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# Insurance legal framework in Bulgaria

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The legal framework of any sector could be quite a complex notion. Regarding the insurance sector, however, its guarantee and surety functions, protecting the interests of insureds and beneficiaries, generate several specificities.

## 1. Sources

The main source of insurance legislation is the Insurance Code (IC) which concentrates great part of the insurance legal regulation in the country; from licensing of insurance undertakings, their capital and general management requirements, insurance intermediaries and distribution of insurance products to the regulation of particular insurance products and insurance contracts in general. Most of the EU Directives are transposed in national regulation through direct incorporation in the IC, thus rendering it a quite extensive and detailed, all-in-one legal act, at least for the most part.

Traditionally, codification in Bulgaria is not exhaustively carried out (although insurance is probably one of the best codified sectors in the country) so that some individual sectorial regulations would also apply, such as:

- Tax on Insurance Premium Act;
- Ordinance 71/22.07.2021 on the requirements to the management system of insurers and reinsurers;
- Ordinance 49/16.10.2014 on the compulsory MTPL insurance and the accident insurance for passengers in public transportation;
- Methodology for claims' settlement in MTPL insurance, integrated in Ordinance 24/08.03.2006 on compulsory MTPL insurance (revoked as to the rest of its provisions in 2014);

- Regulations on specific insurance products, such as the Ordinance on mandatory insurance of the employees and workers for work accidents' risk, the Ordinance on the general terms, minimum sum insured, minimum insurance premium and conclusion of the mandatory health insurance for foreigners that reside on short or long term in Bulgaria or pass through the country and the Ordinance establishing the terms and procedure for compulsory insurance in design and construction;
- Dispersed provisions regarding some insurance products such as these of art. 171 et seq. of the Spatial development Act regarding the different compulsory and non-compulsory insurances in the construction and design sector and those of art. 189 of the Health Act regarding the compulsory medical liability insurance.

Applicable to the insurance sector are also some provisions of the national laws as mentioned below:

- Obligations and Contracts Act;
- Consumers' Protection Act;
- Commercial Act;
- Civil Procedure Code;
- Protection of Competition Act;
- Electronic Document and Electronic Trust Services Act;
- Distance Marketing of Financial Services Act;
- Public Offering of Securities Act.

It shall be noted that the IC contains some exceptions, even contradictions to the general provisions of the above acts. Such provisions are those related to the offering and acceptance rule (according to art. 345, al. 2 IC, the insured or the policyholder are the ones that propose the conclusion of the insurance policy to the insurer) and the definition of "consumer" (in regards to insurance products, the consumer, specifically named "user", shall be every person that somehow benefits from an insurance policy, no matter if they are a physical or a legal person, according to art. 2, al. 2 IC). The provisions of the Electronic Document and Electronic Trust Services Act seem to fall within the same category since its provisions regarding the different types of electronic signatures are intended to be amended reconsidered with the Bill of amendments to the IC[1] for the insurance sector specifically.

## 2. Specificities of insurance in Bulgaria

The surety and guarantee nature of the insurance contract has provoked the legislator and the courts to adopt certain rules, motioned mainly by the specific logic and purpose of the contract. Highlighting some of them such as those listed below, could give certain perspective on the matter.

### A. Formalistic yet protective approach to the insurance contract

According to the provisions of the IC and the long-lasting and well-established legal apprehension of the insurance contract, the latter is a strictly formal act. The policy must contain several elements (the minimum being set in art. 345 IC) in order to be considered validly concluded.

[1] For further details on the subject, check SWOT analysis of the digital transformation amendments to the Bulgarian Insurance Code | Rokas Law

It is commonly apprehended that when determining a certain form for the valid conclusion of a contract, the public interests are preestablished thus the form incorporates the tools for their protection. The interpretation of the insurance contract by the Supreme court seems to mark an unusual exception. The protective nature of the contract for the insured and the injured third parties overrules the formalistic legal approach. Thus, in its Interpretative decision 1/07.03.2019[2], the Supreme court rules that the lack of signature on a contract would usually compromise its validity, especially when it comes to a formal contract (specifically in regards to the consent of the parties). Regarding the insurance contract however, the Court rules that the lack of a signature, despite it being a mandatory element of the contract, would not affect its validity or the consent of the parties. Contrary to the general legal principle that *"special rules overrule the general rules"*, the general rule of simplified written form according to art. 293, al. 4 of the Commercial Act would apply to the insurance contract, overruling the special provisions of the IC on insurance contract's formation. The leading interest being that of the insured and the third parties benefiting from the contract, the formal nature of the contract appears to be considered as secondary when examining its validity and execution.

A similar line of reasoning led the Supreme court to adopt another Interpretative Decision[3] according to which, if an insurance contract was terminated or annulled prior to this circumstance being notified to the register of the Guarantee fund (the Information center) and a third party submitted a claim before the insurer in the meantime, the latter could not oppose the contract's termination or annulment to that third party. Adopting this approach, the Court assigns to the register and the information declared by the insurer to the Guarantee fund a strong protective role regarding the third parties. A role, traditionally reserved for the public registries, which was not necessarily the initial purpose of the Information center of the Guarantee fund.

Regarding the above, when it comes to insurance contracts, the formalistic approach as a means for the protection of the interests of the insured or the third parties, would rather step back in favor of the concrete actual interest of the third parties or the insured.

## B. Flexible approach on insurable interest

The insurable interest is a specific requirement to the validity of the insurance contract, bearing a prolonged significance – it shall be present throughout the entire insurance period as stipulated in the policy. Understandably, this requirement applies between the parties to the insurance contract – the insurer and the policyholder. The latter could be insured, beneficiary or a third party regarding the insured property or liability – no particular attachment to the insured property or liability is required for the policyholder in order to conclude a contract.

This conclusion is based not only on the definition of the policyholder according to the IC, but on a further analysis of the relative insurable interest stipulations of the IC. According to art. 402, al. 2 IC, an insurance contract concluded for another person's property is not invalid as long as the person approves it. A preliminary or even fixed-termed approval is however not required; approval upon occurrence would suffice. Even more flexible solution is adopted regarding the contract for compulsory Motor third party liability insurance. According to art. 483, al. 1, pt. 1 IC, every person can conclude the

[2] Interpretative decision 1/07.03.2019 on Interpretative case Nr. 1/2018 of the Commercial Chamber of the Supreme court of Bulgaria.

[3] Interpretative decision 1/23.12.2015 on Interpretative case Nr. 1/2014 of the Commercial Chamber of the Supreme court of Bulgaria.

contract, including a person that is neither the owner nor the driver of the vehicle. The legislator once more prioritizes the guarantee and surety function of insurance over its formal contractual requirements.

Furthermore, the Courts accept that the law establishes a presumption of insurable interest for the persons that have a legal obligation to conclude an insurance contract in favor of another person or group of persons (as it is the case with medical institutions which are obliged to conclude insurance covering the professional liability of the practicing doctors in the institutions)[4].

### C. Fairness of compensation for moral damages

The difficulty of fair compensation of moral damages has led some European countries to adopt scales or tables of indemnifications (such scales exist in Italy and Spain). Although some attempts to adopt such scales were made in Bulgaria, none of them were successful. Thus, the general rule of art. 52 of the Obligations and Contracts Act, according to which the amount of indemnification due is defined by the court in a fair manner, would apply. The abstract nature of this notion has led the Supreme court[5] to define the elements that shall be considered when determining the extent of the indemnification due so that it would represent, as fairly and objectively as possible, the subjective suffering of the individual. This approach, however, provides little foreseeability as to the amount of the indemnification due and, thus, exposes insurers to serious difficulties when it comes to reserving the insurance funds. Thus, an urge for adopting a scale of indemnification seems to arise.

Regarding all of the above, the guarantee and surety function of the insurance contract shall be strongly considered when analyzing the national framework. Even though those functions are not, strictly speaking, a source of national insurance law, their importance and the need to be complied with lead to sectorial legislative and case law specificities that need to be considered when approaching the insurance legal framework in the country.

## 3. Insurance supervision

Traditionally, supervision is not part of the legal sources of a specific sector. Although, regarding the insurance sector, the Financial Supervision Commission (FSC) is often the proposer of legislative amendments in the insurance sector. From regulation of specific insurance products, distribution channels, intermediaries and insurance undertakings' capital requirements to the transposition of various European acts and the application of EIOPA's recommendations, the FSC has been involved in every aspect of the insurance sector. Its main goal being the assurance of the stability of the insurance sector, a balance between regulation of the insurance market and its liberalization seems to be the core of the approach underlying the most recently proposed amendments of the IC (as per the IC amendment Act that was put to public consultation from mid-October to mid-November).

Apart from its quite central role in the modernization of the insurance legislation, the FSC is becoming sort of a "secondary authority" for the protection of the insurance consumers. The FSC, following a complaint of a consumer[6], can oblige an insurer, an insurance intermediary or every other supervised

[4] In this sense, Decision 83/22.06.2022 on civil case Nr. 4539/20021 of the First Civil Chamber of the Supreme court of Bulgaria.

[5] Decree 4/23.12.1968 of the Plenary session of the Supreme court.

[6] Which could be submitted even online according to the FSC website: www.fsc.bg

entity to present before the Commission its explanation on the complaint together with the evidence supporting it (art. 18 of the FSC Act). Finally, once an incident of non-compliance with insurance regulation is ascertained by the FSC following a complaint, the latter could give specific instructions to the supervised entity or directly sanction it (according to art. 644 IC).

Even though the instructions and recommendations of the FSC that are in its prerogatives according to art. 13 of the FSC Act do not constitute a source of insurance regulation *per se*, the fact that the instructions of the Chairperson or any of its deputies can lead to the imposition of financial sanctions to the supervised entities (art. 644 IC) compel the supervised entities to comply. This role of the FSC leads to the conclusion that its activity and actions shall be strongly considered when defining the insurance framework in the country.

## 4. Dispute resolution

Traditionally, dispute resolution in insurance is conducted by Bulgaria's common courts depending on the financial value of the claim. Since the insurance contract qualifies as a commercial deal, either the civil or the commercial divisions of the courts would be competent to resolve the dispute, depending on the judge's sight.

Theoretically, insurance disputes could be resolved before an Arbitration court as long as both parties have not the capacity of a consumer according to the Consumer protection Act. However, considering that the concept of user in insurance sector is wider than the definition of consumer according to the Consumer protection act, an arbitration clause might be considered inapplicable in the insurance sector.

A sectorial Conciliation committee in the Commission for protection of the consumers could also handle an insurance dispute. A special Sectorial Conciliation committee for the resolution of disputes in the sector of insurance and insurance intermediation, including distance marketing of financial services in those sectors, has competency to resolve such disputes. The proceedings before the Conciliation committee have the advantage of being free of charge. The disadvantage of such proceedings is that the disputes could only be related to consumer's matters in the insurance sector, thus this mechanism could not be regarded as a universal tool for dispute resolution in insurance.

## 5. Concluding remarks

Depending on the nature of the case, the legal framework of insurance in Bulgaria, despite being codified and relatively collected, does not suffice to render the outcome of a dispute foreseeable, even for an experienced practitioner. The insurance case law, however, is abundant and is actively contributing to the constant evolvement of the insurance domain. The disadvantage of this situation is that the legislature provides much more clarity and foreseeability than case law, which is essential for the attainment of the higher purposes of the insurance, being one of the pillars of the financial system.

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