Turība University

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SYNOPSYS OF THE DOCTORAL THESIS

LEGAL REGULATION OF THE INSURANCE AGREEMENT IN LATVIA

Study program "Legal Sciences"

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The defence of the doctoral thesis will be held at Turība University at the public hearing of the Doctoral Council for the Law Sciences on the **May 15, 2019 at 12:00** in Turība University, Riga, Graudu Street 68, room C108.

The doctoral thesis and the synopsis are available for review in the library of Turība University, Riga, Graudu Street 68.

Chairman of the Doctoral Council in Law Sciences:

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CHARACTERISTICS OF THE DOCTORAL THESIS

Topicality of the subject of doctoral thesis

A subject of the doctoral thesis is topical, because on June 1, 2018 a new normative enactment regulating insurance contractual relations came into effect – Insurance Contract Law [*Apdrošināšanas līguma likums*]. [1] Equally actuality is justified by the case law of Latvian general jurisdiction courts and the Constitutional Court of Latvia [*Satversmes tiesa*] in recent years, [2] as well as Law on Insurance and Reinsurance [*Apdrošināšanas un pārapdrošināšanas likums*] adopted on June 18, 2015, which includes a chapter XXII named "Information to be submitted before conclusion of the insurance agreement", systemically better to be fit in other normative enactment – Insurance Contract Law.

Aim and tasks of research of the doctoral thesis

The aim of the doctoral thesis is to discover shortcomings in normative enactments and separate definitions in the insurance contractual law sector, to prove existing mistakes and their impact to the case-law. By reaching the aim the author of the doctoral thesis elaborates proposals on required amendments and alterations in the Insurance Contract Law, prepares draft amendments to the Insurance Contract Law, as well as expresses proposals on advisable changes into the case-law. To reach the aim of the doctoral thesis the author brings forward the following tasks of the research: 1) to review Latvian normative enactments on conclusion and functioning of the insurance contract, and to analyse definitions in the insurance contractual law sector; 2) to discover in Latvian normative enactments legal norms proving existence of insurance law principles; 3) to compare legal regulation of insurance contractual relations in Latvia with legal regulation of EU Member States and European Insurance Contract Law principles; and 4) to analyse case of law of Latvia, decisions of the Ombudsman of the Latvian Insurance Association, Consumer Rights Protection Centre (hereinafter – CRPC) and practice materials to discover actual situation in the sector of insurance contractual law.

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[1] Latvian Insurance Contract Law. Adopted 03.05.2018. Published in „Latvijas Vēstnesis" 18.05.2018. No. 97 (6183). In force since 01.06.2018.

[2] The Republic of Latvia Supreme Court 25.02.2015. judgment No. SKC-1/2015; the Republic of Latvia Supreme Court 08.10.2014. judgment No. SKC-33/2014; the Republic of Latvia Supreme Court 12.03.2014. judgment No. SKC-184/2014; the Constitutional Court of the Republic of Latvia [*Satversmes tiesa*] 06.06.2018. judgment No. 2017-21-01 and individual opinion of the judge of the Constitutional Court Mr. J. Neimanis as of 15.06.2018.; the Constitutional Court of the Republic of Latvia 29.12.2014. judgment No. 2010-60-01; un the Constitutional Court of the Republic of Latvia judgement No. 2014-06-03, where legal discussion is started on the significant aspects of insurance contract as limitation period of claims, obligations of insurer in payment of insurance indemnity, as well as determination of non-material damage in connection with the Council Directive as of 24.04.1972. 72/166/EEC.

Limitations for the doctoral thesis

Legal issues arising out of re-insurance, maritime insurance, life insurance and mandatory insurance of owners of motor vehicles are not analysed in the doctoral thesis. Separate court rulings about these limited issues are mentioned in the research, when it is crucial to apply analogy in other legal significant insurance fields.

Hypothesis of the research

The author of the doctoral thesis formulates hypothesis of the research: special principles of the Insurance Contract Law which are essential to discover contents of insurance contract, are concluded from the Latvian Insurance Contract Law, despite to the fact they are not *expresis verbis* defined in the norms of Latvian Insurance Contract Law. In a result of the research the author of the doctoral thesis concludes that the hypothesis is approved.

Theoretical and methodological grounds for the doctoral thesis

Theoretical and practical aspects of the Insurance Contract Law are researched in the doctoral thesis. Analysis of normative terminology of Insurance Contract Law is made in the research, thus putting emphasis on impact of theory on the practical aspects of insurance. The author in a result of analysis of theory promotes independent proposals based on the research about necessity to amend the Latvian Insurance Contract Law and necessity to complete the case-law with new criteria useful for settlement of insurance law disputes in court. Theoretical significance of the doctoral thesis is in exploration and analysis of problematics of Insurance Contract Law, in a result of which new theoretical and practical cognitions are expressed. In a result of theoretical analysis several proposals are made in the doctoral thesis, which are summarized in the part of suggestions and proposals. Theoretical and methodological basis of the research consists of normative enactments, case law, monographies and publications of legal scholars and internet resources.

Methods applied in the research

Several research methods are used in the doctoral thesis. *Comparative method* is applied for comparison of Latvian normative enactments with similar norms in the EU law and the Principles of the European Insurance Contract Law (hereinafter – PEICL). *Historical method* is used for research of development of legal norms and case law in time and contents. *Social method* is applied, discovering impact of insurance law and separate elements of it to the society

in its totality and to insurance market players – policy holders, insureds, insurers and beneficiaries separately. *Analytic method* is used for research of separate legal norms and definitions, paying attention to components of these norms and place in the system of normative enactments in totality. With the *deductive method* the author made analytic conclusions from the general legal aspects to individual, and with the *inductive method* – the work of courts, Latvian Insurance Association Ombudsman and CRPC was analysed, giving generalization of the case-law and decision tendencies. [3] *Linguistic method* was used to discover contents of legal terms in the Latvian language.

Novelty of the research

Scientific novelty of the doctoral thesis is manifested in the fact that for the first time in Latvia insurance contract principles are analysed, thus creating doctrine about role of special principles in the insurance law. Also scientific reasoning is elaborated for proposal to be introduced in the case-law and legislation to impose obligation on the insurer to pay legal interest percent for delayed payment of insurance indemnity.

Volume and structure of the doctoral thesis

The doctoral thesis on 199 pages consists of annotations in Latvian, English and Russian, introduction, 8 chapters, conclusions and proposals and a list of sources. The doctoral thesis has 4 annexes – draft amendments to the Latvian Insurance Contract Law and research tables of normative enactments. There are 4 tables and 4 schemes in the research.

In the 1st chapter the author analysis concept of insurance agreement and its constituent elements and normative enactments of Latvia, as well as discovers scientific role of PEICL in the Insurance Contract Law. The special insurance law principles are analysed in the 2nd chapter. Types of insurance contract are classified in the 3rd chapter. The process of conclusion of the insurance contract is described in the 4th chapter. In the centre of the 5th chapter are civil sanctions in the insurance law. The 6th chapter is dedicated to the stage of payment of the insurance indemnity. Exceptions in the insurance contract are analysed in the 7th chapter. In the final 8th part the author analyses possibilities to settle insurance law disputes. Conclusions made in these chapters form the basis for proposals summarized in the end of the thesis.

Scientific publications and approbation of results of the research

[3] Neimanis, J. (2006) *Tiesību tālākveidošana*. Riga: Latvijas Vēstnesis, p. 10.

From 2005 – 2018 the author has presented in 12 scientific conferences about the research topic.

1) On 18.05.2018 the author presented in the Liepāja University (hereinafter – "LiepU") scientific conference a thesis "Sanctions in the Insurance Contract Law".

2) On 29.05.2014 the author presented in the Turība University conference about "Topical issues in case law of the ECJ about civil liability of owners motor vehicles".

3) On 23.05.2013 the author presented in the LiepU 17th scientific conference about topic "The role of associations of market players in the Latvian insurance sector". [4]

4) On 17.06.2011 the author presented in the scientific conference of the University of Latvia about "Insured interest as a precondition in the insurance contractual relations".

5) On 25.05.2011 the author presented in the scientific conference of Lodz (Poland) about subject "Legal Aspects of Civil Liability Insurance of Company Board Members". [5]

6) On 19.05.2011 the author presented a thesis "Existence of insurance principles in normative enactments of Latvia" in LiepU 14th scientific conference. [6]

7) On 14.04.2011 the author presented a thesis "An impact of insurance law principles to payment of insurance indemnity" in the Daugavpils University (hereinafter – DU) conference;

8) On 11.06.2010 the author presented a thesis "Possibilities of pay legal interest percent in the recovery cases of insurance indemnity" in the conference of the University of Latvia. [7]

9) On 14.04.2010 the author presented a thesis „Recovery of legal interest percent in the payment cases of insurance indemnity" in DU 52nd scientific conference.

10) On 28.05.2009 the author presented a thesis „Legal aspects of mutual communication in the insurance agreements" in the X scientific conference of the Turība University.

11) On 17.04.2009 the author presented a thesis „Legal problematics of insurance of civil liability" in the 51st scientific conference of DU. [8]

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[4] Rone, D., Janovs, V. (2014). Latvijas apdrošināšanas tirgus dalībnieku asociāciju aktuālā loma apdrošināšanas tirgū. *Sabiedrība un kultūra. Rakstu krājums, XVI / Sastād., atbildīgais redaktors Arturs Medveckis*. Liepāja: LiePA, pp. 588. – 595.

[5] Rone, D. (2011). *Legal Aspects of Civil Liability Insurance of Company Board Members*. Influence of Socio-Economic Environment on the Development of Small and Medium-Sized Enterprises. – Ed. By Anna Adamik, Marek Matejun, Agnieszka Zakrzewska-Bielawska. Lodz. pp. 252. – 265.

[6] Rone, D. (2012). *Apdrošināšanas principu esamība Latvijas Republikas tiesību aktos*. Sabiedrība un kultūra. Rakstu krājums, XIV / Sastād., atbildīgais redaktors Arturs Medveckis. Liepāja: LiePA. pp. 546.

[7] Rone, D. (2012). *Likumisko procentu piedziņa apdrošināšanas atlīdzības izmaksas lietās*. Juridiskās zinātnes aktuālās problēmas. Rakstu krājums. – Riga: Zvaigzne ABC. pp. 7. – 20.

[8] Rone, D. (2010). Civiltiesiskās atbildības apdrošināšanas juridiskā problemātika. – Daugavpils Universitātes 51. starptautiskās zinātniskās konferences materiāli. Daugavpils: Daugavpils Universitātes akadēmiskais apgāds "Saule", pp. 35. – 39.

12) On 15.09.2005 the author presented a thesis in DU scientific conference on "Consequences and possible results of non-fulfilment of insurance contract". [9]

In addition the author has publications related to subjects analysed in the doctoral thesis: "*Topical developments of motor insurance law according to the European Court of Justice decisions*", [10] Consequences and possible results of non-fulfilment of insurance contract, [11] and a chapter about legal regulation of mediation in Latvia in the book "*EU Mediation Law Handbook. Regulatory Robustness Ratings for Mediation Regimes*". [12]

The main sources used in the doctoral thesis and synopsis

Several publications [13] and chapters in the books [14] are available in Latvia about insurance law. Highly valuable scientific researches in Latvia about insurance law are monographies of Dr. Iur. J. Alfejeva "Insurance Law" [15], Dr. Iur. V. Mantrovs "Insurance Law" [16] and the doctoral thesis of Dr. Iur. J. Alfejeva "Criminal Law and Criminological Aspects of Insurance Fraud". [17] The author has developed the research using Latvian legislative acts, comparing them with legal acts of other countries, discovering similar and distinct features of definitions, criteria and legal regulation. PEICL are also used for comparative reasons. [18] The second group of sources used in the doctoral thesis is Latvian case law. Also decisions of the CRPC are analysed, adopted on the basis of complaints from the insured persons against

[9] Rone, D. (2006). Apdrošināšanas līguma nepildīšanas sekas un iespējamie iznākumi. *Tiesību pārkāpumu sekas publiskajās un privātajās tiesībās. Zinātnisko rakstu krājums.* Daugavpils: Daugavpils Universitātes akadēmiskais apgāds "Saule", pp. 46. – 57.

[10] Rone, D. (2014). Topical developments of motor insurance law according to the European Court of Justice decisions. – Aktuální problémy práva v podnikatelském prostředí ČR a EU – sborník příspěvků z mezinárodní vědecké konference – 2. díl. 1. vydání. Praha: TROAS s.r.o., pp. 254. – 263.

[11] Rone, D. (2006). Apdrošināšanas līguma nepildīšanas sekas un iespējamie iznākumi. *Tiesību pārkāpumu sekas publiskajās un privātajās tiesībās. Zinātnisko rakstu krājums.* Daugavpils: Daugavpils Universitātes akadēmiskais apgāds "Saule", pp. 46. – 57.

[12] EU Mediation Law Handbook. Regulatory Robustness Ratings for Mediation Regimes. (2017). Latvia. Edit. Alexander, N., Walsh, S., Svatos, M. The Netherlands: Kluwer Law International BV, pp. 493. – 513.

[13] Rubene, A. Apdrošinājuma ņēmēja tiesības saņemt atlīdzību. *Jurista Vārds*. 15.02.2005., Nr. 6 (361); Zelmene, E. Dibināšanas un pakalpojumu sniegšanas brīvība apdrošināšanas nozarē. *Jurista Vārds*. 30.08.2011., No. 35 (682); Mantrov, V. *Problem Questions of Insurance Contract Regulation in* Latvia. The Quality of Legal Acts and Its Importance in Contemporary Legal Space, Collection of Research Papers Presented During the International Scientific Conference, 4-5 October 2012 at the University of Latvia Faculty of Law, Riga (University of Latvia, Riga 2012), pp. 562 – 574. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2116997

[14] Balodis, K. (2007). *Ievads civiltiesībās*. Riga: Zvaigzne ABC, 47. p.; Torgāns, K. (2008). *Saistību tiesības. II daļa. Mācību grāmata*. Riga: Tiesu namu aģentūra, 214. – 240. p.; Torgāns, K. (2014). *Saistību tiesības. Mācību grāmata*. Riga: Tiesu namu aģentūra, 439. – 460. p.; Loebers, A. (1926). *Tirdzniecības tiesību pārskats*. Riga: Valters un Rapa, 483. p.; *Tirdzniecības tiesības*: 2 d: 1. daļa: Dr. jur. doc. A. Loebera Latvijas Universitāte, 1924.

[15] Alfejeva, J. (2017). *Apdrošināšanas tiesības*. Riga: Biznesa augstskola Turība, p. 173.

[16] Mantrovs, V. (2018). Apdrošināšanas tiesības. Rīga: LU Akadēmiskais apgāds. P. 304.

[17] Alfejeva, J. *Apdrošināšanas krāpšanas kriminoloģiskie un krimināltiesiskie aspekti*. Obtained 31.05.2018. http://www.rsu.lv/petnieciba/promocija/promocijas-darbi

[18] Principles of European Insurance Contract Law (PEICL). (2009) Prepared by the Project Group „Restatement of European Insurance Contract Law". Reichert – Facilides, F. Heiss, H. Edited by Jurgen Basedow, John Birds, Malcolm Clarke, Herman Cousy, Helmut Heiss. European Law Publishers.

insurers. Thirdly the author has analysed literature of Latvian and foreign authors, especially of J. Alfejeva, K. Torgāns, K. Balodis, V. Mantrovs, E. Kalniņš, Худяков А. И., Гинзбург А.И., Беккин Р. И., J. Birds, D. Blend, J. Basedow, Robert H. Jerry, II un J. Bataller Grau. 155 sources of literature, 128 normative enactments, 95 case law decisions and other sources are used in the doctoral thesis.

Concise description of the doctoral thesis by chapters

Introduction

The introduction of the doctoral thesis defines topicality, hypothesis, objective, tasks, study object and scientific research methods used.

The 1st chapter. Concept of insurance agreement and its contentual parts, its normative regulation

The chapter is structured in six sub-chapters, analysing Latvian laws, regulations and the model of the European Insurance Contract Law Principles. Insurance Contract Law belongs to obligations law, [19] and this is amount of legal norms regulating origin, fulfilment, termination and breach of obligations. [20] Latvian insurance contractual law is mainly regulated in four laws: Insurance Contract Law, [21] Insurance and Reinsurance Las, [22] Compulsory Civil Liability Insurance of Owners of Motor Vehicles Law [23] and the Activities of Insurance and Reinsurance Intermediaries Law. [24] In the general civil law normative enactment – the Civil Law – there is no chapter on insurance law. There are historic reasons for such organization of laws. Historically in Latvia insurance law was considered to be a part of commercial law. When renewal of Civil Law of 1937 was done, the legislator decided to follow so called dualism system of private law. According to this system besides codification of the civil law there is separate codification of commercial law (trade law), regulating specific private law relations connected with the commercial activities and which are characteristic with speed, increased protection of confession, publicity and liability. [25] In the end of 1930s when Latvian Civil Law came into effect the dualism system was established in Latvian private law. In 1920s besides

[19] Torgāns, K. „Saistību tiesības. II daļa. Riga: Tiesu namu aģentūra, 2008. See also Torgāns, K. (2014). *Saistību tiesības*. Riga, Tiesu namu aģentūra, p. 439. – 460.
[20] The Republic of Latvia Supreme Court Compendium of decisions „Par likumu piemērošanu, izšķirot tiesās strīdus, kas saistīti ar sauszemes transportlīdzekļu apdrošināšanas un to īpašnieku civiltiesiskās atbildības obligātās apdrošināšanas līgumu saistību izpildi". 2005, May. Available at: www.at.gov.lv
[21] Adopted 03.05.2018. Published in „Latvijas Vēstnesis" 18.05.2018. No. 97 (6183). In force since 01.06.2018.
[22] Insurance and reinsurance laws. Adopted 10.06.1998. Published in „Latvijas Vēstnesis" 30.06.1998. No. 188/189 (1249/1250). In force since 01.09.1998.
[23] Adopted 07.04.2004. Published in „Latvijas Vēstnesis" 27.04.2004. No. 65 (3013). In force since 01.05.2004.
[24] Adopted 17.03.2005. Published in „Latvijas Vēstnesis" 01.04.2005. No. 52 (3210). In force since 15.04.2005.
[25] *Lošmanis A*. (2002). Jaunais Latvijas Komerclikums. *Tiesību transformācijas problēmas sakarā ar integrāciju Eiropas Savienībā*. Riga: LU Juridiskā fakultāte, 298, 300., p. 301.

elaboration of new Civil Law also work was started on elaboration of new Trade Law (Code). [26] The trade law remained uncodified in the pre-war Latvia. Insurance contract as a civil law contract was regulated in the Baltic Local Law Codification as of 1864 (hereinafter – the Baltic Civil Law) in the III chapter. [27] The insurance law regulation was included in the 15th division named "Contracts regarding games of chance" of the Baltic Civil Law, the 4th chapter "Insurance contract"". [28] Currently the Civil Law in comparison with Insurance Contract Law is considered as general law, which the Insurance Contract Law is a special law.

A notion of commercial transaction regulated in the Commercial Law is essential in analysis of insurance law. Article 388 of the Commercial Law provides that "commercial transactions are lawful transactions of a merchant, which are connected with commercial activities". Due to the fact according to Article 1, part 1 of the Commercial Law the insurer as a commercial company registered in Commercial register is a merchant, the insurance contracts are commercial transactions, because directly related to commercial activity of the insurer. Moreover as provided in Article 10, part 1, Clause 3 of the Insurance and Reinsurance Law the insurance company "engages in commercial activity directly related with insurance".

The XXII chapter named "Information to be provided before conclusion of the Insurance agreement" in the Insurance and Reinsurance Law structurally and substantially fit in the Insurance Contract Law, because is directly related to the conclusion of the insurance contract and obligations of the parties, instead to supervision of insurers. The legislator had a chance to settle both laws on May 3, 2018 when amendments were made to the Insurance and reinsurance law, and on May 5, when new Insurance Contract Law was adopted, by exclusion from the Insurance and reinsurance law the chapter XXII, and by transferring it to the II chapter in the Insurance Contract Law named "Order of conclusion of the insurance contract". As one can read in the annotation to the Draft Amendments to the Insurance and Reinsurance Law, such amendments were planned. [29] Nevertheless only part of planned amendments were made. The chapter XXII is still included in the Insurance and reinsurance law. Only Article 180, parts 3 and 6 [30] and Article 182 [31] were transferred to the other law. The rest of chapter XXII is still in

[26] "Jaunizstrādājamā tirdzniecības kodeksa saturs". LVVA 1533.f., 1.apr., 447.l., 10. – 15.p.
[27] *Latvijas tiesību vēsture (1914 – 2000)*. (2000). Riga: Fonds Latvijas vēsture, 29. p. Skat. arī Lazdiņš, J. (2014). Baltijas Civillikums laikmetu griežos: likuma pieņemšanas 150 gadu jubilejas atcerei. *Jurista Vārds*. 11.11.2014. No. 44/45 (846/847).
[28] There were 4 chapters in the Baltic Civil Law in total in the division 15.
[29] Draft Law "Amendments to Insurance and reinsurance law" Amendments. Obtained 04.06.2018. from http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/0/7ABE8C73C9E75284C22581FA002CF515?OpenDocument
[30] Insurance and reinsurance law, Article 180, parts 3 and 6 norms are included in Article 59, parts 3 and 4 of the Insurance Contract Law.
[31] Insurance and reinsurance law, Article 182 norms are included in Article 5 of the Insurance Contract Law.

force. Therefore still two laws contain rules directly applicable at the conclusion of insurance contract, which systemically is not the best solution.

One of the EU's long-term priorities is the creation of a single market. In the field of insurance, the EU aims to provide all EU citizens with a maximum choice of insurance products offered throughout the EU, while providing legal and financial safeguards, and to ensure the freedom to provide insurance services in any Member State, both by establishing a representative office and using the principle of freedom to provide services. [32] The rules for insurance contracts in EU Member States remain different. [33] Only a small part of the EU-wide regulation applies to the regulation of the activity of the insurance contract. The substantive provisions of insurance contracts are only harmonized in certain sectors and also on specific issues. There is a significant set of harmonized rules for the civil insurance of motorized vehicles. [34] Unified rules are also in the insurance of legal expenses.[35] PEICL is a model law consisting of definitions and norms followed by comments with explanations and examples, as well as references to norms of Member States and EU rules. [36] PEICL principles do not contain all norms required for complete regulation of insurance contractual relations, but only those norms essential and specific for insurance contracts. [37] Although comments of PEICL have no legal force of normative enactment, they serve for aim stated in the principle I:104 of the PEICL – to ensure "uniform application". PEICL is not binding, but notions and ideas are used by the European Court of Justice, [38] carrying analysis of Insurance Contract Law. [39] Insurance Contract Law is one of two priority sectors, [40] were EU wide codification is required to overcome obstacles in the inner market. [41]

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[32] Obtained 31.05.2018. from http://www.eu.int/scadplus/leg/en/lvb/l24021.htm: Insurance: Introduction
[33] Council 22.06.1988. Second Directive 88/357/EEC. OJ L 172, 4.7.1988., 1./14.
[34] Council 24.04.1972. Directive 72/166/EEC; Council 30.12.1983. Second Directive 84/5/EEC, OJ 1984 No. L 8/17; Council 14.05.1990. Third Directive 90/232/EEC, OJ 1990 No. L 129/33; European Parliament and Council 16.05.2000. Directive 2000/26/EC, OJ 2000 No. L 181/65.
[35] Council 22.06.1987. Directive 87/344/EEC, OJ 1987 No. L 185/77.
[36] More about contents and structure of norms see: Heiss, H. Towards a European Insurance Contract Law: Restatement – Common Frame of Reference – Optional Instrument. Obtained 31.05.2018. www.docstoc.com/docs/39373636/Heiss----Towards-a-European-Insurance-Contract-Law; see also Bataller, G. J. Un marco común de referencia para el contrato de seguro en la Unión Europea. *Revista española de seguros*. 2008, p. 681; see also: Heiss, H. The Common Frame of Reference (CFR) of European Insurance Contract Law. 23.08.2008. Obtained 31.01.2018. www.reference-global.com/doi/abs/10.1515/9783866538009.5.229 p. S95.
[37] Brömmelmeyer, C. Principles of European Insurance Contract Law. p. 1. Obtained 31.05.2018. www.reference-global.com/doi/abs/10.1515/ERCL.2011.445
[38] See Advocate General *M. Poiares Maduro* 21.11.2007. conclusions C-412/06 *Annelore Hamilton v. Volksbank Filder eG.,* 2008, I-02383. p.
[39] Heiss, H. The Common Frame of Reference (CFR) of European Insurance Contract Law. Published in 23.08.2008. Obtained 31.05.2018. www.reference-global.com/doi/abs/10.1515/9783866538009.5.229
[40] Other field – consumer rights protection. COM (2004) 651 final. Clause 3.1.3.
[41] Heiss, H. *The Common Frame of Reference (CFR) of European Insurance Contract Law*. Published in 23.08.2008. Obtained 31.05.2018. no www.reference-global.com/doi/abs/10.1515/9783866538009.5.229, p. S99.

Section 1.4 is dedicated for the concept of an insurance contract and the subject matter of the contract. As regards the number of parties involved in the transaction, the insurance contract is a bilateral transaction, i.e. a legal transaction involving a statement of the will of two parties. The insurance contract shall be concluded by two persons, an insurer and a policyholder, and each of the parties shall have rights and obligations. The insurance contract is a commitment transaction (contrary to the action transaction), i.e. a legal transaction whereby one person undertakes to perform a certain activity for the other person. The insurance contract is a causal transaction. As stated in civil rights theory, any commitment arises for a purpose. This purpose is causa for the transaction. [42]

Section 1.5 analyses the subjects of the contract, their rights and obligations. Insurance contract subjects are parties to the transaction who undertake the obligations laid down in the insurance contract and may benefit from the rights laid down in the insurance contract. However, in accordance with the content of the insurance contract and the regulatory enactments in the field of insurance law, additional persons – insured and beneficiaries – have rights and obligations, despite the fact that they are not parties to the insurance contract. The insurer is the special subject of the insurance contract. In particular, an insurance contract may only be concluded by a person who may provide insurance services. A policyholder shall be a natural or legal person who concludes an insurance contract for his or her benefit. The rights and obligations of the policyholder shall be divided into two groups, depending on the criterion chosen: 1) rights and obligations depending on corresponding person – insurer [43] or insured; [44] 2) rights and obligations depending on are they given to the policy holder and the insured, [45] or only to the policy holder. [46]

Insured is a legal or natural person who has insured interest and in the benefit of who insurance contract is concluded. Since insurance, depending on an insurance object, can be divided into 3 categories: property insurance, insurance for civil liability and insurance of persons, the insured may be grouped accordingly in these insurance forms. In the insurance of property insured is a person indicated in the insurance contract who has suffered a loss in the event of an insurance, and for which the insurance remuneration is paid. In the case of civil liability insurance, the insured is a person indicated in the insurance contract or the person determined under the insurance contract whose civil liability is insured. In the case of personal insurance, the insured is a natural person indicated in the insurance contract or a natural person

[42] Čakste, K. (2011). *Civiltiesības. Lekcijas. Raksti*, Riga: Zvaigzne ABC, p. 134.
[43] Ibid. Article 7, part 4. Article 24.
[44] Ibid. Article 23, part two.
[45] Ibid. Article 7, part four; Article 20.
[46] Ibid. Article 10; Article 24.

to be determined in accordance with the insurance contract whose life, health or physical condition is insured and to whom the insurance remuneration is paid. In the mandatory liability insurance there are 2 special subjects of the insurance contract – the insurer and the person whose civil liability is to be mandatory insured. In addition to the special subject – insurer, there is a special subject, whose mandatory civil liability shall be insured. The rights and obligations of the insured may be divided into 2 groups, depending on the criterion chosen: 1) rights and obligations of the corresponding person – insurer, [47] or beneficiary; [48] 2) rights and obligations depending on are they also given to the policyholder and insured, [49] or only to the insured. [50] The beneficiary is only possible in insurance of persons – in health, life and accident insurance, or also in the insurance against damages. [51] Beneficiary is not possible in the liability insurance.

Section 1.6 analyses the essential and natural components of the insurance contract. In accordance with Article 1469 of the Civil Law, the components of a legal transaction are either essential or natural or accidental. The Insurance Contract Law does not define the essential components of the insurance contract. Pursuant to Article 1533 of the Civil Law, the contract is definitively concluded if there is a complete agreement between the parties on the essential elements of the transaction. The author of the doctoral thesis concludes that the elements necessary for maintaining the nature of the insurance contract are the insurance object, the risk to be insured, the insurable interest, the insurance premium and the insurance remuneration. The other elements named in the Law are valued as the natural components of the insurance contract.

The 2nd chapter. Insurance principles

The chapter has five subdivisions. Insurance Contract Law has special principles specific for the insurance sector, and also general civil law principles applicable for the entire civil law system as a whole. [52]

In section 2.1, the author examines the principle of legitimate insurable interest. There is no consensus in legal literature on the content of the principle of insurable interest. [53] The insured must have a legitimate insurable interest in relation to an insured object. The absence of such a link shall render the insurance contract either void, contested or simply unenforceable in terms of reimbursement costs. [54] The principle of legitimate insurable interest arose in the 18th

[47] Insurance Contract Law. Article 7, part 4.
[48] Ibid. Article 23, part 2.
[49] Ibid. Article 7, part 4; Article 20.
[50] Ibid. Article 23, part 2.
[51] Ibid. Article 1, part 1, Clause 20.
[52] Neimanis, J. (2004). *Ievads tiesībās.* Riga: zv. adv. J. Neimanis, p. 68.
[53] Insurance Disputes. Second edition. Edited by the Right Honourable Lord Justice Mance, Iain Goldrein, Prof. Robert Merkin. – London, Hong Kong: LLP, 2003, p. 5.
[54] Birds, J. Hird, J. N. (2004). *Birds' Modern Insurance Law.* London: Sweet & Maxwell. 6th edition, p. 34.

century in Britain. The principle of legitimate insurable interest also means that the insurable interest may not be illegal, namely that there is nothing illegal to be insured. When analysing the principle of legitimate insurable interest, the time in which this interest should exist is essential. In foreign case-law and doctrine, there are differing views on whether the period of conclusion of the insurance contract is crucial [55] or on the contrary, when the case of insurance occurs, [56] or the third option, that the insured interest should exist both when the insurance contract is concluded and then the insured risk occurs [57]. Article 1, part 1, Clause 4 of the Insurance Contract Law provides that the insured interest is "an interest of the insured to not suffer losses in the event of insured risk". The definition accents the moment of occurrence of the insured risk, and that insured interest must be when insured risk happens. However Article 16, part 1, of the Insurance Contract Law provides that: „ If, at the time of entry into force of insurance, the insured interest does not exist, the insurance contract shall not be valid from the time of its conclusion". Therefore, the existence of an insured interest in Latvia is demanded in two moments: 1) at the time when the insured risk occurs; 2), at the time of entry into force of the insurance. It is not *expresis verbis* stated in the Insurance Contract Law whether the insured interest shall be subjective or objective. However the case-law of Latvia follows cognition that for the termination of the insurance contract it is not sufficient with the loss of subjective interest, but there is a need for a loss of objective interest. In the case of insurance of property objective interest is a right to the particular property. In the case of civil liability insurance objective interest is a possibility to undertake particular civil liability. In the insurance of persons objective interest is being of a natural person. Therefore subjective interest of the insured or attitude towards possibility to suffer damages currently in practice is not a recognized ground to terminate insurance contract. Termination of objective insured interest is connected with such legal fact, existence of which can be objectively checked and proved.

In the accident insurance there is no interest of the insured not to suffer damages, because the fact of physical trauma does not cause damages, only pain, discomfort and moral sufferings. In the insurance of accidents there is no interest of the insured not to suffer damages, but instead an interest to gain monetary resources in a form of insured indemnity when accident occurs. Moreover if the accident insurance policy provides payment of insurance indemnity in the case of death of insured, then at the moment of death the insured does not have interest not to suffer damages, because the insured has died. A deceased can't have any interest. Neither beneficiaries, nor heirs can have interest not to suffer damages, because they don't suffer direct

[55] *Dalby v India and London Life Assurance Co* (1854) 1 C.B. 365.
[56] Jerry H. R, II. (1996). *Understanding Insurance Law*. Matthew Bender & Co. Inc. 2nd edition, p. 255.
[57] *Sadlers Co. v Badcock*, 2 Atk. 554, 1 Wils. 10, 26 Eng. Rpt. 733 (1743).

damages for death as such. Instead the insured has an interest to secure that in the case of death because of insured event a financial remuneration is received by beneficiaries or heirs.

In the case of accumulating life insurance, there is no "interest to suffer losses" for the insured. Instead, the insured has an interest in accumulating financial resources and at the same time ensuring that, in the event of the insured's death, the beneficiaries or heirs indicated in the insurance contract would benefit from insurance indemnity. There is no insured risk in the life insurance, and the accumulating life insurance serves for financial accumulation reasons. [58] The accumulating life insurance is considered to be the insurance, although theoretical features are different. In the accumulating life insurance the insured risk is absolute, because the death is inevitable for all humans. The unknown element is a time of death. Considering differences between risk and accumulating life insurance, also a definition of insured interest shall be fixed exactly to this type of insurance. [59]

Section 2.2 analyses the principle of risk or so called unpredictability of the occurrence of the insured event. Neutralisation of consequences caused by accidents is at the basis of insurance, [60] and this unpredictability may not be foreseen in advance. An insurance contract shall be concluded for insurance of risk, about which there is uncertainty – will it come true or not, and when. The risk principle also means that it is possible to insure events, which the insured could not affect with his or her knowledge. Conversely, if the insured, acting reasonably, could affect the event, then there could be no risk of an insurance event.

Section 2.3 is devoted to the principle of compensation, also describing the principle of subrogation in this subchapter. The principle of compensation [61] and the principle of subrogation is generally recognised in insurance rights. The principle of compensation means that, when an insurance event occurs, the insurer pays the amount of money corresponding to the value of loss or gives any other appropriate benefit. [62] The compensation principle is the only principle explicitly named in the Latvian Insurance Contract Law, using the word "principle". In accordance with this principle, the policyholder must not profit from the insured event. [63] The insurance remuneration must cover the actual loss of the insured, but with the remuneration the

[58] Худяков, А. И. (2004). *Страховое право*. СПб.: Издательство Р. Аслнова „Юридический центр Пресс", 502 с.
[59] Birds, J. Hird, J. N. (2004). *Birds' Modern Insurance Law.* London: Sweet & Maxwell. 6th edition, p. 34.
[60] Torgāns, K. (2009). *Regresa prasība OCTA apdrošināšanā*. Civiltiesību, komerctiesību un civilprocesa aktualitātes. Raksti 1999.-2008. Riga: Tiesu namu aģentūra, p. 568.
[61] There have been other opinions expressed about payments not corresponding to the principle of compensation. See. Cooter, R. Porat, A. Anti-Insurance. *The Journal of Legal Studies*. Vol. XXXI (2) No. PT.1, 2002, pp. 203 – 232.
[62] Chitty on Contracts. The Common Law Library. No. 1. 27th edition. Volume I and II. London: Sweet and Maxwell, 1994, p. 885.
[63] The same is stated in the judgment of the court of Great Britain in *Castellain v Preston* (1883) 11 QBD 380.

insured may not profit. [64] The principle of subrogation means that the insured's right is transferred to an insurer after the latter has paid insurance indemnity.

Until 1 June 2018, when previous law "On Insurance Contract" was in force, it only regulated the right of recourse, understanding by that insurer's right to take over the rights of the insured against a person liable for damages in all forms of insurance, except in the case of personal insurance. [65] However even in personal insurance the rights of recourse were allowed if only insurance contract explicitly referred to compensation principle applicable by the parties. [66] Therefore insurers, writing in the terms of personal insurance that compensation principle is applicable, gained rights to recover from person liable for losses amounts of money paid as insurance indemnity. [67] Until 1 June 2018, the concept of subrogation was not used in the Law "On Insurance Agreement", and any reimbursement of paid insurance indemnity was based only on the rights of recourse. On 1 June 2018, coming into effect of the Insurance Contract Law, the concept of recourse is completely changed and in fact renamed as subrogation rights. [68] In the current law both – recourse rights and subrogation rights – are regulated, and their content is completely different from the previous regulation. Therefore, after 1 June 2018, caution is needed when previous case-law is applied regarding matter of recourses, since the content of this concept has changed substantially after this date.

Section 2.4 explores the principle of full disclosure of information, so called *uberrimae fidei* principle for the utmost good faith. The obligation to provide information stems from the principle of good faith, known at the time of ancient Rome, several centuries before the insurance contract arose. [69] The principle of full disclosure covers both the period before the conclusion of the insurance contract and the time during insurance contract. Prior to the conclusion of an insurance contract, the policyholder shall provide complete information to enable the insurer to decide whether to enter into an insurance contract and to establish an insurance premium for the conclusion of such a transaction. In turn, during validity of the

[64] Vītiņš, V. (1939). *Vispārējs tiesību pārskats*. 2. izdevums, Riga: SIA „Verdikts", p. 262.
[65] Law "On Insurance Contract". Article 40, part 1. *Not in force any more.*
[66] Ibid.
[67] See for instance insurance regulations of the following companies: "ERGO" Health insurance terms No VA 01-2014 Clause 6.1; "ERGO" accident insurance terms No NGD 01-2013, Clause 13.7; "Seesam" Health insurance terms No VA 13/1 13. punkts; "Seesam" accident insurance terms No NGA14 Clause 11; "Balta" Health insurance terms No 4201.01 Clause 2.6; "Balta" accident insurance terms No 4305.01 Clause 6.2.3.
[68] The annotation of the darft Insurance Contract Law does not contain either doctrinal reasoning for such change of legal terminology, or need to divide one term "recourse rights" into two terms "recourse rights" and "subrogations rights". Neither there is argumentation why recourse rights or subrogation rights may not be used any more in personal insurance, which until June 1, 2018 was general kind of regain of paid insurance indemnities, when responsible person for losses was, for instance a person criminally liable in attack to the insured.
[69] Zaveckas, K. (2008). *Content of duty of disclosure in insurance intercourse: theoretical and practical aspects.* Synopsis of doctoral thesis. P. 3. Defended at Mykolas Romeris University. Obtained 31.05.2018. from file:///C:/Users/Dana/Downloads/1902075.pdf

insurance contract, the policyholder and in certain cases also the insured have an obligation to report substantial changes in the insured risk, as well as about occurrence of an insured event. The obligation to provide information in insurance rights stems from the fact that asymmetrical information is available to the parties of the insurance contract, namely one of whom knows more than other. [70] It is important to determine, whether information to be disclosed is "required" and essential, taking into account the term "required" used in Article 7, part 1 of the Insurance Contract Law. Necessity can be measured in degrees, starting from the most required, up to the least required and even non-required information. One may not follow just unilateral opinion of the parties about necessity of information, because insurer and the insured are subjective extremes with different and categorical understanding about the essential elements.

Section 2.5 analyses the principle of direct causation. The concept of "direct cause" defined in the insurance literature means the active cause causing the chain of events and leads to a result, and without interference with any other force (from a new and independent source). The insured can receive only insurance indemnity for damages directly caused by the insured risk stated in the insurance contract. [71] Therefore, one of the mandatory preconditions for the payment of insurance indemnity is the existence of a causal link between the actual risk of insured and the damage suffered by the insured.

The 3rd chapter. Types of insurance

The contents of the chapter are set out in 3 sections. In section 3.1, the types of insurance have been studied, taking into account the criterion of the insurance object which is at the basis of structural system of the Insurance Contract Law. Namely, articles and divisions are systemically formed based on an insurance object. In the property insurance the insured objects are material values or interests.[72] The liability of a natural and legal person for damages or damage caused to a third party as a contractual and tort law relationship may be protected by civil liability insurance. Civil liability insurance is possible both in a voluntary and compulsory manner, provided that it is determined as an obligation in law. [73] In civil liability insurance, the insured object is civil liability of the person. [74] An insured in the civil liability insurance is a person indicated in the insurance contract or a person identified in the insurance agreement

[70] Kontautas, T. (2002). *Duty of disclosure in insurance law*. Master thesis. P. 6. Defended at Erasmus University Rotterdam. Obtained 31.05.2018. from http://www.dbr.lt/uploads/ensimaz.pdf
[71] Cases of direct causations in Latvian case-law are analysed in the Republic of Latvia Supreme Court Senate judgment as of 19.10.2005. case No. SKC-651, also Supreme Court Civil Cases department judgment of 13.10.2016. No. C30758212, SKC-311/2016.
[72] Ibid, Article 1, part 1, Clause 8, subparagraph a).
[73] About voluntary and mandatory insurance chapter 3.2 is elaborated.
[74] Insurance Contract Law, Article 1, part 1, Clause 8, subparagraph b).

whose civil liability is insured. [75] Civil liability is the only type of liability that can be insured. Neither administrative, criminal nor disciplinary liability can be insured because the purpose of all three types of liability is to punish the perpetrator directly and personally, thereby expressing a response to action prohibited by law. Both criminal and disciplinary sanctions and administrative punishment have a personal character, and its application gives the person certain restrictions on rights and freedoms. [76] In the insurance of persons the insured object is life, health or physical condition of the person. [77] The insured in the insurance of persons is a natural person indicated in the insurance contract whose life, health or physical condition is insured according to the insurance contract. [78]

Section 3.2 analyses the types of insurance, taking into account the voluntariness criterion. All forms of insurance can be divided into voluntary and compulsory insurance forms, depending on whether the law provides for a statutory obligation to insure civil liability. In accordance with the Insurance and reinsurance, Article 6, part 1 "insurance is voluntary except in cases when the law provides otherwise". Historically in 1996 in Latvia there was one mandatory type of civil liability insurance for the owners of motor vehicles. Currently in Latvia there are around 16 types of mandatory civil liability insurance.

Section 3.3 is devoted to the types of insurance taking into account the risk criterion. All types of insurance can be divided into two groups, depending on whether the insured facility belongs to a risk insurance or life insurance category. In professional language, risk insurance is also called non-life insurance, [79] thus putting accent on a contrary nature to life insurance. Life insurance does not meet the definition of non-life or risk insurance. Although the base life insurance service is based on a risk, guaranteeing the cost of insurance claims in the event of an insured death, but life insurance may have several other non-risk-related types, including life insurance or life-related life insurance. [80]

The 4th chapter. Conclusion and termination of the insurance contract

This chapter has three sub-chapters in which the insurance application, the conclusion and entry into force of the insurance contract, as well as the termination of the insurance contract, are examined sequentially. Unlike other civil contracts, where the information provided before the contract is irrelevant, the insurance application is also important in

[75] Insurance Contract Law. Article 1, part 1, Clause 12, subparagraph b).
[76] Krastiņš, U. Liholaja, V. (2015). *Krimināllikuma komentāri. Pirmā daļa (I-VIII 1 nodaļa)*. Riga: Tiesu namu aģentūra, p. 174.
[77] Insurance Contract Law. Article 1, part 1, Clause 8, subclause c).
[78] Ibid. Article 1, part 1, Clause 12, subclause c).
[79] Insurance and reinsurance law. Article 2, part 3; Article 3, part 1, clause 3; Article 16, part 1.
[80] Alfejeva, J. (2017). Apdrošināšanas tiesības. *Latvijas tiesību sistēma. Kolektīvā monogrāfija.* Sērija "Tiesību zinību bibliotēka" Nr. 38. Autoru kolektīvs. Riga: Biznesa augstskola Turība, p. 160.

insurance. The insurance application is a document containing the information provided by the policyholder for the insured object in the conclusion of an insurance contract. [81] According to Article 6, part one of the Insurance Contract Law the insurer "has rights" but no obligation to demand insurance application. Only the policyholder is responsible for the data referred to in the application. [82] If the information provided to the insurer does not comply with the truth, the insurer may refuse to pay the insurance indemnity. [83] Submission of an insurance application to an insurer does not impose an obligation on the insurer to conclude an insurance contract.

Insurance Contract Law determines 3 mutually excluding cases when insurance agreement comes into effect: 1) when the insurer and policyholder agreed on the terms of the insurance contract; [84] 2) when the policyholder, expressing its consent to the conclusion of the contract, pays an insurance premium in the form, term and amount specified in the insurer's offer; [85] 3) when the policyholder expresses its consent to the conclusion of an insurance contract in the form prescribed by another insurer. [86] Where contracting parties have agreed that the insurance premium or part thereof may be paid after the start of the insurance period, then agreement as consensual agreement comes into force at the time the parties have agreed on, even without payment of the premium. The consensual agreement is concluded at the time the parties have reached the agreement, but the real agreement needs transfer of the property [87] or fulfilment of action – payment of insurance premium. In the pre-war Latvia the insurance agreement was a real agreement, where insurance agreement came into effect with payment of insurance premium or prolongation of payment term. [88] Now the approach is more flexible and insurance contract in Latvia can be both – real agreement and consensual agreement, [89] depending on agreement of the parties.

In addition to 8 general types of termination of obligations stated in the Civil Law, [90] Insurance Contract Law provides for special cases when insurance agreement is or can be terminated before the term if the agreement. One of these early termination cases are objectively

[81] Ieviņš, U. (2017). *Apdrošināšanas pamati*. Riga: Latvijas Vēstnesis, p. 22.
[82] Ibid.
[83] Ibid.
[84] Insurance Contract Law, Article 11, part 1.
[85] Ibid, Article 11, part 2 and Article 13, part 1.
[86] Ibid, Article 11, part 2.
[87] Balodis, K. (2007). *Ievads civiltiesībās*. Riga: Zvaigzne ABC, 47. p.; Torgāns, K. (2008) *Saistību tiesības. II daļa. Mācību grāmata*. Riga: Tiesu namu aģentūra, p. 183.
[88] Loebers, A. (1926). *Tirdzniecības tiesību pārskats*. Riga: Valtera un Rapas akc. sab. izdevums, p. 429.
[89] Mantrov, V. *Problem Questions of Insurance Contract Regulation in Latvia*. *The Quality of Legal Acts and Its Importance in Contemporary Legal Space, Collection of Research Papers Presented During the International Scientific Conference*, 4-5 October 2012 at the University of Latvia Faculty of Law, Riga (University of Latvia, Riga 2012), p. 2.2.
[90] Civil Law, Articles 1811 – 1911. In addition Torgāns, K. (1994). *Komentāri Saistību tiesībām Civillikumā. 2. papildinātais izdevums.* Riga, p. 106.

identifiable, others are subjective because depend on the unilateral discretion of the insurer or policyholder. Upon termination of an insurance contract, the issue of the reimbursement of the insurance premium received by the insurer to the policyholder shall be decided. Since the insurance premium is a fee for insurance, the termination of an insurance contract may constitute a basis for the full or partial repayment of the insurance premium.

The 5th chapter. Civil law sanctions in the insurance law relations

The chapter has two subdivisions. Subdivision 5.1 examines penalties against the insurer, with particular attention to the recovery of legal interest per cent from the insurer and recovery of losses caused by the insurer. Subdivition 5.2 analyses penalties against the policyholder and the insured. Although the Civil Law does not use a legal term of sanctions, the Insurance Contract Law in Article 52, part 3 refers to this term, stating that "in the case of insurance of civil liability the insurance indemnity does not cover penalty sanctions or other sanctions imposed on insured". The term "sanctions" in Latvian normative regulation for insurance was introduced on June 1, 2018 when Insurance Contract Law come into effect. The term "sanction" does not only mean criminal or administrative liability sanctions in the public administration. Also in contractual law civil sanctions exist, which the contractors apply or may demand to apply mutually in their relations. Civil sanctions cause to civil relations parties negative consequences, and a chance to apply these sanctions functions as motivation to fulfil obligations in a correct and due manner. In the insurance contractual relations the following civil sanctions are possible: demand for legal interest percent for delayed payment of insurance indemnity, termination of insurance contract before its term, reduction of insurance indemnity, compensation of caused damages. In the case law the term of sanctions are frequently used by that meaning negative consequences in civil law sense – both in a way prescribed in the agreement and in law. [91]

The recovery of legal interest per cent from the insurer is one of the methods how legally and financially motivate the insurer to pay insurance indemnity in a timely manner. A sanction to pay legal interest per cent acts as an incentive for a faster settlement of debt. [92] The current

[91] See the Republic of Latvia Supreme Court Civil cases department 20.05.2016. judgment in case No. C24079010 (SKC-233/2016), 9.2. clause; The Republic of Latvia Supreme Court Civil cases department judgment of 05.12.2016. No. C20362313 (SKC-365/2016), Clause 6; The Republic of Latvia Supreme Court Civil cases department 27.03.2015. judgment in case No. C20231907 (SKC-52/2015), Clause 7.2, referring to professor Čakste, K. (1937). *Civiltiesības*, 27. – 28. p. This notion is also mentioned in the judgment of Kurzeme regional court judgment as of 18.05.2018. in case No. C29398416 (CA-0126-18/10) Clause 8.6.; The Republic of Latvia Supreme Court Civil cases department judgment as of 12.02.2016. in case No. C35070510 (SKC-95/2016), Clause 7; The Republic of Latvia Supreme Court Civil cases department judgment as of 18.05.2016. No. C20292813 (SKC-225/2016), Clause 5.2 and 5.7. The Republic of Latvia Supreme Court Civil cases department 30.09.2016. judgment in case No. C30664811 (SKC-156/2016) Clause 6.3.

[92] Torgāns, K. (2006). *Saistību tiesības. I daļa. Mācību grāmata*. Riga: Tiesu namu aģentūra, p. 145.

situation in Latvian case-law where insurers are not obliged to pay any civil sanctions, legal interest per cent included, is beneficial for insurers. Therefore the Insurance Contract Law shall be amended, stating that an object from which legal interest per cent can be calculated is amount of insurance indemnity which the insurer could possibly determine at the moment when it obtained necessary information for adoption of such decision. And the moment at which the legal interest per cent can start to be calculated is a moment when the insurer had at its disposal sufficient amount of information giving it a chance to adopt decisions about payment of insurance indemnity.

When the insured risk occurs, the insured or the person who is entitled to an insurance indemnity, may suffer losses due to 2 reasons: 1) due to losses directly caused by insured risk – theft, floods, medical expenses, etc.; 2) due to losses caused by the insurer for not paying in a timely manner all or partial insurance indemnity. When the insured or person entitled to insurance indemnity receives insurance indemnity, only the first type of losses can be liquidated cause by the insured risk. However the second type of losses are not recognized so far by Latvian case-law and such losses are not compensated. However actually there are cases when due to negative decision or slow work of the insurer the insured suffers additional losses.

The Insurance Contract Law provides for 3 possible sanctions against the policy holder, insured or beneficiary: 1) termination of the insurance agreement before its term; [93] 2) partial payment of insurance indemnity at the moment of insured event; [94] 3) non-return of insurance premium in the case the agreement is terminated. [95] It is allowed to apply each sanction only in cases provided in the Insurance Contract Law. Before application of sanctions facts and legal grounds of the case shall be evaluated, in conformity with which a mechanism of sanctions can be started.

The 6th chapter. Payment of insurance indemnity

The chapter is structured in four subdivisions. Subdivision 6.1 deals with the term of adoption of decision of the insurer for payment of insurance indemnity. The insurance indemnity is defined in the Insurance Contract Law as "amount of money payable for insured event or services to be provided under the insurance contract". [96] The insurer, replying to the request of the insured to pay insurance indemnity, may adopt 3 types of decisions: 1) to pay insurance indemnity in full or partial amount; 2) not to pay insurance indemnity; 3) to request additional evidence from the insured or the policy holder, so the insurer could adopt a decision. Such

[93] See, for instance, Insurance Contract Law, Article 22, part 2.
[94] Ibid, Article 29, part 2.
[95] Ibid, Article 35, part 2.
[96] Insurance Contract Law, Article 1, part 1, Clause 5.

variety of decisions can be also named as a decision of the insurer in a positive, negative or postponing meaning. The Insurance Contract Law states a term for adoption of the decision of the insurer only when the insured or the policy holder is a natural person. [97] In other cases there is no legal regulation for terms of adoption of the decision, but the term shall be stated in the insurance agreement. [98]

Section 6.2 examines the obligations of the policyholder and the insured for to receive insurance indemnity. One of the most extensive obligations to be observed by the policyholder and the insured is the submission of information to the insurer. Obligation to submit information is actual in three moments of time: 1) before conclusion of the insurance agreement; [99] 2) during validity of the insurance agreement; [100] 3) after event causally linked to the insured risk. [101] Whatever details the policyholder and the insured would provide to the insurer in connection with the insured object, it is always possible to identify any additional facts which have not been reported to the insurer and interpret this as critical, thus obtaining a basis for the refusal to pay the insurance indemnity. The solution to this would be in each particular case answering the questions: "Is the non-disclosed fact so essential, directly related with the insured object and insured risk, that non-disclosure of it has significantly affected fulfilment of obligations of the insurer and occurrence of insured risk?"

Section 6.3 analyses refusal of the insurer to pay insurance indemnity because of the policy holder's or insured's wrongful intent or gross negligence. In the Civil law the term „gross negligence" partially conform the term of Criminal law "criminal negligence". [102] A substance of the negligence characterized in Article 1645 of the Civil Law cover objective and subjective factors, and contain only general guidelines according to which it shall be decided is the negligence gross or minor. At the moment of evaluation of gross negligence or wrongful intent when deciding about payment of insurance indemnity, one shall evaluate subjective and objective grounds in connection with behaviour of person and attitude towards the event.

Section 6.4 examines the insurer's decision regarding payment of the insurance indemnity in the absence of the insured risk or insurance case. Article 31, part 1 of the Insurance Contract Law provides that the insured event is a mandatory precondition for payment of insurance indemnity. Finding the insured event is a complete and sufficient ground to pay

[97] Insurance Contract Law, Article 32, part 1.
[98] Ibid, Article 8, part 2.
[99] Insurance Contract Law, Article 7, part 1.
[100] Ibid, Article 20.
[101] Ibid, Article 27, part 1.
[102] Torgāns, K. (2009). *Regresa prasība OCTA apdrošināšanā*. Civiltiesību, komerctiesību un civilprocesa aktualitātes. Raksti 1999.-2008. Riga: Tiesu namu aģentūra, p. 570.

insurance indemnity and the insurer in this case has no rights to reject payment of insurance indemnity. The statutory definition provides for the following mandatory preconditions, which must be established for the event of an event could be qualified as the insured event: 1) an insured risk has occurred; 2) there is causal link between the insured risk and the event; 3) the insurance agreement provides for payment of insurance indemnity in the particular case.

The 7th chapter. Exceptions in the insurance contracts

In the chapter, the author analyses the types of exceptions provided for in the insurance rules, as well as their substantive balance with the risks insured. The parties have the right to agree as what to insure, and what exceptions to make. Some exceptions to the insurance agreement are provided in Article 18, part 1 of the Insurance Contract Law with 8 absolute and 2 relative exceptions. Article 18, part 1 of the Insurance Contract Law allows to provide "other similar" exceptions, however this notion is useless, because according to Article 18, part 2 of the Insurance contract agreement it is allowed to include any exceptions in the insurance agreement regardless of their similarity or difference with the law.

The 8th chapter. Resolution of disputes in the insurance law

The last chapter of the work consists of three sub-chapters in which the author investigates sequentially the role of the courts, arbitration, constitutional court, Latvian Insurers Association Ombudsman and mediation in insurance law. The advocate A. Bitāns characterizing insurance as the most popular type of compensation of losses and damage, and underlining advantages of the insurance in comparison with other systems of compensation in the civil law system, explains that the insured can receive from the insurer "compensation faster, and therefore there will be no need to apply to the court". [103] However, insurers also have potential disputes with policyholders, insureds and beneficiaries. [104] Disagreements arising from the contractual relationship in insurance can be resolved by all dispute resolution methods and in all dispute resolution institutions, though respecting limitations of legal authorities, jurisdiction and competence specific in each case. In dealing with insurance disputes, the insured in Latvia may refer to the principle of *contra proferentem*, in accordance with which doubts regarding the meaning of the contract are interpreted against interests of the one who drafted the contract – the insurer. [105] This principle applies where, from the circumstances of the conclusion of the contract, it appears that the liability for non-compliance with the

[103] Bitāns, A. (1997). *Civiltiesiskā atbildība un tās veidi.* Riga: Izdevniecība AGB, p. 168.
[104] According to the court calendar https://tis.ta.gov.lv/court.jm.gov.lv/stat/html/index_201808.html each month 20 - 30 civil cases are reviewed about insurance law disputes.
[105] Alfejeva, J. (2017). *Apdrošināšanas tiesības*. Riga: Biznesa augstskola Turība, p. 39.

contractual provisions is not clearly formulated, can be understood differently [106] or the insurer has not explained important calculation principles characteristic for the particular contract. [107]

In certain cases, the insurance law dispute can be dealt with by the LAA Ombudsman. The LAA Ombudsman is not an arbitration, it is not included in the arbitration register, and does not apply the law on arbitrations. It is an alternative consumer-rights dispute resolution authority to courts and arbitration. The Ombudsman has several advantages as an insurance dispute resolution institution, compared with the courts and tribunals. The Ombudsman is an alternative dispute resolution institution for courts but is not restrictive in terms of appeal. The cost of examining the dispute is significantly lower than in court. The dispute is heard faster at the Ombudsman than in a national court. Disputes are being dealt with at a closed hearing and they are confidential, and the Ombudsman's rulings are not published. However, it should be noted that the Ombudsman's direct organisational and financial connection with insurance companies creates an impossibility for the Ombudsman to operate independently and neutrally. As the Ombudsman review disputes where one of the parties to the dispute is always a member of the LAA (an insurance company), it is not possible for the Ombudsman to take a decision as an independent dispute resolution institution. Neutrality and disinterest are basic criteria which must be matched by a person or an institution that reviews disputes or participates in dealing with them.

Thesis submitted for defence, conclusions and proposals

1. Definition of insured interest in the Latvian Insurance Contract Law

Conclusion: The term "insured interest" in Article 1, part 1, Clause 4 of the Insurance Contract Law is not precise. Currently the law provides that "insured interest is an interest of the insured not to suffer losses when the insured risk occurs". Firstly, the definition is not accurate regarding accumulative life insurance, because in this type of insurance there is no risk, but only a chance to accumulate monetary resources. Moreover in the case of death of the insured the interest not to suffer losses is not possible, because deceased does not have any interests. Secondly, this definition is not correct regarding accident insurance where one of the risks insured is death. The insured can't have an interest not to suffer losses at the moment of his or her own death. Thirdly, the definition is not accurate regarding accident insurance in a sense that at the moment of accident there are no losses, but instead the pain, inconveniences, moral sufferings. The insured has an interest to gain monetary assets for this case.

[106] The Republic of Latvia Supreme Court Civil law department judgment as of 05.03.2014. No. SKC-44/2014.
[107] The Republic of Latvia Supreme Court Civil law department judgment as of 08.10.2014. No. SKC-33/2014. Clause 8.7.

Proposal: So the definition of insured even would be accurate in the Insurance Contract Law regarding accumulative life insurance, accident insurance and other types of insurance, the author of the doctoral thesis proposes to express Article 1, part 1, Clause 4 of the Insurance Contract Law in the following wording:

„4) insured interest –

4.1) in accumulative life insurance – an interest of the insured to accumulate monetary resources, so the insured or in cases provided in the insurance contract – the beneficiary – could receive these resources at the moment when insured risk occurs;

4.2) in the accident insurance – an interest of the insured to gain for the insured or in cases provided in the insurance contract – the beneficiary – monetary resources at the moment when insured risk occurs;

4.3) in other types of insurance – an interest of the insured not to suffer losses when insured risk occurs".

2. Civil law sanction – legal interest per cent – for the insurer

Conclusion: There are no civil sanctions provided in Latvian laws or case-law against insurer for late payment or ungrounded non-payment of insurance indemnity. In these circumstances there is a high risk in Latvia that the insurer groundlessly adopts a decision about refusal to pay insurance indemnity or partial payment of insurance indemnity.

Proposal: To amend the Insurance Contract Law and to provide that the insurer is obliged to pay legal interest per cent in benefit of the insured in the case when the insurer groundlessly has refused to pay insurance indemnity or delayed its payment. An object on which legal interest per cent can be imposed is amount of insurance indemnity, which the insurer could determine at the moment when it obtained all necessary information for adoption of such decision. And the moment from which such legal interest per cent can be calculated is a moment when the insurer had acquired sufficient amount of information giving a chance to adopt a decision about payment of insurance indemnity. Therefore the Insurance Contract Law shall be amended by adding to it Article 33.[1] in the following wording:

"Article 33.[1]. Liability of the insurer for adoption of ungrounded decision

"The insurer shall pay to the recipient of the insurance indemnity legal interest per cent in cases when the insurer considering information at its disposal could have been adopted a decision about payment of insurance indemnity, but has not done so. Legal interest per cent shall be paid from unpaid insurance indemnity from the moment the insurer had acquired

information, based on which it could adopt a decision about payment of insurance indemnity, until the moment the insurance indemnity is paid."

3. Consequences for conclusion of insurance contract without insured interest

Conclusion: Article 16, part 2 of the Insurance Contract Law provides that if the insurance agreement is concluded without legal interest with a wrongful intent of gross negligence of the policy holder, the insurer does not pay back "paid insurance premium". It is possible to conclude:

7.1. Retention of all paid insurance premium is excessively harsh sanction against the policyholder, as it does not take into account the fact that if the insurance agreement is not in force, the insurer has not either provided insurance services;

7.2. In more unfavourable situation are those policyholders, who have fully paid insurance premium, in comparison to those who have paid partial instalments;

7.3. It is burdensome to prove elements required in the 2nd part to the rule – „wrongful intent" or „gross negligence" of the policyholder. Instead this situation can be easier and more efficiently resolved by simple proving of absence of the insured interest, in a result of which the insurance contract in not valid from the moment of its conclusion.

Proposal: To express Article 16, part 2 of the Insurance Contract Law in the following wording:

"(2) If the insurance contract is concluded without insured interest, the insurer pays back insurance premium received from the policyholder."

To exclude the 3rd part of the Article 16, because due to lack of insured interest the insurer has not undertaken any risk, and therefore there are no legal grounds to retain remuneration for non-existent service.

4. The notion of the insured event in Article 16, part 5 of the Insurance Contract Law

Conclusion: The notion of "insured event" is not accurately applied in the 5th part of the Article 16 of the Insurance Contract Law. According to the Article 1, part 1, Clause 6 of the Insurance Contract Law the insured event is only such "event causally related to the insured risk, for the occurrence of which payment of insurance indemnity is provided according to the insurance contract, or in the end of insurance term for accumulative life insurance, if the event related to the insured risk has not occurred during insurance period." To qualify any event as the insured event, two preconditions shall be observed. First, the event shall be causally linked

with the insured risk. The second, the insurance agreement shall foresee payment of insurance indemnity for such event. The event mentioned in the 5th part of the Article 16 can't be qualified as the insured event, because the second precondition is not fulfilled. Namely, for occurrence of such event insurance indemnity is not payable because the insured does not have insured interest.

Proposal: Article 16, part 5 of the Insurance Contract Law shall be expressed in the following wording:

„(5) If at the moment of occurrence of the insured risk the insured interest does not exist, the insurer pays back to the policyholder part of insurance premium, which is calculated in accordance with Article 35, part 5 of this law."

5. Criteria to check significance of the non-disclosed information

Conclusion: Regardless of the fact how detailed information is provided by the policy holder and the insured to the insurer about insured object during validity term of the insurance agreement, there is always a possibility to find out additional facts and circumstances about which information is not provided and, accordingly, to interpret them as crucially important, thus obtaining legal grounds to terminate the insurance agreement or refuse payment of insurance indemnity.

Proposal: To use in the case-law criteria in a form of question: Is the non-disclosed fact so essential, directly related with the insured object and insured risk, that non-disclosure of it has significantly affected fulfilment of obligations of the insurer and occurrence of insured risk?

6. Amount of information demanded by the insurer

Conclusion: Article 7, part 1 of the Insurance Contract Law provides an obligation to submit to the insurer "demanded information about condition and circumstances of the insured object, which are necessary for the insurer to evaluate probability of occurrence of the insured risk and amount of possible losses, included information regarding status of health of the insured, and which is necessary to conclude insurance contract." Provided information shall therefore correspond two criteria. Firstly, the information shall be demanded by the insurer. Secondly, the information is necessary for conclusion of the insurance agreement. Article 7, part 1 of the Insurance Contract Law can be interpreted in two ways:

The 1st option of interpretation: All information demanded by the insurer shall be submitted about circumstances, which is necessary for the insurer to evaluate probability of occurrence of insured risk, and moreover the insurer may demand only information which is important for

conclusion of the insurance contract. In the case of this interpretation the policy holder and the insured are obliged to submit to the insurer only demanded information, but not information which is not requested.

The 2nd option of interpretation: The policy holder and the insured shall submit both: A) information requested by the insurer about circumstances required for the insurer to estimate probability of occurrence of the insured risk, B) and in addition information required for conclusion of the agreement. The policy holder shall at its own initiative find out what additional information the insurer might need, which would be especially required to conclude the insurance contract.

It would be proportionally to provide in the law that the policy holder shall submit only information explicitly demanded by the insurer.

Proposal: Article 7, part 1 of the Insurance Contract Law shall be expressed in the following wording:

„(1) At the moment of conclusion of the insurance contract the policy holder and the insured are obliged to submit information demanded by the insurer, included information regarding status of health of the insured, and which is necessary to conclude insurance contract. The insurer may demand information about circumstances to evaluate probability of occurrence of the insured risk and amount of possible loss. The insurer also uses publicly available or legally available information on the condition and circumstances of the insurance object to assess the probability of occurrence of the risk and the amount of potential losses."

7. Reduction of insurance indemnity because of wrongful intent or gross negligence of the insured

Conclusion: Article 29 of the Insurance Contract Law provides rights, but not obligation of the insurer to deny payment of insurance indemnity in the case if the insured by wrongful intent or by gross negligence has not fulfilled any of obligations state in Article 27 of the law. However in the case when the insured has not fulfilled any of obligations state in Article 27 of the law due to minor negligence, the insurer has rights but no obligation to reduce payment of insurance indemnity, but for no more that 50%. Neither the law, nor the case-law provides for criteria according to which the insurer, finding out about wrongful intent, gross negligence or minor negligence, can adopt a decision about denial or approval to pay insurance indemnity. The decisive part of the decision completely depends on opinion of the insurer and, knowing commercial interest of the insurer, in these circumstances the insurer has interest to adopt a decision about refusal to pay insurance indemnity. According to Article 29 of the Insurance

Contract Law situations are possible when the insured, acting by wrongful intent, gross negligence or minor negligence, still receives full insurance indemnity. Therefore it would be more just to precise Article 29, part 1 of the Insurance Contract Law to differ it from the part 2 of the same article, so in the cases where gross negligence or wrongful intent is present the reduction of insurance indemnity would be larger than in the cases of minor negligence.

Proposal: To express Article 29, part 1 of the Insurance Contract Law in the following wording:

„(1) The insurer reduces insurance indemnity by 50 – 100 per cent, if the policy holder, the insured or the beneficiary with wrongful intent or gross negligence has not fulfilled any obligation provided in Article 27 of this law. In this case the insurer has rights to terminate unilaterally the insurance contract from the moment the insured risk had occurred, and retain insurance indemnity".

8. Amount of information the insured receives from the policy holder

Conclusion: The insured can fulfil its obligations towards the insurer only when the insured knows about insurance, the insurer and the insurance terms. Accordingly, an obligation shall be imposed on the policy holder to notify to the insured about insurance.

Proposal: To express Article 23, part 2 of the Insurance Contract Law in the following wording:

„(2) The policy holder shall inform the insured about the fact of insurance, providing information about the insurer, type of insurance, insured sum, time of the insurance and insurance terms. The insured shall inform the beneficiary about the insurance agreement and insurance terms regarding the beneficiary."

9. Rights of the insured to receive from the policy holder information about insurance contract

Conclusion: Article 23, part 3 of the Insurance Contract Law does not provide what amount and content of information about insurance contract may be given to the insured. There are no grounds to submit to the insured information about those aspects of the insurance agreement which are not directly related to the insured.

Proposal: To express Article 23, part 3 of the Insurance Contract Law in the following wording:

„(3) The insured has rights to receive from the policy holder information about such aspects of insurance agreement which directly relates to the insured, and the policy holder has

no rights to refuse provision of such information. The beneficiary has rights to receive from the insured information about the insurance agreement, and the insured has no rights to refuse provision of such information."

10. Structural and substantial organization of the Insurance and Reinsurance Law in relation to the Insurance Contract Law

Conclusion: The chapter XXII of the Insurance and Reinsurance Law named "Information to be provided before conclusion of the insurance contract" does not structurally and substantially fit in this law, because relates to conclusion of the insurance agreement, which is regulated in the Insurance Contract Law.

Proposal: To exclude from the Insurance and Reinsurance Law chapter XXII, transmitting it to the Insurance Contract Law.

11. Introduction of special principles of the insurance law into the Insurance Contract Law

Conclusion: It is possible to find in Latvian law principles of law, which are directly and indirectly positivized. Directly positivized legal principles are those, which are not only mentioned in law, but also defined in law. In its turn indirectly positivized legal principles are those, which can be partially concluded from headlines of chapters or articles of laws, but which are not directly defined in law. From all insurance law principles Latvian law mentions just one principle, namely, the compensation principle, which is regulated in the Insurance Contract L and in the Compulsory Civil Liability Insurance of Owners of Motor Vehicles Law. Determination of principles in normative enactments is one of preconditions to maintain legal order in the country. However there is difference between, for instance, civil procedural law principles, which are widely explained and discussed in doctrine of Latvian law and case-law, and insurance law principles, which so far have not been sufficiently widely explored in legal science. In these circumstances there is a high risk that courts might consider in their rulings that there are no other insurance law principles in Latvia, but only the compensation principle. Due to significant impact of the doctrine of positivism the author of the doctoral thesis proposes to amend the Insurance Contract Law with a separate article naming insurance law principles, however refraining from defining them. Contents of special principles of insurance law is not frozen, and continue developing. Therefore naming of principles in the law would create stable ground for legal recognition of the principle. And non-definition of principles would maintain possibilities to fulfil the principle with content corresponding to the particular case. Such

solution would allow to determine more precisely what special law principles are applicable in the Insurance Contract Law.

Proposal: To express heading of Article 3 of the Insurance Contract Law in the following wording: “Law and principles applicable to insurance contract”.

To add part 4 to Article 3 of the Insurance Contract Law in the following wording: “(4) The following principles are applicable to the insurance law:

1) Principle of legal insurable interest;

2) Principle of unpredictability of insured event (risk);

3) Principle of compensation;

4) Principle of *uberrimae fidei* (utmost good faith);

5) Principle of *causa próxima* (nearest cause);

6) Principle of subrogation.”

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