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## **CONSUMER PROTECTION IN GREECE, ESPECIALLY IN INSURANCE CONTRACTS**

### **1. Introduction**

In Greece, legislation on consumer protection is mainly the result of the Hellas' obligation to implement relevant European Union law. Thus, the basic Consumer Protection Act (Law 2251/1994 – ConsPL)<sup>1</sup> embodies the most important EC Directives<sup>2</sup> in this area. Presidential decrees 339/1996, 182/1999, 100/2000 and 131/2003<sup>3</sup>, along with more than a dozen joint ministerial decisions, constitute the current legal framework on consumer protection. The ConsPL regulates various consumer issues such as general terms and conditions of consumer

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\* mail

1 Law 2251/1994, entered in force 16 November 1994, substantially amended by Law 3587/2007, in force 10 July 2007. The 1994 Law replaced the first Hellenic Consumer Protection Law 1961/1991, last amendment of ConsPL by Law 4314/2014, in force 23 December 2014. Hellenic legislation is fully cited in Greek at the end of the paper but citation in English is chosen in the footnotes for reasons of easier reading and comprehension.

2 Consumer *acquis* directives transposed to Hellenic legislation by the ConsPL are: the Directive on distance selling (97/7/EC), the Directive on injunctions (98/27/EC), the Directive on doorstep selling (87/577/EEC), the Directive on sale of consumer goods and guarantees (99/44/EC), the Directive on unfair contract terms (93/13/EEC) and the Directive on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (2011/83/EU). Directives outside the scope of the *acquis* transposed to Hellenic legislation by the ConsPL are: the Directives on misleading advertising and comparative advertising (84/450/EC – 97/55/EC), the Directive on unfair commercial practices (2005/29/EC) and the Directive on the distance marketing of consumer financial services (2002/65/EC).

3 Accordingly transposing to Hellenic legislation the following directives: the Directive on package travel (90/314/EEC), the Directive on timesharing (94/47/EC), the Directive on pursuit of television broadcasting activities (89/552/EEC), the Directive on injunctions (98/27/EC) and the Directive on electronic commerce (2000/31/EC).

contracts, unfair contract terms, distance selling, doorstep selling, misleading and comparative advertising, distance marketing of consumer financial services, product liability, etc. In part 2, after giving the definition of the term “consumer” and presenting the basic regulatory framework regarding general terms and conditions in consumer contracts, the settlement of consumer disputes will be highlighted. The following parts (3-5) focus on insurance contracts, as a significant category of consumer contracts, which are examined within the legislative framework of both insurance and consumer law.

## **2. Consumer legislation in Greece: A brief overview**

### ***2.1. Definition of the term “Consumer”***

According to the ConsPL<sup>4</sup>, a consumer is any natural person or legal entity or association without legal personality, who the products or services offered in the market are intended to, and who make use of such products or services, as long as they are their final recipient. Consumer is also any addressee of an advertisement and any person or legal entity providing guarantees for the consumer, as long as they do not act in their professional or business capacity. As the definition of the term ‘consumer’ is quite broad<sup>5</sup>, commercial companies could also be regarded as consumers, as long as they are the final recipient of products or services. Of course, the ConsPL and other relevant legislative instruments make use of the term ‘consumer’ in a narrower sense, where it is deemed necessary, as we will further see.

### ***2.2. General Terms and Conditions***

According to Art. 2 §1 of the ConsPL, the general terms and conditions formulated in advance for future contracts are not binding on consumers if, at the conclusion of the contract, consumers were without fault unaware of them, in particular when the supplier did not indicate their existence or deprived consumers of the possibility to acquire knowledge of their content. General terms and conditions have not been individually negotiated but have been drafted by the trader in advance, thus not allowing the consumer to influence the substance of the terms. General terms and conditions which result in a substantial disruption in the balance of the rights and obligations of the contracting parties to the detri-

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4 Art. 1 §4a.

5 As already mentioned, the ConsPL has transposed Directive 93/13 EEC on unfair contract terms into Hellenic law. Article 2(b) of the Directive defines the consumer as any natural person who is acting for purposes which are outside his business, trade or profession. The ConsPL's definition is wider since it is not restricted only to persons acting outside their business, trade or profession, nor is it implemented only to natural persons.

ment of consumers are prohibited and void. The abusive character of a general term incorporated in a contract is assessed by taking into account the nature of the goods or services for which the contract was concluded, the objective of the contract, the circumstances attending the conclusion of the contract and the other clauses of the contract or of another contract on which it is dependent. Except for the above criteria, in order to characterise general terms and conditions as unfair, Art. 2 §7 ConsPl entails an indicative, non-exhaustive list of thirty two terms, which are *per se* unfair. Moreover, Art. 2 §2 ConsPL provides that general terms and conditions included in consumer contracts concluded in Hellas, should be drafted in Greek language, in a clear, precise and intelligible way. The use of Greek language is also mandatory in cases where general terms and conditions are incorporated in international transactions which take place within the Greek market.

### **2.3. Settlement of consumer disputes**

#### *2.3.1. Court proceedings*

In Hellas, there are no special courts for consumer cases. Disputes between consumers and suppliers, due to breach of private rights stemming from consumer legislation, are heard in ordinary civil courts under ordinary proceedings. The ConsPL provides that all consumer associations are entitled to request before courts and administrative authorities the legal protection of their members' rights.

Consumer associations are constituted as legal bodies and are governed by the provisions of Article 10 ConsL and the Civil Code. Their exclusive objective is the protection of consumers' interests. They represent consumers in the organizations in which consumer representation is provided for, and they inform and advise consumers. Consumer associations are organized as associations of the first and second degree. Members of the first-degree consumer associations are only natural persons. Only the first-degree associations can be members of the second-degree consumer associations<sup>6</sup>. Consumer associations are entitled to bring a court action, to ask for provisional measures, to apply for annulment or for substantive judicial review against administrative acts and to make representations in civil proceedings. They are also entitled to intervene in pending legal proceedings involving their members, in order to support their consumer rights<sup>7</sup>. Furthermore, consumer associations, which have at least 500 active members and have been entered into the Consumer Associations Register for

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6 Art. 10 §2 ConsPL.

7 Art. 10 §15 ConsPL.

at least one year, are also entitled to bring a declaratory action<sup>8</sup> (Kerameus, 2008: 350-351; Yessiou-Faltsi, 2011: 119-120), concerning redress for damages sustained by consumers due to illegal behaviour of suppliers.

The above mentioned provisions introduce two exceptions to the rules on standing to sue, i.e. the capacity of a person to become a proper party with regard to a given proceeding. Normally, standing to sue is granted only to persons whose substantive rights constitute the object of the relief sought in action. Third persons having only indirect or remote interest or fighting *pro bono publico* are not allowed to institute civil proceedings. Such actions, brought by a third party other than the holder of the subjective right in question, are admissible only when expressly permitted by law (Kerameus, 2008: 349; Yessiou-Faltsi, 2011: 125).

Art. 10 §§15 and 16d ConsPL establish the exceptional right of consumer associations to institute civil proceedings, asking for the protection of a specific right belonging to one of their members or a consumer<sup>9</sup>. In this case, standing to sue is characterized not only as exceptional but concurrent as well: the actual owner of the right can bring an action in his own name, even if an action brought by a consumer association for the same cause is pending. *Vice versa* is not possible: *lis pendens* of the action brought by the owner of the right impedes consumer associations to ask for the judicial protection of this right as well (Αλεξανδρίδου, Απαλαγάκη, 2008: αριθ. 36-46).

Yet, consumer associations can always intervene in the pending proceeding. Intervention is regularly permissible to third parties, only if they claim a legal interest in the victory of one of the original parties. The legal interest condition is not only connected to the *res judicata* effect or other binding effects of the decision against the third party but also extends to any other interest related to the legal rights of the intervener (Yessiou-Faltsi, 2011: 146). Thus, the right of consumer associations to intervene in a pending consumer-supplier dispute case would be doubtful, if it were not expressly provided in the ConsPL (Αλεξανδρίδου, Απαλαγάκη, 2008: αριθ. 39).

### 2.3.2. Class actions

Hellenic procedural law does not provide the admissibility of class actions. However, the ConsPL<sup>10</sup> provides that consumer associations, which have at least 500 active members and have been entered into the Consumer Associations

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8 Declaratory actions (art. 70 CCivP) tend to judicial determination of the existence or non-existence of a legal relationship capable of becoming *res judicata*. Declaratory judgments are not enforceable *per se*.

9 This right is distinguished from the right of bringing collective actions. *See infra*.

10 Art. 10 § 16.

Register for at least one year, may bring any kind of action in order to protect consumers' general interests (collective action – *Verbandklage* according to German law; Καράκωστας, 2008: 399)<sup>11</sup>. A number of claims (of no restrictive character) are mentioned in the law, such as claims against the supplier to cease and desist from any illegal behaviour, even prior to its materialisation, regarding the use of unfair standard terms, contracts negotiated away from business premises, contracts negotiated at a distance, after-sales services, defective products, misleading, unfair, comparative or direct advertising, etc., and claims for the financial redress of non-pecuniary damages. Consumer associations can also demand for interim protection of their members' rights, while the judicial decision is still pending.

### 2.3.3. Amicable settlement

The ConsPL also provides for amicable settlement of consumer disputes<sup>12</sup>. As Hellas is administratively divided into 54 prefectures, a Committee for amicable settlement is established in each of them, as a means of alternative dispute resolution between suppliers and consumers or consumer associations. These three-member Committees consist of a lawyer appointed by the board of directors of the local bar, a representative of the local chamber of commerce or industry appointed by the board of directors of the chamber, and a representative of the local consumer associations nominated by the relevant boards of directors. Cases are brought before the Committee at the request of consumers, consumer associations and the Consumer Ombudsman.<sup>13</sup> Cases are heard within a maximum of 15 days following submission of the plea; interested parties must be invited in writing at least 5 days before the hearing. Whenever special conditions so require, the chairman of the Committee can extend the time limits by a maximum of 5 days. Interested parties can represent themselves at the hearing or they can appoint a lawyer or authorize a third person for this purpose. Findings of the Committee, which must be notified to the Consumer Ombudsman and the

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11 In collective actions against suppliers, the general rules on standing to sue apply since consumer association is regarded as the actual owner of the right in dispute, although in reality it is not a contractual party: see Αλεξανδρίδου, Απαλαγάκη, 2008: αρθ. 38, 50. According to contrary opinions, collective action is a kind of *actio popularis*: consumer associations are not the actual owners of the right in question but merely defendants of general interests. See Νίκας, 2003: 314; Κουσουλής, 2002: 1099.

12 Art. 11 ConsPL. Quite recently, Art. 11a was added to the ConsPL by Ministerial Decision Z1-111/2012, in force 7.3.2012, embodying into Hellenic law Commission Recommendations 98/257/EC and 2001/310/EC concerning the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. See also *infra* note 14.

13 For the function and jurisdiction of the Consumer Ombudsman *see infra*.

parties within a maximum of 15 days after the hearing, are not binding for the parties and are not considered as enforceable instruments.

Consumer Ombudsman was established by Law 3297/2004<sup>14</sup> as an independent authority for extrajudicial dispute resolution in the area of consumer disputes, supervised by the Minister of Development. The Ombudsman's institutional role is to intervene in consumer disputes and seek their out-of-court consensual settlement. The Ombudsman is also legally endowed with the power to issue public recommendations and effective protection of consumers' rights from misleading and unfair commercial practices. Additionally, the Consumer Ombudsman operates as a legal consultant to the state, making concrete propositions and detailed legislative suggestions for tackling various market dysfunctions and promoting consumer protection.

The Consumer Ombudsman undertakes cases of its own motion or upon a signed request, submitted by at least one of the interested parties (natural or legal persons or associations) within three months from the day the complainant was fully informed about the harmful and damaging act. The Ombudsman also undertakes requests of consumers or consumer associations rejected in the framework of previous out-of-court dispute settlement proceedings. Nevertheless, he does not intervene in cases pending before regular courts.

Each complaint is examined objectively and impartially. The interested parties can communicate their views to the Ombudsman and be informed about the arguments of the opposite party. The Consumer Ombudsman promotes the amicable settlement of the dispute, endeavoring to reconcile the parties. If such an agreement is achieved, a relevant record is drawn up and signed by both parties or by their representatives. The record has the same legal effects as an in-court settlement. If no settlement is reached, the Ombudsman makes a written recommendation to the parties in order to solve their dispute. If one of the parties does not comply with the recommendation, the Ombudsman has the right to disclose the facts notifying the relevant findings.

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14 In force 23 December 2004; last amended by Law 3769/2009, in force 1 July 2009. The establishment of the Consumer Ombudsman followed a series of legal texts of the European Union, such as the Commission Recommendation of 30 May 1998 (98/257/EC) on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and the Commission Recommendation of 4 April 2001 (2001/310/EC) on the principles for out-of-court institutions involved in the consensual resolution of consumer disputes. The Consumer Ombudsman is the most important alternative dispute resolution scheme regarding consumer disputes. Other relevant schemes are the European Consumer Center, SOLVIT NET, FIN-NET, the Ombudsman for Banking-Investment Services, etc.

### 3. Insurance legislation in Hellas

#### 3.1. Consumer insurance contracts

Private insurance law is basically regulated by the Insurance Contract Law (InsL)<sup>15</sup>. Marine and aviation insurance are governed by the Private Maritime Code<sup>16</sup> and the Private Aviation Code<sup>17</sup>, respectively. Another important legislative act is the Law on compulsory insurance of civil liability arising from motor vehicle accidents<sup>18</sup>.

The InsL governs all kinds of insurance, including both commercial and consumer insurance. Usually the policyholder (the person who concludes an insurance contract with the insurer) or the insured (the person who suffers from the occurrence of the insured event) are the final recipients of the insurance services, so they are characterised as consumers according to the ConsPL<sup>19</sup>, irrespective of their business activity. This assessment, based on the broad definition of the term ‘consumer’ in consumer legislation, would result to the same treatment of all insured persons, either natural or legal persons, and regardless of whether they conclude an insurance contract for private or business reasons. Since the primary aim of the insurance legislator was the protection of the party who concludes an insurance contract for private reasons, the InsL narrows the field of application of consumer legislation, considering as consumer the natural person or the legal entity which enters into an insurance contract for non-commercial reasons (Χατζηνικολάου-Αγγελίδου, 2000: 32-33; Χατζηνικολάου-Αγγελίδου, 2014: 6). In that sense, it could be deemed that in the field of consumer protection insurance law takes priority over consumer law by defining in which insurance cases the ConsL is applicable (Ρόκας, 2006: §381; Ρόκας, 2014, 45).

It should be noted that no provision of the InsL contains the above-mentioned definition of “consumer”, nor does the law make an explicit reference to policyholders who conclude an insurance contract for private reasons. However, the application of a number of protective provisions for the insured can be restrained, if the policyholder or the insured has concluded the insurance contract

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15 Law 2496/1997, in force 17 November 1997. Art. 33 para. 2 InsL abolished the 9<sup>th</sup> part of the Commercial Code on insurance contracts, which regulated all relevant matters since 1911. For a brief summary of the Hellenic law on Private Insurance (in English), see Deloukas, Perakis, 2008: 248-251.

16 Law 3816/1958, in force 28 February 1958, arts. 257-288.

17 Law 1815/1988, in force 11 November 1988, arts. 129-138.

18 Law 489/1976, in force 1 January 1978; consolidated by Presidential Decree 237/1986; last amended by Law 3557/2007.

19 See *infra* under 1.1.



for purposes relating to its trade, business or profession<sup>20</sup>. These exceptions clearly indicate the legislator's intent to distinguish between consumers and non-consumers (Χατζηνικολάου-Αγγελίδου, 2000: 34; Ρόκας, 2006: §377 with reference to favourable jurisprudence). Of great significance in that course is the provision of Art. 33 §1 InsL, under which

“[a]ny and all legal acts which are to the detriment of the policyholder, the insured or the beneficiary shall be null and void, unless otherwise specifically stipulated in this Law. This shall not apply to insurance for the carriage of goods, credit or guarantee insurance<sup>21</sup>, or marine or aviation insurance”.

On the basis of the provided elaboration, the following categorisation can be made: (i) purely commercial insurances are the 5 categories mentioned in Art. 33 InsL, including: (a) insurance for the carriage of goods, (b) credit insurance, (c) guarantee insurance, (d) marine insurance, and (e) aviation insurance; (ii) all other insurance contracts are classified based on their functional character: (a) if they are concluded for purposes related to the insured's trade, business or profession, they are deemed as commercial; (b) if they are not concluded for professional reasons, they are regarded as consumer insurance contracts.

The main characteristics that insurance must have in order to fall into category (ii)(a) are the following: (a) the risks undertaken by the insured cover events that occur in the course of professional activity; (b) the policyholder or the insured has a negotiable advantage and is familiar with the insurance market; (c) the insurance contract is of commercial character for both parties<sup>22</sup>, (d) the insurance contract does not have the characteristics of a *contrat d'adhésion*.

### **3.2. Commercial insurance contracts**

Commercial insurance in the narrow sense (*see* previous paragraph under *i*) is also governed by the InsL. However, there are some special provisions regarding marine and aviation insurance. Marine insurance is regulated in title 14 (arts. 257-288) of the Private Maritime Code. The Code provides that the InsL shall also apply by analogy in case of navigation risks unless its provisions are incompatible with marine insurance<sup>23</sup>. As far as aviation insurance is concerned, special provisions are introduced by the Private Aviation Code, containing minimal

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20 Arts. 7 §§3 and 6, 14 §4, 18 §4, 19 §5. For an English translation of the InsL, *see* Ρόκας, 2008: 515-541. The InsL was translated by E. Galanaki.

21 The law refers to commercial guarantees. Accordingly, the consumer guarantee insurances are not included in the exceptions of this article.

22 Insurance is always regarded as a commercial activity for the insurer.

23 In fact, art. 257 of Private Maritime Code states that arts. 189-255 of the Commercial Code on insurance contracts also apply in marine insurance; considering that the provisions



regulation though. The relevant provisions of the Private Maritime Code and the InsL<sup>24</sup> also apply by analogy to aviation insurance.

In a commercial insurance contract, the insurer undertakes large risks (Χατζηνικολάου-Αγγελίδου, 2000: 48). Large risks insurance<sup>25</sup> is deemed to be (a) railway rolling stock insurance, (b) aircraft insurance, (c) ships (sea, lake and river and canal vessels) insurance, (d) goods in transit (including merchandise, baggage, and all other goods) insurance, (e) aircraft liability insurance, (f) liability for ships insurance, (g) credit or suretyship insurance, whenever the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risk relate to such activity, (h) land vehicles or motor vehicles insurance, fire, natural forces or other damage to property insurance, general civil liability insurance and miscellaneous financial loss insurance, provided that the business size of the policyholder exceeds some limits<sup>26</sup>. This definition follows the line of Art. 33 InsL (*supra*, under IV 2), being at the same time broader (including as well railway rolling stock insurance and land and motor vehicles insurance, fire, natural forces or other damage to property insurance, general civil liability insurance and miscellaneous financial loss insurance) and narrower as far as credit and suretyship insurance are concerned, although it is generally accepted that only credit and suretyship insurances for commercial reasons fall under the scope of this article.

#### 4. Consumer protection in insurance contracts

As already mentioned, the InsL does not contain special regulation for policyholders who are natural persons. Nevertheless, insurance legislation is mainly oriented towards the protection of the policyholders' rights, so that favourable provisions contained both in the InsL and Legislative Decree 400/1976 usually

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of the Commercial Code on insurance contracts have been fully replaced by the InsL, art. 257 should be interpreted as referring to the new law: Ρόκας, 2008: 85.

24 Also by succession to the Commercial Code: art. 138 Private Aviation Code. *See* Ρόκας, 2008: 96.

25 According to art 13 §3 Law Decree 400/1976, as amended by Presidential Decree 252/1996, in order to implement into Hellenic law the Directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (88/357/EC) (92/49/EC – third non-life insurance Directive) and Directive on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267 and 90/619 (92/96/EC – third life assurance Directive).

26 The limits relate to the balance-sheet total, the net turnover and the average number of employees.

apply to both consumer and commercial insurances, unless the parties agree otherwise due to the commercial character of the contract. Thus, the most significant principles of policyholders' protection in Hellenic law will be subsequently exposed:

*A. Information duty:* the insurer has the duty to provide the policyholder with specific information relevant to the contract itself and the insurance company before the conclusion of the contract<sup>27</sup>. Insurance undertakings are also obliged in the duration of the contract to inform the policyholder of any change of name, legal form or address of its registered office, branch office or agency issuing the policy. If this pre-contractual obligation of the insurer is not met, the policyholder has the right to withdraw in writing within fourteen days of the policy being delivered; the consequence of the policyholder's withdrawal is that the contract will be avoided<sup>28</sup>.

*B. Incorporation of the insurance terms and conditions:* whenever the contract is governed by general or special insurance terms and conditions, the insurer shall note this in the section of the insurance policy where the individual elements of the contract appear, and provide the aforesaid terms and conditions to the policyholder together with the insurance policy<sup>29</sup>. If the insurer does not comply with this obligation, the policyholder has a right to withdraw, which leads to a void contract. If the policyholder does not withdraw, the insurance contract is governed by the general insurance terms, which apply to the specific kind of insurance<sup>30</sup>. All terms contained in the insurance policy should take into consideration the policyholder's reasonable interests as well as those of the insured; they should also be clearly expressed and written in understandable language. Any agreement purporting to waive the right to avoid the insurance contract on grounds of error shall not be binding on the policyholder<sup>31</sup>.

*C. Rights of withdrawal and rescission:* (a) the policyholder has a withdrawal right to the formation of the insurance contract in the following two cases: (i) in the event that the contents of the insurance policy differ from the contents of the application for insurance, the policyholder has the right to withdraw within one month following receipt of the insurance policy, provided that the insurer has duly informed the policyholder of such inconsistencies, as well as of his right to

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27 Art. 4 §§2H, 3D Law Decree 400/1976.

28 Art. 2 §6 InsL.

29 Art. 2 §4 InsL.

30 It should be stressed though that, in an effort of deregulation of the insurance market, the systematic notification of the general insurance terms and conditions to the supervisory agency is no longer obligatory according to art. 42c §1 Law Decree 400/1976.

31 Art. 2 §8 InsL.

object<sup>32</sup>. It is supported that the inconsistencies refer to the content of the application of insurance (nature of risk, extent of cover, amount of premium, etc.), not to the insurance terms that are not individually negotiated. If the application for insurance does not make explicit reference to the extent of exceptions acceptable by the applicant, this does not constitute inconsistency to the application, although the exceptions have to be reasonable (Póκας, 2008: 518 note 3; Póκας, 2003: 842-843)<sup>33</sup>; (ii) as already mentioned above (this paragraph, under A), if the insurer fails to supply to the applicant all necessary information, when the application or insurance is submitted, or if the insurer fails to communicate to him the insurance terms and conditions, the policyholder has the right to withdraw within fourteen days of the policy being delivered. The aforesaid time limit shall not commence, should the insurer fail to inform the policyholder of his right of withdrawal. The policyholder's right to withdraw shall expire after the lapse of ten months from the date of payment of the first premium. If the policyholder withdraws, the contract shall be avoided<sup>34</sup>. (b) The policyholder has the right to rescind from the contract irrespective of cause, unless otherwise provided in the insurance policy<sup>35</sup>. Specifically, in indemnity insurances with a contract period in excess of one year and in personal insurances the policyholder shall be entitled to rescind from the contract within fourteen days from the date, when the policy was delivered to the policyholder. In non-group life insurances the policyholder is entitled to rescind from the contract within thirty days from the moment he was informed about its conclusion. The cooling period shall not commence, if the policyholder has not been informed by the insurer of his right in this regard, which must be confirmed by means of a document. If the insurer fails to inform the policyholder of his right to rescind, the right lapses after two months from the payment of the first premium. The right to rescind

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32 Art. 2 §5 InsL. The insurer should inform the applicant in writing, or by notice situated on the first page of the insurance policy written in such a way as to make the notice readily distinguishable from the other parts of the document, thus enabling it to be easily noted by the reader. The insurer must also supply the policyholder with a sample withdrawal statement.

33 In its decision (ΑΠ 846/2003) *EEmPD* 2003, 839-842), the Supreme Court embedded a different opinion, accepting that the policyholder should be duly informed about all exceptions contained in the insurance policy. It is also interesting to note that neither the law nor the courts distinguish between consumer and commercial insurance for the application of this protective regulation, which, as I. Rokas points out in his comment, can lead to the weakening of the consumer's position.

34 Art. 2 §6 InsL.

35 The contract can also provide for private sanctions in case of rescission, although these sanctions cannot prevent the rescission from taking effect: Póκας, 2008: 527 note 25. Such provisions are not permitted in distance insurance contracts.

does not apply to indemnity insurances where, upon the particular request of the policyholder, cover is provided immediately<sup>36</sup>.

*D. Non-interruption of the insurance coverage:* in comparison to the previous legal regime, the InsL provides larger protection for the policyholder in case of negligent or intentional breach of his duties. The provisions of the InsL, which regulate the insurer's duties, are of mandatory character for consumer insurance, and all legal acts which are to the detriment of the policyholder, the insured or the beneficiary shall be null and void. In purely commercial insurances (*see supra*, under IV 2) this mandatory character fully retreats, whereas for the rest of the commercial insurances, contractual deviations in specific cases are allowed (Χατζηνικολάου-Αγγελίδου, 2000: 60-61). The policyholder enjoys protection mainly in the following areas: (a) He has a duty to disclose, before the conclusion of the contract, all information or circumstances of which he is aware and which are of substantive relevance for the assessment of the risk. If, for any reason whatsoever beyond the control of the insurer or the policyholder, or because of negligent breach of his disclosure duty by the policyholder, information or circumstances which are objectively material for the assessment of risk did not become known to the insurer, the latter shall be entitled to terminate the insurance contract, or to request its alteration, within a period of one month following the insurer's discovery of such information or circumstances. The insurer's proposal for the contract alteration shall be deemed to constitute a termination of the contract if, within one month from receipt thereof, such proposal is not accepted by the policyholder. Intentional breach of the disclosure by the policyholder shall entitle the insurer to terminate the contract within one month from the date on which the insurer acquired knowledge of the breach<sup>37</sup>. The insurer is obliged to comply with the time-limits provided by law, otherwise he cannot invoke his termination or alteration right; (b) Throughout the contract period, the policyholder shall be obliged to notify the insurer, within 14 days after acquiring knowledge, of any information or circumstances liable to entail a significant aggravation of risk. The insurer is also in this case entitled to terminate the contract or to request its alteration<sup>38</sup>. On the other hand, if there is a material reduction of risk, the policyholder shall be entitled to request a proportionate reduction of the premium. If the insurer refuses to make the reduction, or fails to answer the relevant request for a period in excess of one month following its submission, the policyholder shall be entitled to terminate

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36 Art. 8 §3 InsL.

37 Art. 3 §§1-6 InsL.

38 Art. 4 §§1-2 InsL. According to §3 of this article, its provisions do not apply to life assurance and health insurance.

the contract for the remaining contract period<sup>39</sup>; (c) The policyholder shall be obliged to take all necessary measures to avoid or mitigate the insured loss and to comply with the insurer's instructions. In the event of negligent breach of this obligation, the policyholder shall be obliged to indemnify the insurer. Expenses resulting from such actions will be borne by the insurer, provided that they are reasonable under the circumstances, even if such expenses exceed the insured sum. Any agreement to the contrary shall be acceptable, if the policyholder or the insured has concluded the insurance contract for commercial purposes<sup>40</sup>; (d) The policyholder shall notify the insurer of the occurrence of the risk within eight days as from the date on which he acquired knowledge thereof. He is also obliged to supply, at the insurer's request, all necessary information, details and documents relating to the circumstances and the consequences of the occurrence of the insured event. The intentional breach by the policyholder of these duties shall grant the insurer the right to claim damages. Negligent breach of the policyholder's duties does not create any kind of liability, but he cannot evoke ignorance of the occurrence of the insured event, should the ignorance be imputable to his gross negligence<sup>41</sup>. Nevertheless, the insurer is obliged to pay the insurance money, even in case of late notification by the policyholder; any contrary agreement is null and void, unless the insurance contract is purely commercial (Χατζηνικολάου-Αγγελίδου, 2000: 73-76); (e) The insurer shall not be obliged to pay the insurance money, if the insured event occurred: (i) in case of indemnity insurance, due to an intentional act or omission or due to gross negligence, (ii) in case of personal insurance, due to an intentional act or omission, on the part of the policyholder or the insured or the persons dwelling with any of them, or their legal or other representatives<sup>42</sup>; However, the terms of the policy may provide for an increased number of cases in which the insurer's liability shall be excluded, if the policyholder or the insured concludes the policy with a view to covering professional risks<sup>43</sup>; (f) In case of multiple insurance, the policyholder should notify without undue delay each insurer of the conclusion of the other contract and of the insured sum. Should the policyholder intentionally fail to make the said notifications, the insurer is entitled to terminate the contract<sup>44</sup>.

*E. Prohibition of termination without prior notice of the contract.* (a) The policyholder is obliged to pay the premium. Failure to pay a subsequent premium due

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39 Art. 5 §1 InsL. In case of life and health insurance policy, any change in the health of the insured shall not give rise to the right to reduce the premium.

40 Art. 7 §§3-4 InsL.

41 Art. 7 §§1-2 InsL. These provisions shall not apply to personal insurances.

42 Art. 7 §5 InsL.

43 Art. 7 §6 InsL.

44 Art. 15 §§1, 3 InsL.

gives the insurer the right to terminate the contract. The termination notice shall be sent to the policyholder, whereby the latter shall be informed that any further delay in the payment of premium shall result on the expiry of one month from receipt of the notice, in the termination of the insurance contract<sup>45</sup>; (b) The policyholder shall be entitled to terminate the insurance contract by notice, if the insurer is declared insolvent. The insurer shall also be entitled to terminate the insurance contract by notice, if the policyholder is declared insolvent. The termination, whenever initiated by the insurer, shall not come into effect until the lapse of thirty days from the date on which such notice of termination was communicated to the policyholder<sup>46</sup>; (c) The indemnity insurance contract shall not be terminated, if the policyholder or the insured is succeeded by another party. The insurer or the policyholder shall be entitled to terminate the contract within thirty days from the date on which such succession becomes known. The termination, whenever initiated by the insurer, shall not come into effect until the lapse of fifteen days from the date on which such notice of termination was communicated to the policyholder<sup>47</sup>. This provision does not however apply to insurance policies issued to order or to bearer, *i.e.* to commercial insurances (Χατζηρηνικόλαου-Αγγελίδου, 2000: 94); (d) If the contract is of indefinite duration, it shall be terminated by notice at the end of the insurance period. The notice does not have to mention a cause. The time limit set for the exercise of the right of termination may be neither less than one month, nor more than three months<sup>48</sup>; (e) Other reasons for terminating the insurance contract than those provided by law can be agreed in the insurance policy. In the event that the insurer maintains the right to terminate the contract after the insured event has occurred, the policyholder shall have a corresponding right. The termination, whenever initiated by the insurer, shall not come into effect until the lapse of thirty days from the date on which such notice of termination was communicated to the policyholder<sup>49</sup>.

*F. Protection in case of subrogation.* The policyholder and, in the event of insurance on the account of a third party, the insured and the beneficiary, if any, shall be obliged to safeguard their rights to bring a legal action against any third party to which the insurer may become subrogated. In case of breach of such obligation, the liable party shall compensate the insurer for any loss or damage

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45 Art. 6 InsL.

46 Art. 8 §§ 4-5 InsL.

47 Art. 12 §§ 1-2 InsL.

48 Art. 8 §2 InsL.

49 Art. 8 §5 InsL. This provision does not apply to life and health insurance.

sustained thereby<sup>50</sup>. If the policyholder or the insured concludes insurance for purposes relating to its trade, business or profession, it may be agreed that the insurer shall be discharged of its liability to pay the insurance money to the insured under the policy, to the extent that the insurer was deprived of the right to claim damages for reasons for which the policyholder or the insured is liable<sup>51</sup>.

*G. Protection from void insurance contracts.* (a) An insurance contract, covering risks or undertaking insurance commitments that are contrary to rules of safeguarding public interest, is prohibited and is absolutely null and void<sup>52</sup>; (b) conclusion of insurance contracts by an undertaking without lawful licence is prohibited and is null and void. The invalidity cannot be invoked against a *bona fide* contracting party<sup>53</sup>.

## 5. Instruments of protection in consumer insurance law

The provisions of the InsL are in principle mandatory, to the extent that they aim at the protection of policyholder's rights. Indeed, as already stated before, any act to the detriment of the policyholder is considered null and void, unless otherwise specifically stipulated by the InsL. Some authors characterise the set of insurance rules as semi-mandatory, considering that the above-mentioned protective provision does not apply to purely commercial insurance contracts, contractual deviations being permitted in specific cases of commercial insurance, and policyholders' rights cannot be reduced but only expanded (Χατζηνικολάου-Αγγελίδου 2000: 47 with reference to Ρόκας, 1998: §112; Ρόκας, 2014, 539-540).

The main instruments of protection in consumer insurance law have mainly been described in the previous paragraph. As we have already seen, the InsL provides for rights of withdrawal and rescission, cooling off periods and information and advice duties. As far as control of general terms of insurance is concerned, consumer legislation also applies, along with special rules contained in insurance law. Thus, the provisions on general contract terms and unfair standard terms included in the ConsPL are also implemented to general insurance terms (Χατζηνικολάου-Αγγελίδου, 2000: 57-58; for an exposition of jurisprudence regarding abusive general insurance terms, see Δέλλιος, 2008: αρ.θ. 48 and notes 148-151). Therefore, terms which have been drafted in advance for a future number of contracts shall not be binding on the consumer, if at the conclusion

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50 Art. 14 §3 InsL. Under the previous legal regime, breach of such obligation generated the insurer's right to terminate the contract.

51 Art. 14 §4 InsL.

52 Art 53 §1 Law Decree 400/1976.

53 Art 53 § 2 Law Decree 400/1976.



of the contract he was unaware of them without fault, especially if the supplier omitted to inform him of their existence or deprived him of the opportunity to appraise their content (Ρόκας, 1998: 533-578; Ρόκας, 2006: §§338-362; Ρόκας, 2014 44-46)<sup>54</sup>. Standard contract terms which cause a significant imbalance in the parties' rights and obligations to the detriment of the consumer shall be prohibited and are considered null and void. The abusive character of a general term inserted in a contract shall be assessed taking into account the nature of the goods or services for which the contract was concluded, the contract's scope, all special circumstances existing at the conclusion of the contract, as well as the rest of the terms of the contract or of any other contract on which it is dependent<sup>55</sup>. Nevertheless, when a court declares by final judgment that a standard term is abusive, its decision is binding only for the specific parties and the specific contract. No rule exists providing the general abolition of the said term in all existing contracts or the prohibition of its insertion in future contracts. The same stands for collective actions as well, since the ConsPL does not broaden the subjective limits of *res judicata*, although it provides that legal effects of such a decision apply to everyone and not only to the parties (Ρόκας, 2006: §354; Αλεξανδρίδου, Απαλαγάκη, 2008: αριθ. 60-67).

Hellenic law does not provide for special sanctions for late performance on the part of the insurer. On the occurrence of the insured event, the insurer must pay the insurance money promptly. If a longer period is required for the assessment of the full extent of the loss, the insurer shall be obliged to pay the undisputed amount without undue delay. If the insurer does not perform his obligation in a timely manner, the policyholder can set him in default by means of protest and moratory interest claim.

## 6. Conclusion

As we have briefly seen, Hellenic legislation, in line with European law, provides a satisfying framework of consumer protection. The basic consumer protection act, the ConsPL, apart from complying with the country's obligation to transpose

54 Art. 2 §1 ConsPL. For an interesting comment on general insurance terms with reference to jurisprudence see Βαρελά, 2007: 710-712. See also Τριανταφυλλάκης, 2006: 142-147

55 Art. 2 §6 ConsPL. As we have already seen Art. 2 §7 ConsPL contains a black list of 32 terms which are characterized *ex lege* as abusive, and are also implemented to insurance contracts, as far as they comply with the special regime applying to insurance: for example, according to art. 2 §7 no. 25 ConsL terms obliging the consumer to pay in advance an excessively large proportion of the price before the execution of the contract are deemed abusive; in contrast, the InsL provides (art. 6) that the policyholder shall be obliged to pay the premium in cash and the cover shall not begin prior to the payment of the premium: see Ρόκας, 2006: §343 and note 3.

European Directives, takes also some innovative steps towards the possibility of a collective protection of the consumers. Furthermore, the existence of consumer policy institutions and consumer associations and the availability of ADR/Ombudsman procedures are important for the essential protection of consumers' rights, including policyholders' rights. Indeed, the basic law on insurance contracts, the InsPL, is also oriented towards the protection of the weaker party, providing a number of important tools and protective measures towards this direction. Nevertheless, consumer protection can only be effective, if consumers are active and eager to facilitate the exercise of market regulation. It seems that consumers constantly become more aware of their rights and eager to take action. This change of attitude of course is reflected in the insurance market as well; however substantial changes are to be expected in the following years.

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## **ЗАШТИТА ПОТРОШАЧА У ГРЧКОЈ, НАРОЧИТО У УГОВОРИМА О ОСИГУРАЊУ**

### **Резиме**

У Грчкој, законодавство о заштити потрошача је углавном резултат обавезе Грчке да имплементира одговарајуће законске одредбе права Европске уније. Према Закону о заштити потрошача 2251-1994, потрошач је свако физичко и правно лице или удружење без правног субјективитета, коме су намењени производи или услуге понуђене на тржишту, и који користи те производе или услуге у својству крајњег корисника. С обзиром да је дефиниција појма „потрошач“ прилично широка, привредна друштва такође могу имати статус потрошача, све док су крајњи корисници производа и услуга.

У Грчкој не постоје специјални судови за потрошачке спорове. Надлежност за решавање спорова измеђи потрошача и снабдевача, због повреда приватних права на основу Закона о заштити потрошача, имају редовни судови у редовном поступку. Ипак, Закон о заштити потрошача предвиђа да сва удужења потрошача имају право да затраже заштиту права својих чланова (потрошача) пред судовима и управним органима. Овај Закон такође предвиђа могућност мирног решавања потрошачких спорова. Законом 3297-2004 успостављена је институција Заштитника потрошача (Омбусмана), као независног органа за вансудско решавање спорова у области потрошачког права, који је под надзором Министарства за развој. Институционална улога Заштитника потрошача је да интервенише у случају потрошачких спорова и предлаже споразумно решавање истих вансудском нагодбом. Министарство развоја је одговорно за имплементацију европског и националног законодавства, као и политике заштите потрошача, која се остварује преко Генералног секретаријата за потрошаче (ГСЦ). Основне дужности овог Секретаријата су пружање информација потрошачима, њихова едукација, саветодавна функција и пружење правне помоћи.

Постојање институција које се баве потрошачком политиком, удружења потрошача, могућност употребе алтернативних метода за решавање спорова и доступност процедура у оквиру институције Заштитника потрошача су важан корак ка суштинској заштити потрошачких права. Наиме, заштита потрошача може бити ефикасна тек уколико потрошачи постану актив-

ни учесници у тржишним односима, чиме олакшавају примену тржишних прописа. Стиче се утисак да су потрошачи све активнији, да постепено постају свесни својих права и имају жељу да предузму одређене кораке у правцу остваривања својих права. Промена става потрошача је такође присутна на тржишту осигурања.

Право на приватно осигурање је у начелу регулисано Законом о осигурању, који уређује све врсте осигурања, укључујући и трговинске и потрошачке уговоре о осигурању. Носилац полисе осигурања (особа која закључује уговор о осигурању са осигуравачем) или осигураник (особа која сноси ризик за осигурани случај) су крајњи корисници услуге осигурања, који према одредбама Закона о заштити потрошача имају својство потрошача, без обзира на врсту пословне активности којом се баве. С обзиром на чињеницу да је основни циљ законодавца приликом регулисања осигурања била заштита станке која закључује уговор из личних разлога, Закон о осигурању сужава поље примене потрошачког законодавства јер одређује потрошача као физичко и правно лице које закључује уговор о осигурању из некомерцијалних разлога.

У том смислу, може се сматрати да у области заштите потрошача законодавство из домена права осигурања има примат над потрошачким законодавством јер прецизно одређује случајеве у којима се Закон о заштити потрошача примењује на осигурање. Одредбе Закона о осигурању су у начелу обавезне, у мери у којој имају за циљ заштиту права носиоца полисе осигурања. Када се ради о контроли општих услова осигурања, примењују се одговарајуће одредбе из Закона о заштити потрошача заједно са посебним правилима садржаним у Закон о осигурању. Сходно томе, одредбе о стандардним условима уговора и непоштеним условима уговарања садржане у Закону о заштити потрошача важе и за опште услове осигурања. Најважнији принципи заштите носилаца полиса осигурања у грчком праву су: а) обавеза пружања информација осигуранику; б) експлицитно навођење термина и услова осигурања; ц) право на повлачење и раскид уговора; д) трајно осигуравајуће покриће; е) забрана раскида уговора без претходне најаве; ф) заштита у случају суброгације; г) заштита од ништавих уговора о осигурању.

**Кључне речи:** заштита потрошача, Закон о заштити потрошача, Заштитник потрошача (омбудсман), Закон о осигурању, Грчка.

