

# INSURANCE INTEREST IN THE PERSONAL INSURANCE

*Ketevan Svintradze, PhD student*

Grigol Robakidze University, Tbilisi, Georgia

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## **Abstract**

Insurance, which was created in the early centuries, is of great interest even today. As a result, private insurance had to be distinguished. A great part of society is interested in protecting property. The basic of insurance must be juridical connection of subjects and people that was called insurance title. In the conditions of modern life, it is necessary for a person to be insured.

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Insurance has a long history. In the Middle East Asia, two thousand years B.C., in the epoch of the king Hammurabi, the participants of the trade caravans were concluding contracts with each other, - if any of them had a loss during a trip, all of them would equally share this damage.

In the old Rome, besides the development of professional and military boards, the primary requirement of the activity of the latter was mutual assistance. Therefore, these boards are referred to as organizations of the mutual insurance.

The professional insurance was formed in Italy in the 14<sup>th</sup> century, where the main topic was insurance of maritime interests. This circumstance gave a right to the German economist Alfred Manasse to name the above mentioned period as the time of creation of the genuine insurance. Victor

Ehrenberg, the German specialist of jurisprudence, agrees with Alfred Manasse's this point of view, and mentions that, "the history of insurance starts from the time when the commercial insurance was created."

Life insurance was formed a bit later than commercial insurance. It started in England, in 1762. The first institution – The Equitable Life Assurance Society (Equitable Life) was founded there. It should be taken into consideration that this institution operates in accordance with the modern scientific principles.

At the end of the middle ages, Canonic Law struggled against the development of life insurance. The Canonic Law demanded fair value for all the deals, prohibited taking interests and referred to life insurance as gambling and a bet.

It is noteworthy that, a bet on people's lives was popular at that time. And, the interested individuals would first insure the persons and then would kill those on the lives of whom the "insurance" bet was made.

By the effect of the Canonic bans, as insurance should have to be separated from gambling, the notion of insurance interest was formed.

When the Russian scientist, V.I. Serebrowski got familiar with the analysis of insurance interest interpretations made by different authors, came to a conclusion that interest is the opposite of loss. Besides that, the notion of loss is opposed by the concept of benefit. At the same time, benefit cannot be insurance interest, as benefit, and a property, in general, is the point towards which interest is directed. This is the aim of interest.

Ehrenberg interprets it in a different way: "Interest is a relationship, where a definite person should have a loss".<sup>43</sup>

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<sup>43</sup> Serebrowski V.I. "Features of the Soviet Insurance Law", Selected Works, 1997. P. 373.

Time by time, in the Continental Law countries, requirement of interest, as the essential condition of insurance, became relevant only for property interests. And for personal insurance - interest during conclusion of a contract replaced the written consent of the insured person.

Chapter 1, the Article 5 of the Georgian Law “On insurance” stipulates that there should be an agreement drawn up between the insurer and the policy holder which has to be implemented on the basis of the concluded contract. According to the Article 10, paragraph 2 of the same law, the law on the compulsory insurance can put a liability on the policy holder to insure the third party.

In the contract, in case of the voluntary insurance, the policy holder is entitled to define the third party as insured.

According to the paragraph 3 of the same Article, the insured should necessarily have interest in maintaining this property. In case of the voluntary insurance, the refusal of the person (the insured) will result in impossibility of its conclusion, and if the contract has already being signed, it should be altered or even terminated.

Thus, the law does not relate directly the fate of the contract on personal insurance with insurance interest of the insurer or the beneficiary. Though, from my point of view, for personal insurance the concept of insurance interest has a right to exist. However, the specifics of personal insurance affect the property, as well as, legal signs.

Personal insurance, more or less, implies guarantee of the property sphere of the interested persons. In case of personal insurance, the insurer is certain about the property conditions of his/her own and those of the close persons. For gaining the intangible property, it is necessary to conclude a contract on personal insurance. Thus, insurance of legal relationship is formed. In such a case, the subject of interest is the property sphere; to be

more concrete, the demand on possible cover of the property sphere in a concrete environment, possibility of request of the money sums (sickness, payment of the tuition fee).

Generally speaking, private interest forms a fundament for stability of one's own and of his/her relatives' property sphere. The object of insurance is insurance interest of a policy holder in a shape of a demand which carries a social nature - to gain the right to pay the insurance sum when damage is caused to the insurer or the life or health of the insured person when the latter reaches a concrete age, or when the events stipulated by the contract take place in his/her life (insured event/insured loss).

Proceeding from the above mentioned, insurance interest carries property signs in personal insurance too.

Any kind of interest (factual interest) the core idea of which is social demands of the insured person, for expression of the surrounding reality, represents an objective-subjective action which plays the role of a motive as an element of voluntary process of a person's behavior. Accordingly, in personal insurance, interest could be factual. Therefore, it gains the legal meaning not on its own, but only as a result of a legal action. The written evidence of the insured person (which, in this case, is the subject of interest), and which carries the objective-subjective character, is a result of the process of realizing and realization of interest. Thus, we may conclude that for the existence of the insurance legal relation, interest of the insured person can be expressed through such consent. It should be also mentioned that, here, interest of the insurer remains as factual interest. The expression made by the insured person in a written form plays an important role in protection of his/her interests. He/she should deliberately make a decision on becoming an insured person, as the beneficiary and the insurer are not under the risk of the insured event, which, in fact, means that he/she is interested in

occurrence of the contingency which will give him/her an opportunity to receive the insurance sum in his/her favor.

The Article 800 of the Civil Code of Georgia stipulates that the agreement made on a concrete property, or other property interest, is the essential condition for conclusion of a contract on property insurance. It could be claimed that, in property insurance, the category of interest is a legal fact to which the fate of insurance is related. The same can be mentioned about the existence and realization of the insurance relation. Accordingly, the insurance property can be separated as the subtype of the property insurance which directly relates the property insurance contract to the existence of insurance interest. It is also proved that insurance interest represents a legal fact in property insurance which carries definite signs. The Russian scientist V.I. Serebrowski called them the conditions of the insurance interest.<sup>44</sup>

Interest should be material as it is a social requirement of the subject in the conditions of his/her existence. The subject of interest is a material property which satisfies interests and that is where its value for a subject lays.

The subject of the proprietary interest is a property which by means of the economic relations (market) can be defined in a money sum. These relations form the monetary value of the loss in the field of property, in other words, proprietary interest specifies the monetary value of the insurance indemnity. Thus, insurance interest is not some abstract, psychological direction, but a property notion expressed in quite a measurable sum. All the above mentioned gives a practical basis for the compensational concept of

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<sup>44</sup> Serebrowski V.I., “Features of the Soviet Insurance Law”. P. 372. Men. E.M. “Property Insurance According to the Legislation of the USSR, M., 1924 C.372.

the property insurance, as insurance cannot be the source of unjustified gaining of wealth if not differently stipulated by the contract.

According to the Article 826 of the Civil Code of Georgia, the insurance payment should not exceed a real value of a property. It has to be mentioned that, in case of the business risk, the sum insured should not be more than the amount of the loss which an entrepreneur might have when the insured event takes place, as the value of the property is defined not by the balance, but by the market value.

The paragraph 1 of the Article 822 of the Civil Code of Georgia stipulates that if the insured sum, considered by the property or business risk insurance contract, exceeds the insurance value, it will be considered invalid in the part of the insurance payment when the latter is in excess of the insurance value.

The Article 799 of the Civil Code of Georgia stipulates that the object of the insurance is proprietary interest in the shape of the insurance demand, which carries a social nature and aims to gain the right and make the policy holder pay the sum insured, which will compensate the loss according to the case stipulated by the insurance contract.

Many people are interested in maintaining their property, but the basis of insurance interest should be the legal connection of the persons, subjects of interest, which V.K. Reicher calls the insurance title.<sup>45</sup>

Different legal interests may exist on the same property. It can be insured by different subjects on the basis of their insurance title.

For instance, the owner of a warehouse can insure the warehouse from fire according to its value. The lessee, who is situated on the same

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<sup>45</sup> Reicher V.K., “Public and Historic Types of Insurance”, №9. 1998. P.103-104

territory, and whose enterprise is located near the warehouse, can insure the same warehouse in case of fire as he/she also may receive loss when there is fire in the warehouse. If the warehouse is destroyed, the owner gets the right on insurance, receiving the insurance indemnity for the warehouse of the goods. The lessee also gains the right to receive compensation for loss, but only because of the reason of renting the new warehouse which is located away from the original warehouse, because the owner holds insurance interest.

There is another point of view, e.g., Y. Fogelson<sup>46</sup> considers that the term “proprietary interest” is perceived as interest of a person who is under the risk of losing a property or of having it damaged. This term does not fit interest of a person who has some other loss related to losing and damaging a property. In such an approach, interest based on the other insurance titles (legal relations), rental and deposit contracts etc. are being ignored. In such a case, the insurance of the property is explained by the fact that the property implies not only items, but also property rights, more concretely, the right on compensation of the loss, which is a subject to the insurance payment.

From all the above mentioned, we can conclude that different legal interests may exist on the same property which can be insured by different subjects on the basis of their insurance titles.

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<sup>46</sup> Fogelson Y. “Insurance Interest in Property Insurance. Housekeeping and Law”. № 9. 1988. P.103-104.

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