threats and dangers. In order to avoid and minimize these phenomena, the society has taken joint measures, which over time have become specialized institutions which share the risk of loss, damage and uncertainty as a whole.

By risk we mean a state of uncertainty which can be caused by the action of a future event and affect the outcome we hoped for. So the word risk means "doubt about the future, as well as the fact that the result may put us in a worse position than we are at the moment."¹

The definition of risk, in the simplest words, can be described according to the Oxford dictionary, "risk is the possibility of something bad happening".²

If we deal with the etymology of the word 'insurance' in different languages, in addition to the economic, legal and technical aspect that it contains, its concept marks the provision of insurance, the creation of trust in something, protection and guarantee.

We find a definition in Merriam - Webster, where it is said that insurance is "contract coverage where one party undertakes to indemnify or guarantee another against loss from a certain accident or risk, the business of insuring persons or property and the amount for it where something is insured",³ while Investopedia states, "Insurance is a contract, represented by a policy, in which an individual or entity receives financial protection or reimbursement against losses from an insurance company. "The company combines customer risks to make payments more affordable for policyholders."⁴

"Insurance means the transfer of a potential risk, of a property and/or non-property

1 Roli dhe rëndësia e sigurimeve

<https://bqk-kos.org/edu/wp-content/uploads/2020/02/Artikulli-per-Sigurimet-1.pdf>

2 <https://dictionary.cambridge.org/dictionary/english/risk>

3 Merriam – Webster since 1828 <https://www.merriam-webster.com/dictionary/insurance>

4 Investopedia <https://www.investopedia.com/terms/i/insurance.asp>

loss from the insured to the insurer, according to an insurance contract; Insurance is a way or method that people, businesses and organizations use to transfer certain risks to the insurer.”⁵

An insurance contract is an agreement between two parties according to which one party (policyholder - insured) agrees to pay a certain amount to the insurance company (insurance provider - insurer) for an uncertain event in future (insured event) while the insurance company, pays the insured party - the policyholder or a third party, with the contracted amount.

“The insurance contract is the act through which the insurer assumes certain risks, against the payment of the premium, to pay the indemnity to the insured, the beneficiary or a third party in the event of the insured event. Insurance contracts must meet the conditions set out in the CBK Law on Insurance and the Law on Obligations, in force”.⁶

Types of insurance and insurance system in Kosovo

On the basis of how individuals are obliged to insure business activities and assets, on the basis of how relationships can be established in the field of insurance, insurance can mainly be compulsory and voluntary.

Compulsory insurance

Compulsory insurance is that form of insurance which legally obliges the individual and the business to be provided with it. It is mandatory for individuals and businesses which are involved in activities that carry high financial costs, to provide compensation to victims (without burdening the state), or both.

This form of insurance is regulated at the state level, where imperative norms determine the types of insurance that will be mandatory and what will be covered by insurance policies for their holders.

By compulsory insurance we mean the legal relationship established between the insurer and the insured on the basis of the insurance contract, which is provided by law. The legal element of compulsory insurance is mostly expressed in the compulsory insurance of vehicles and other motor vehicles for the damage caused during their use in land, water, air, national and international traffic.

Voluntary insurance, based on the definition given to compulsory insurance, can be defined as a form of insurance which is not strongly supported by law.

Compulsory or legal insurance and voluntary insurance have common points of offer and distinction between them. The common point between these types of insurance is the legal basis - the insurance contract, which is a formal mutually binding contract. While the distinguishing point of these types of insurance is that voluntary insurance is created on the basis of the contract, which is also in writing, but the insured is not obliged, according to the legal force to enter into an insurance contract.

With the contract for compulsory insurance, the insurance contractor is obliged to pay a certain amount of money (premium) to the insurance company (insurer) on the

5 Roli dhe rëndësia e sigurimeve

<https://bqk-kos.org/edu/wp-content/uploads/2020/02/Artikulli-per-Sigurimet-1.pdf>

6 Law no. 04 / L-077 on Obligation Relations.

basis of the principle of reciprocity and solidarity, while the insurance company is obliged that, if it happens the event that presents the insured case, to pay the insurer or any third person the compensation, respectively the contracted amount or to perform something else.

Insurance and the relations established in the field of insurance are extremely important legal categories for the society and as such have material and formal resources like any positive branch of law, with which they are regulated⁷. The basic formal legal sources that regulate relations in the field of insurance are: Constitution, law, bylaws, insurance contract, customs, customary and doctrinal law, case law and legal science or doctrine.⁸ The division into material and formal legal sources is indisputable in the legal theory of the law⁹ in which the rules or provisions derive, which regulate the legal relations of the insurance law.¹⁰

In the Republic of Kosovo, compulsory insurance, but also voluntary insurance, are regulated by the law on obligatory relations, as well as by the law on compulsory auto liability insurance and on the basis of the insurance contract and on the basis of the insurance contract and general legal-property rules. The first attempt to partially regulate some insurance issues was made years ago when the draft insurance regulation was drafted regulation No. 2001/25 on licensing, supervision and regulation of insurance companies and insurance intermediaries as well as all laws governing the relationship of insurance law applicable under UNMIK regulations to applicable laws in the Republic of Kosovo.

Compulsory auto liability insurance

Auto liability insurance is the compulsory liability insurance which the owner of the motor vehicle must use before his use to cover the liability for damages caused to third parties in case of death, bodily injury, damage to health or damage to property.¹¹ As a basic and most important source in the field of insurance, which regulates insurance and the relations established with them, is Law No. 04 / L- 018 on Compulsory Motor Third Party Liability Insurance.

The system of compulsory auto liability insurance in Kosovo, after the end of the war, did not work, because all documentation for the registration of vehicles and other motor vehicles was destroyed. Compulsory insurance in Kosovo started operating in March 2000.

As insurers, foreign insurers appeared in the insurance market immediately after the war. With the administrative directive no. 199/3 of UNMIK regulates the conditions for licensing of domestic and foreign insurance companies, which will operate in the territory of Kosovo, respectively will deal with insurance activity.

Also in 2000, two foreign insurance companies were initially licensed for compulsory auto liability insurance: INSING in Tirana and AIG in New York. Later, these insurance companies were licensed in the Republic of Kosovo for auto liability insurance, such

7 Aliu.A (1999). "Burimet e së drejtës civile në Kosovë", Prishtinë.

8 Ibid.

9 Llukiq. R, & Koshutiq. B, (1986). "Fillet e së drejtës", Prishtinë, pg.245.

10 Marovic. B, (1993). "Osiguranje" Beograd., pg.53.

11 Law no. 04 / L-018 on Compulsory Insurance from Liability, article 3.

as: KOSOVO E RE, SIGURIA, INSIG, EUROSIG, DUGAGJINI, CROATIA SIGURIA and DARDANIA, which still carry out business activity in the work of insurance law. The first policy of compulsory auto liability insurance was signed on March 1, 2000, and after a period of time it appears that a very large number of vehicles in the territory of the Republic of Kosovo have been registered and insured.¹²

In the Republic of Kosovo, compulsory insurance, but also voluntary insurance, are regulated by the law on liability relations as well as by the law on compulsory auto liability insurance as well as on the basis of the insurance contract and general legal rules- wealthy. The first attempt to partially regulate some insurance issues was made years ago when the draft insurance regulation was drafted regulation no.2001 / 25 on licensing, supervision and regulation of insurance companies and insurance intermediaries as well as all laws governing applicable insurance law relationships¹³ under UNMIK regulations on applicable laws in the Republic of Kosovo.

Voluntary insurance

Unlike compulsory - legal insurance, which as we have stated above is created on the basis of the insurance contract concluded between the insurer and the insured for auto liability insurance - damage caused by a third party, voluntary insurance is created on the basis of free will - the contract concluded between the contracting parties, the insurer and the insured.

In voluntary property insurance contracts in the economy - business, usually the contracting parties are legal entities.

The insurer can be an insurance company or any other form provided by law, while the insured can be a private economic enterprise, or other form of organization, which deal with economic-business activities.

In Kosovo, the activity of insurance law is exercised by insurance companies, insurance intermediaries, insurance shareholders, administrators, employees, agents and persons licensed by the Central Bank of the Republic of Kosovo (hereinafter CBK). The ability to be a contracting party is acquired at the moment of issuing the licensing act by the CBK.¹⁴

The insurance relations, respectively the rights and obligations of the contracting parties are created on the basis of the insurance contract. The contract for compulsory auto liability insurance is concluded between the insurance company or any other form of organization, on the one hand as the insurer, and the owner or possessor of the vehicle, on the other hand, as the insured, so that in case of risk, the insurer will compensate the damage caused to the insured and other injured persons. The contract for voluntary property insurance is concluded between the insurance company or any other form of organization as insurer and the economic enterprise or any other form of organization as insured, where the insured is obliged to pay the insurance premium to the insurer, while the insurer undertakes

12 Nikqi . B, (1984). "Sigurimi i detyruar nga auto-përgjegjësia për dëmet e shkaktuara personave të tretë", Prishtinë.pg. 1-3.

13 Regulation no. 2001 / 25 on Licensing, Supervision and Regulation of insurance Companies and Insurance Intermediaries

14 Central Bank of the Republic of Kosovo (CBK).

to compensate the damage caused to the insured for the insured case.¹⁵ Voluntary insurance created on the basis of free will - contract, are numerous, both in the field of insurance law in the field of economic-business law, as well as in the field of personal insurance

Voluntary insurance contract

The contracting parties, with the voluntary insurance contract, aim to insure against any eventual risk which may cause them material damage, providing compensation for the damage caused in the event of the insured event.

The realization of the compensation for the damage caused to the property of the insured enterprise, on the basis of the insurance contract, is done after the presentation of the risk - the insured event.

"The insurance policy is a document that defines the rights and obligations between the insurer and the insurance contractor."¹⁶

Voluntary insurance contracts are of a wide and varied range. In some of the most common types of voluntary insurance (although few) in Kosovo include property insurance in business, property insurance, life insurance, health insurance, etc. These programs are voluntary and belong to individuals whether they want to buy them or not.

Business asset insurance

Commercial property insurance is most often related to the purpose of securing the property of fixed assets (machines and tools, livestock for raising, economic facilities, etc.), circulating assets and common means of consumption, depending on the type of assets and ordinary risks. Insurance can be done against fire and other natural events such as hail, floods, breakage, theft, exposure, lightning, robbery, as well as unauthorized use and others.¹⁷

Voluntary insurance of property and material-personal goods which are covered are:

- real estate,
- movable property.

Immovable property consists of: land and all other items that are related to the land, and these are: buildings and items installed in the building, such as. water pipes, power conductors, etc. Then come the things organically related to the earth: trees, fruit trees, but there are also things, which are considered immovable, even though they are in fact movable, and these are otherwise called immovable. Movable property insurance includes all those items that are not part of real estate.

Property insurance includes: insurance of industrial, commercial and service enterprises from fire risk and other risks, insurance of cars from damage and other risks, insurance of construction facilities, insurance of facilities under construction, insurance of facilities under assembly , guarantee insurance, insurance of film

15 Dauti, N, (2001). "E drejta e detyrimeve (pjesa e përgjithshme dhe e veçantë)" Prishtinë. Pg. 421.

16 Roli dhe rëndësia e sigurimeve. <https://bqk-kos.org/edu/wp-content/uploads/2020/02/Artikulli-per-Sigurimet-1.pdf>.

17 Antonijevi, Z, (1977). "E drejta ekonomike", Prishtinë, pg.464.

production, insurance of goods in warehouses and refrigerators, insurance of materials in mines with underground explosives, etc.¹⁸

Within insurance, the events that are covered are: insurance of civilian objects from fire hazards and other hazards, insurance against theft, robbery and robbery, insurance of goods from breakage, insurance of sports, artistic and similar performances from rainfall. rain or snow, insurance of material reserves, insurance of households, general liability insurance, etc.¹⁹ Within the insurance in agriculture are: insurance of some types of pets, insurance of agricultural crops (crops) and fruits from overproduction, etc.

The Law on Obligations of Kosovo has regulated the issue of property insurance with the provisions of Article 946, while the issue of insurance of persons has been regulated with the provisions of Article 963, where they have divided the matter of insurance into property insurance and in the insurance of persons. This division is a consequence of the legal-economic nature of the activity of insurance law.

Property insurance has the character of compensation, respectively it aims to compensate the damage caused to the property of the insured, as a result of the appearance of the insured case. In the case of personal insurance, it cannot be a question of compensating the damage in the material sense, since the personal good (the life, bodily and health integrity of the person) is

It follows that a condition for the realization of the right to insurance is the existence of material interest so that the damage does not occur. For this reason, material interest and compensation for damage are two basic principles in the matter of property insurance in the economy - business.

It should be noted that the rules of realization of property insurance differ from the rules of insurance of persons. In property insurance in the economy - business, the compensation for damage can not be higher than the damage caused as a result of the insured event. The insured, with a property insurance contract, in the economy, can not contract higher compensation for damage than the amount of damage caused, or contract higher amounts which exceed the real value of the insured property. In case the sum insured is less than the real value of the property, the reward is reduced in fair proportion.

It is not allowed to enter into many contracts for the same property and for the same insured case, for full value (double insurance). It is forbidden to combine the compensation from the insurance and the compensation of the damage from the person responsible for the damage caused.

Different theories have been put forward as to where the interest and purpose of insurance lies. Both the foreign and the domestic legislator has foreseen the meaning of insurance interest, the Law on Obligations of Kosovo, the issue of interest and the purpose of property insurance has foreseen it with the legal provisions which we will quote below lower: Property insurance can be contracted by any person who has an interest so that no insured event occurs, as it would suffer any material damage.

- Only persons who at the time of causing the damage had a material interest, so that the insured case does not occur, have the right to insurance.

18 Bakraçi. Xh, (2004). "Menaxhmenti i rrezikut dhe sigurimi", Prishtinë, pg. 208-209.

19 Ibid.

- In the case of property insurance, the amount of compensation can not be greater than the damage that the insured has suffered in the presentation of the insured case.
- The provisions of the contract by which the amount of compensation is limited to amounts smaller than the amount of damage, are prohibited when determining the amount of damage. Lost profit can only be considered if it is contracted.
- In the event that during the insurance period, the insured events occur, one after the other, the insurance premium for each of them is determined and paid in full taking into account the entire insurance amount, without deducting the previously paid premiums paid in that period.
- In case with the insurance contract the value on the insured item is determined by agreement, the compensation is determined according to this value. Unless the insurer proves that the contracted value is much higher than the effective value and if there is no valid reason for this difference (eg insurance of the item used, at the value of the item as if it were new or providing subjective value).
- In the provision of crops and fruits and other land products the amount of damage is determined taking into account the value they would have at the time of collection, unless otherwise contracted.²⁰

Theoretical aspect of insurance treatment

In theory, the field of insurance law, in many respects, is treated in detail, so opinions differ and are highly controversial.

One of the simplest divisions on the theoretical meaning of insurance is that it classifies these theories into two groups. The first group defines insurance in a broad sense, which includes all types of insurance as well as life insurance. The second group defines insurance in the narrow sense and excludes the field of life insurance and other types of insurance of persons

Also, for the meaning of the insurance contract in general there are several theories and we think that through these theories is given the meaning of the contract for voluntary insurance of property in the economy (business) and compulsory insurance. Economic-legal theories, in insurance contracts give priority to economic-business elements. This context includes:

- a). The theory of necessity, according to which the risk which may occur is covered by insurance. According to this theory, insurance is nothing but an institution or entity, which must meet a need that will arise only if, due to the occurrence of risk, damage is caused. Security theory, according to which risk coverage is an essential factor in insurance, while the guarantee of its coverage is given to the insured by the insurer.
- b). Technical legal theories find their logic in defining the insurance contract in the coverage technique, the formation of the insurance organization that determines the statistical basis for determining the insurance price. These include:
 - The theory of compensation of damage, according to which, the insurer for the paid premium assumes the obligation to compensate the damage on a reciprocal basis according to statistical laws;

²⁰ Law no. 04 / L-077 on Obligation Relations.

- The theory of the technical organization of the insurer, which undertakes risks and determines the premium based on statistical data.
 - c). Legal theories examine insurance mainly on the basis of legal logic. These include:
 - The theory of compensation for damage, according to which the purpose of any insurance is the compensation of damage due to the risk caused that occurs during the duration of the insurance contract.
 - The theory of prestige starts from the fact that the insurer for the received premium gives the insured a contract - compensation in the obligation to pay for the eventual damage compensation.²¹
- As a result of these theories, in legal practice, insurance can be divided into property insurance - the theory of compensation for damages and insurance of persons - the theory of compensation due to the specifics of contracting for compensation of damages.
- d). Mixed theories, which start from the simultaneous observance of technical, economic and legal elements. According to this theory, insurance is a type of operation in which the insurer, as a reward for the premium, promises that if the risk is realized, the insurer will pay the indemnity.²²

Conclusions

In this paper we showed that the applicable positive law, ie the legal framework that regulates these relations plays an important role in the insurance system and in establishing relations in the field of insurance.

We dealt in detail with the Legal Framework which regulates issues in this field, explained the chaotic and divergent situation in the early beginnings of this activity. we showed how the existing legal infrastructure of the former Yugoslavia was initially replaced by UNMIK regulations and later by domestic legislation, laws issued by the Assembly of Kosovo and the legislation governing this area.

Also, I pointed out that, in the Republic of Kosovo, the insurance system and relations in this field are not regulated by a law, but they are regulated by a number of laws which include specific areas of these relations. Most insurance is regulated by Law no. 04 / L-077 on Obligations Relations, while for specific issues, serve laws such as Law no. 04 / L-018 on Compulsory Motor Third Party Liability Insurance, Law no. 05 / L-045 on Insurance, Law no. 04 / L-249 on Health Insurance, not neglecting the treatment in the theoretical aspect of the concept of insurance and the insurance contract.

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