

## THE CONCEPT AND NOTION OF PROFESSIONAL LIABILITY INSURANCE

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In the terms of modern trade conditions (including purchases of various services), economic relations are undergoing significant changes. Due to the development of free market relations, a number of types of services provided by the state have gradually started to be offered by private entities. So, there are various types of professional activities (auditing activities, advocacy activities, expert activities, crisis management activities, etc.) in the circulation of civil relations, which are provided to civil relations entities in larger volumes day by day. Of course, as a result such activities lead to an increase in the amount of damage caused to individuals, organizations or the state. In this regard, the state and society must take very seriously the issue<sup>1</sup> of reducing the unfavourable consequences of caused by professional activities and eliminating them in an optimal way.

One of the main solutions to the raised issue is the launch of the insurance institute. In this case, since we are talking about compensation for damages caused by professional activities, we should focus mainly on the discussion of the institute of professional liability insurance.

In general, as an economic and legal category, dating back to before our era<sup>2</sup>, insurance has developed much over time evolving into an effective and flexible risk-sharing tool. It is one of the most important elements of the economy, which is due to its role in the economic and social life of the society. Existence of a developed insurance market and proper legal regulation of insurance relations are one of the guarantees of the normal functioning of the society and economic stability<sup>3</sup>.

Like in business, in any other area of normal life, everyone is exposed to many risks, the occurrence of which can cause great property damage, up to the termination of their existence in civil- legal law. These entities get the opportunity to fully or partially share their potential risks with insurance companies that have huge financial resources through insurance for a certain fee. It is true that the insured risks may not occur at all, and the insurance companies should not pay compensation for the insurance premiums they have received, however the entities have more confidence in their future by reducing their possible large losses for small payments through insurance.

Thus, the main purpose of insurance is that it is a flexible tool for risk

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<sup>1</sup> See Zhalinsky A., Reriht, A. Introduction to German law. M., 2001. page 270

<sup>2</sup> See Barseghyan T., Haykyants A. , Gharakhanyan G. , Meghryan S. , RA Civil Law, Part II . Second edition, Yerevan, YSU Publishing House, 2008, page 485

<sup>3</sup> See Lugovets V. Ya. Legal bases of professional liability insurance in the Russian Federation, Diss. ... Ph.D., Volgograd, 2015, page 18

management<sup>1</sup> and compensation of damages<sup>2</sup> which is the reason for its role in the economy.

There are different classifications of insurance depending on the nature of the insured interests and risks. The main, most general classification of insurance is its division into personal and property insurance. The difference between property insurance and personal insurance is that it insures property interests, and the prerequisite for the origin of the right to compensation is the fact of causing damage to it, while in the case of personal insurance, the object of insurance may be personal interests, besides, the insurance indemnity may be paid simply for reaching a certain age or for any other event stipulated in the policy<sup>3</sup>. Property insurance in turn is divided into three types: property insurance, liability insurance and business risk insurance<sup>4</sup>.

In case of business risk insurance, the object of insurance is the property interests related to the business activities carried out by the insured, and in case of liability insurance, the contractual or non-contractual liability of the insured or the insured person before third parties is insured.

The insurance policy can be concluded by the insurer under standard conditions developed for the relevant type and class of insurance. Signing contracts in such manner for a large number of customer service providers, including insurance companies, is a prerequisite for competitiveness, as each time concluding contracts with different content and adapting their activities to their terms requires a large amount of human and financial resources. Concluding contracts under common standard conditions for a large number of entities makes it easier for the insurance company to run business. If the insurance policy (certificate) is concluded in accordance with the standard conditions accepted by the insurer, it must contain a reference to the mentioned conditions, and they must be attached to the policy (certificate). In addition to the above conditions, it is also necessary that the insured confirms in the policy (certificate) the fact of having received the mentioned conditions. In case the referenced terms are not attached to the policy or in case of absence of the note of having received the terms by the policyholder, the terms are not binding on the parties and are not deemed to be an integral part of the contract. The existence of the mentioned requirements is, in fact, an additional guarantee for the protection of the insurer's interests, because before concluding the contract, the latter must have the opportunity to get acquainted with the conditions under which the contract is concluded, in making which it did not participate.

One of the most important elements of insurance is insurance risk.

According to Article 983<sup>1</sup>, part 5 of the Code it is defined as a possible volume of damage caused by the occurrence of the insured event. Notwithstanding the above definition, the term insurance risk is sometimes used in the following senses:

- a) an event in the case of which insurance indemnity will be paid
- b) the size of probability of the insurance accident occurring.

In particular, in part 9 of Article 1003 of the Code, which speaks of insurance against various risks, the concept of insurance risk is identified with the insurance

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<sup>1</sup> See Molchanova I.S., The concept of risk in a property insurance policy, Diss. ... Ph.D., St. Petersburg, 2014, page 20.

<sup>2</sup> See Longvina N.V., Legal regulation of insurance in the Russian Federation, Diss. ... Ph.D., Moscow, 1998, page 5.

<sup>3</sup> See Chetyrus E. I., Insurance of civil liability for harm, Diss. ... Ph.D., Moscow, 2015, page 16.

<sup>4</sup> See Nozhkina A.A., Liability insurance under the contract, Diss. ... Ph.D., Moscow, 2014, page 33.

accident. The insurance risk concept is identically used in part 12 of article 1010 (unless the risk of loss is the subject of the insurance). In part 11 of the same article, which refers to the reduction of insurance premiums in case of continuous risk reduction, the risk is defined as the probability of an insurance accident. The same concept is used interchangeably in part 1 of article 1014, which refers to the early termination of a contract on the grounds that the insurance risk has ceased to exist.

The study of insurance terms developed by insurance companies operating in the Republic of Armenia shows that in practice the concept of insurance risk is used for various purposes. In particular, in some cases, the risk is defined as the possible volume of the damage<sup>1</sup>, in some cases as a presumed event<sup>2</sup>, in respect of which insurance indemnity will be paid<sup>3</sup>, and in some cases, the concept of risk is used to mean the probability of an accident occurring<sup>4</sup>.

Thus, the main purpose of insurance is that it is flexible tool for risk management<sup>5</sup> and compensation of damages<sup>6</sup>, which is the reason for its role in the economy.

In the course of their professional activities, individuals and legal entities are even more interested in having effective guarantees for the management of their own risks and compensation for the damages, and their timely use. Any professional activity must be based on legal responsibility. In the event of such responsibility victims and insured persons have the opportunity to exercise their mutual civil rights and responsibilities through and within the framework of the institution of professional liability insurance. In this respect, professional liability insurance is a relatively independent institution of civil liability insurance, which needs its own legal regulations. The civil legislation of the Republic of Armenia contains very few provisions on the institution in question, which do not even generally reveal the concept of the institution.

Thus, according to part 2 of Article 27 of the Law of the Republic of Armenia "On Notary", "A notary is obliged to insure its responsibility risk in the amount of twice the fee charged for the services provided during the previous year, but not less than 6 million AMD"<sup>7</sup>.

According to part 2 of Article 25 of the Law of the Republic of Armenia "On

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<sup>1</sup> See "Ingo Armenia" ICJSC "Vehicle Insurance Rules" clause 25.1, adopted by the Board on 01.12.2009, e. source: [http://www.ingoarmenia.am/uploads/files/04.10.10\\_MotorInsuranceRules011209\\_%20arm1.0.pdf](http://www.ingoarmenia.am/uploads/files/04.10.10_MotorInsuranceRules011209_%20arm1.0.pdf) (view date 25. 11. 2017)

<sup>2</sup> See "Ingo Armenia" ICJSC "Rules for insurance of property from fire and other hazards", clause 3.1 adopted by the Board on 28.06.2013 e. source: <http://www.ingoarmenia.am/uploads/files/IndividualPropertyInsuranceRules.pdf> (view date 25. 10. 2017)

<sup>3</sup> See "Rosgosstrakh-Armenia" ICJSC "Voluntary Car Insurance Terms" page 4, adopted by the Board on 03.03.2014 e-source: [http://www.rgs.am/up/files/TC750-01-02-ED5\\_ARM.pdf](http://www.rgs.am/up/files/TC750-01-02-ED5_ARM.pdf) (view date 25. 10. 2017)

<sup>4</sup> See "Sil Insurance" ICJSC "Vehicle insurance conditions" point 10.2.9 adopted by the Board on 28.12.2016 e-source: <http://www.silinsurance.am/resources/sil/pdf/f7ec60195a8f2f15210ad73a1cf68a95.pdf> (view date 25. 10. 2017)

<sup>5</sup> See Molchanova I.S., The concept of risk in a property insurance policy, Diss. ... Ph.D., St. Petersburg, 2014, page 20

<sup>6</sup> See Longvina N.V., Legal regulation of insurance in the Russian Federation, Diss. ... Ph.D., Moscow, 1998, page 5

<sup>7</sup> See Law of the Republic of Armenia "On Notary", No. HO-274, RAPT 2002.01.10/2 (177) Article 2, adopted on December 4, 2001.

Bankruptcy” “The Administrator is obliged to insure its civil responsibility for damage caused to persons participating in bankruptcy cases with an insurance amount of at least five thousand times the minimum wage” (...)<sup>1</sup>.

It is immediately noticeable that the existing norms mainly refer to the cases of compulsory professional liability insurance. In addition, the norms do not define the concept of the institution in question, but only refer to the need of persons engaged in certain professional activities to insure their risk of civil responsibility. In fact, there is no normative field, which will allow to separate, and to define the general conditions of professional liability insurance.

In order to fully understand the concept of the institute, it is necessary to identify its features first.

There are quite successful references to the concept of insurance in both theoretical and practical literature, which define insurance, give clear definitions, which we have already talked about at the beginning of this article. The main problem is to clarify what is called professional activity and how we can distinguish professional from other types of activities. Some single out entities engaged in professional activities only on the grounds that they are legally entitled to enter into liability risk insurance contracts<sup>2</sup>.

It can be argued that this is a rather unfair approach, as the law may provide for cases of concluding compulsory professional liability insurance contracts for certain entities, but persons carrying out various activities are free to enter into such contracts voluntarily to insure their own liability risk.

Every professional activity has its own uniqueness, by which it differs from those activities that are generally carried out, which are characterized by the lack of relevant qualifications or knowledge in the specific field. One can meet the following definition of professional activity in foreign legal doctrines “It is a type of human activity carried out in a certain professional area, based on knowledge, skills and a number of abilities, aimed at the achievement of expected results, as a rule, is the main source of income of a professional business entity and is carried out by the entities, that have special authority to carry out such activities”.<sup>3</sup>

We believe that the above definition of professional activity enumerates the features of the latter as comprehensively as possible. It can only be added that the complex of professional knowledge, skills and abilities must be certified by relevant documents (for example, diplomas certifying higher education, special permission to engage in certain activities, in some cases, long work experience in the field).

There is also disagreement in the professional literature about the goals of running the institute. It is believed<sup>4</sup> that it is aimed at protecting the weak side of the obligation, who had to trust the debtor's professionalism. However, not everyone, who thinks that professional liability insurance is mostly aimed at securing and serving the property interests of the insured (if it is the same as the insured person), shares this opinion.

<sup>1</sup> See Law of the Republic of Armenia “On Bankruptcy”, No. HO-51-N, RAPT 2007.01.31/7 (531) Article 139, adopted on December 25, 2006.

<sup>2</sup> Dedikov S. V. Scientific and practical comment to chapter 48 “Insurance” of the Civil Code of the Russian Federation. Article 932 // Judicial and legal work in insurance. 2010. No. 3. Pages 51-58; Samokhvalov A. S. Professional liability insurance: authoref. dis. ... cand. econom. sciences. M., 2004.

<sup>3</sup> Kozachkova D.S. On the concept of professional activity // Proceedings of the Orenburg Institute (branch) of the Moscow State Law Academy. 2016. Issue. 24, p. 55.

<sup>4</sup> Lugovets V. Ya. Protection of property interests of subjects by means of professional liability insurance // Power of the Law. 2015. No. 2. page 92.

It must be emphasized, that the above two approaches do not contradict each other, but, in our deep conviction, complement each other, and the credo of the type of insurance in question is the simultaneous existence of the two purposes<sup>1</sup>:

- **to protect the Customer** from the insolvency of the entity that is an insured person under the professional liability insurance contract that has caused damage to the Customer;

- and keep the same entity from the “**destruction**” for its professional mistake.

The type of civil-legal liability in question is distinguished by a number of other features. Prior to occurrence of the liability, the parties are bound by a civil-legal obligation. The obligation can be confirmed by a transaction concluded by and between the parties or by other legal actions. The basis for the origin of liability in this case is the non-fulfilment or improper fulfilment of the obligation to the debtee.

Assuming the analysis and the judgments in the theoretical sources, it can be argued that there is a need to clearly state by the legislation the concept of professional liability insurance and its scope.

Due to the above, we propose that an amendment be made to the Civil Code of the Republic of Armenia in the form of a separate article, with the following content:

*“1. The insurer, a party to the professional liability insurance policy undertakes for a certain single or regular fee (insurance premium) to compensate in full or partially, the other party of the policy, the insured or the person identified by it (the beneficiary) for the damage of a person receiving services, caused as a result of carrying out professional activities, within a certain insurance amount or provide a certain amount (insurance indemnity) if the occurrence of these events is probable (or) accidental, and does not depend on the will of the parties or the insured person or the beneficiary.*

*2. For the purposes of part 1 of this Article, a person receiving services is a party that has entered into a professional services contract with an insured (insured person, if the same), that carries out professional activities.*

*3. For the purposes of part 1 of this Article, professional activity is a type of human activity carried out in a certain professional field, based on knowledge, skills and a number of abilities, aimed at the achievement of expected results, as a rule, is the main source of income of a professional business entity and is carried out by the entities, that have special authority to carry out such activities.”*

We believe, that adding the above-mentioned norm is expedient and necessary in the issue of marking the boundaries of the institute in question and its accomplishment.

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<sup>1</sup> See Zhalinsky A., Rerih, A. Introduction to German law. M., 2001. pages 280-281.

## «ՄԱՍՆԱԳԻՏԱԿԱՆ ՊԱՏԱՍԽԱՆԱՏՎՈՒԹՅԱՆ ԱՊԱՀՈՎԱԳՐՈՒԹՅՈՒՆ» ՀԱՍԿԱՑՈՒԹՅՈՒՆԸ

Դավիթ Բակլաչյան

*ԵՊՀ քաղաքացիական իրավունքի ամբիոնի ասպիրանտ,  
ՀՀ ՊԵԿ Իրավաբանական վարչության հայցային աշխատանքների  
և դատական պաշտպանության բաժնի պետ*

Հոդվածում փորձ է կատարվում պարզելու մասնագիտական պատասխանատվության ապահովագրության առավել նշանակալից խնդիրները ներկա փուլում և դրանց հաղթահարման ուղիները՝ պատասխանատվության ապահովագրության ինքնուրույն տեսակ ձևավորելու համար: Մասնագիտական պատասխանատվության ապահովագրության ընդհանուր չափորոշիչների ներդրման անհրաժեշտությունը հիմնավորվում է նմանատիպ պայմանագրերի և պայմանագրային ու դեֆիկտային պատասխանատվության ապահովագրության պայմանագրերի միջև եղած տարբերություններով՝ ունենալով պայմանագրի սուբյեկտային կազմի, ապահովագրական շահի, ապահովագրական ռիսկի առանձնահատկություններ:

## ПОНЯТИЕ И СУТЬ СТРАХОВАНИЯ ПРОФЕССИОНАЛЬНОЙ ОТВЕТСТВЕННОСТИ

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В статье сделана попытка определить наиболее значимые проблемы страхования профессиональной ответственности на современном этапе и пути их преодоления с целью формирования самостоятельного вида страхования ответственности. Необходимость введения общих норм страхования профессиональной ответственности обосновывается отличиями такого договора от договоров страхования договорной и деликтной ответственности как комплексного, имеющего особенности в субъектном составе, страховом интересе, страховом риске договора.

**Բանալի բառեր** – մասնագիտական պատասխանատվության ապահովագրություն, պատճառված վնասի համար պատասխանատվության ապահովագրություն, ապահովագրության օբյեկտ, ապահովագրական շահ, ապահովագրական ռիսկ, ապահովագրական պատահար, ապահովագրող, ապահովագրված անձ

**Ключевые слова:** *страхование профессиональной ответственности, страхование ответственности за причинение вреда, объект страхования, страховой интерес, страховой риск, страховой случай, страхователь, застрахованное лицо.*

**Key words:** *professional liability insurance, liability insurance for injury, insurance object, insurance interest, insurance risk, insurance case, insurer, insured person.*