Irma Nozadze[*]

Duty to Inform as a Specificity of Demonstration of Good Faith Principle in Voluntary and Compulsory Insurance

Insurance contract executed within the framework of either voluntary or compulsory insurance is based on the bona fides of the parties thereto. Due fulfilment of the duty to inform is of paramount importance as it is one of specific features of the demonstration of the good faith principle. The duty to inform should be duly fulfilled both during pre-contractual and contract period and upon occurrence of an insured event. Fulfilment of the duty to inform in voluntary and compulsory insurance is associated with certain specificities. This paper is focused on the analyses of these differences, it exposes the boundary between voluntary and compulsory insurance, reveals its essence and importance within the legal framework, in judicial practice and, in general, in civic relationship.

Key words: *insurance forms, voluntary insurance, compulsory insurance, specificity of demonstration of good faith principle, duty to inform, legal consequences of the breach of the duty to inform.*

1. Introduction

The article investigates the duty to inform as one of the means of display of good faith principle in voluntary and compulsory insurance. This research aims at: revealing the specificities of performance of the duty to inform in voluntary and compulsory insurance; also at analysing the differences associated with performance and non-performance of the duty to inform in voluntary and compulsory insurance relationships and, in this context, the paper clearly demonstrates the existence of a boundary between voluntary and compulsory insurance relationships, discloses its essence and importance within legal framework, judicial practice. Furthermore, this research aims at providing the respective conclusion.

"Good faith doctrine (*Treu und Glauben*) is the key issue in German Contract Law."[1] "It is self-evident for continental lawyers that the principle of good faith (*bonna foi, true und Glauben, redelikheid en billijkheid*) has a central role to play in a contract. The Civil Code has assimilated the provision on this rule. It was chronologically enforced in French, German and Dutch Codes."[2]

In insurance relationships the content of the principle of good faith is broad and comprehensive.[3]

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[*] Doctoral Student at Ivane Javakhsivili Tbilisi State University Faculty of Law, Visiting Lecturer at Tbilisi Teaching University.

1 *Beatson T., Friedmann D.,* Good Faith and Fault in Contract Law, Oxford, New York, 2002, 171.

2 *Smits J., M.,* Contract Law, A Comparative Introduction, Great Britain, 2015, 136.

3 Commentary on Civil Code of Georgia, Article 799, 2016, 14-15, <www.gccc.ge>, [14.03.16.] (in Georgian).

It is impossible to appropriately investigate all the means of demonstration of good faith principle within a single article. Hence, this article with examine only the duty to inform, as a specific feature of demonstration of good faith principle in voluntary and compulsory insurance.

2. Manifestation of Good Faith Principle in Insurance Contract

An insurance contract is based on four fundamental legal principles: principle of indemnity, principle of insurable interest, principle of subrogation and principle of utmost good faith.[4]

In its turn, the insurable interest is the mean to reduce moral hazard,[5] develop good faith relationship between the parties and protect public order.[6] "The Appeals court hereby explains, that the Civil Code obliges the subjects of Private Law to act in good faith. As per Part 3 of Article 8 of the Civil Code the parties to legal relationship are required to perform their rights and responsibilities in good faith.

The starting point of the provisions regulating civil law relationships is the restoration of natural equity; respectively, the main attribute of behavioural standard in civil circulation is equity, good faith and morality. The duty to conduct civic relationships in good faith is sometimes directly provided for by a number of provisions of the Civil Code, whilst the majority of provisions relies on it, although they do not directly refer to it. The main duty of the principle of good faith is the occurrence of fair legal consequences and, at the same time, prevention of unfair ones, what is directly linked with stability and sustainability of civic relationships."[7]

"An insurance contract is based on the principle of utmost good faith - that is, a higher degree of honesty is imposed on both parties to an insurance contract then is imposed on parties to other contracts. This principle has its historical roots in ocean marine insurance. As ocean marine underwriter had to place great faith in statements made by the applicant for insurance concerning the cargo to shipped. The property to be insured may not have been visually inspected, and the contract may have been formed in a location far removed from the cargo and ship."[8]

2.1 Elements of the Principle of Good Faith

According to established opinion, in insurance contract the principle of good faith was limited only to proper performance of the duty to inform. However, this opinion is not correct, as the principle of good faith is much broader and is not limited only to performance of the duty to inform.[9] Comp.:[10] "An

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4 *Rejda G.E.,* Principles of Risk Management and Insurance*,* 10th ed., United States of America, 2008, 174.

5 Ibid, 178.

6 Commentary on Civil Code of Georgia, Article 799, 2016, 16, <www.gccc.ge>, [14.03.16.], (in Georgian).

7 Electronic Law Library (ELL), <www.library.court.ge>, Tbilisi Appeals Court, Civil Chamber, 21 November, 2012. Case №2b/3080-12 (in Georgian).

8 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 181.

9 Commentary on Civil Code of Georgia, Article 799, 2016, 14-15, <www.gccc.ge>, [14.03.16.] (in Georgian).

insurance contract is mutually binding, consensual and indemnity contract."[11] The performance of the principle of "*bona fides*"[12] - good faith depends on proper performance of the duty - "*obligare*"[13]. Hence, for abidance by the principle of good faith it is necessary to duly perform the duty to inform. A policyholder should be scrupulous about the execution of an insurance contract, double insurance should not be used for gaining unlawful revenues. To minimize loss in insurance the policyholder should dully follow the directions of the insurer, demonstrate adequate care toward insured property, pay insurance premium in good faith; the contract should be executed and interpreted in full compliance with the principle of good faith and, in general, the parties to a contract should perform the obligations imposed thereon and exercise their rights in good faith.

2.2. General Criteria of Correlation of the Principle of Good Faith in Compulsory and Voluntary Insurance

An insurance contract can be of both voluntary and compulsory format. In both cases a contract should be interpreted in full observance of the principle of good faith. Owing to just to the principle of good faith the parties to a contract have reciprocal obligation to be responsive towards the interests of each other.[14]

Voluntary insurance relationship originates on the basis of the autonomy of parties' will, what cannot be said about the compulsory insurance contract, as in this case the essential terms and conditions of the contract are determined by a special law and they fall within the scope of aspects regulated by public law.[15] A voluntary insurance contract is explicitly a civil law contract, whilst the legal nature of a compulsory insurance contract should be verified on the example of classic theories of delimitation between public and private laws. In view of the theory of interests, compulsory insurance explicitly protects the public interest. Unlike voluntary insurance contract the scope of interests covered by compulsory insurance is broader. It should be mentioned with regard to subordination theory, that the relationship under compulsory insurance does not originate on the basis of a contract, but rather on the basis of law.

Accounting for the theory of subjects may turn insufficient in the case concerned. For example, both parties to a contract may happen to be the subjects of private law, but the relationship may still be construed as public law relationship. In this case the purpose of execution of contract will be of decisive

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10 *Rejda G.E,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 181. In the Opinion of this Scholar, Owing to Pecific Nature of Insurance Contract, The principle of Utmost Good Faith is Supported by three Important Legal Doctrines: Representations, Concealment and Warranty.

11 Commentary on Civil Code of Georgia, Article 799, 2016, 4 , <www.gccc.ge>, [14.03.16.] (in Georgian).

12 *Zimmerman R., Whittaker s.,* Good Faith in Law, European Contract Law, Cambridge University Press, 2004 , 66.

13 *Zimmermann R.,* The Law of Obligations Roman Foundations of the Civilian Tradition, Oxford University Press, 1996, 1.

14 Commentary on Civil Code of Georgia, Article 799, 2016, 14 , <www.gccc.ge>, [14.03.16.] (in Georgian).

15 Commentary on Civil Code of Georgia, Article 801, 2016, 1, <www.gccc.ge>, [15.03.16.] (in Georgian).

importance. "Unlike voluntary insurance, compulsory insurance contract is of public law nature and originates on the basis of law."[16]

Hence, the basis of observance of the principle of good faith in voluntary insurance relationships is honest behaviour of the parties during pre-contractual and contract validity period as essential terms and conditions of a contract are determined on the basis of the "autonomy of parties' will",[17] and the negotiation of a compulsory insurance contract, determination of its terms and conditions is not dependent on the will of the parties. In compulsory insurance the object of insurance, type of insurance and performance procedure are prescribed by special law. Respectively, inclusion of the principle of good faith in relevant law mainly depends on the common sense of the legislator.

Although the legislator is entitled to provide for different from Civil Code regulation in special law on compulsory insurance, it is essential for specific legislative regulation not to contradict the principle of good faith.

At the same time, when speaking about the principle of good faith it is important to take account of its purposes according to the form of insurance contract, appropriate application of the principle of good faith for the attainment of the purpose of specific insurance contract. Furthermore, the main goal of insurance relationships should as well be guaranteed - the policyholder should correctly manage financial loss through insurance.[18]

"From the very outset the goals of insurable interest doctrine was said to be the development of good faith contractual relationships and protection of public order."[19] The purpose of compulsory insurance contract is the promotion of the development of stable and regulated civic relationship.[20] The principle of good faith should be enforced in compulsory insurance contract in a manner as to take account of the wide circle of individuals to maximum practicable extent, as the protection of public interests is the main purpose of compulsory insurance contract.[21] E.g. The already revoked Law of Georgia on Third Party Liability of the Motor Vehicles Owners aimed at caring about the compensation of damages inflicted by the owners motor-vehicles - the sources of increased hazard - to persons, whose life and health would have been injured during the movement of motor-vehicles.[22]

In march 2010 the President of the United States Barak Obama signed Patient Protection and Affordable Care Act, which act set essential terms and conditions for the performance of this type of

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16 *Gogiashvili* , Public Law , Private Law and Judicial Practice, Georgian Law Review, 6/2003-4, 486. 7; *Ibid*, 488. 8 (in Georgian). Ruling № AS-4-381-05 of the Supreme Court of Georgia of 21 April, 2005, Commentary on Civil Code of Georgia, Article 801, 2016, 2- 3, <www.gccc.ge>, [15.03.16.] (in Georgian).

17 Commentary on Civil Code of Georgia, Article 801, 2016, 1, <www.gccc.ge>, [15.03.16.] (in Georgian).

18 *Thorburn C.,* On the Measurement of Solvency of Insurers, Resent Developments that will Alter Methods Adopted in Emerging Markets, The World Bank ,Washington, 2004 February, 2.

19 *Iremashvili K.,* Irmashv Doctrine and Analysis of its Criticism, Law Journal №2, 2013, 58 (in Georgian).

20 Official Electronic Source, <http://www.constcourt.ge>, First Chamber of the Supreme Court of Georiga, Decision №1/2/106, Tbilisi, 31 October, 2001 (in Georgian).

21 Commentary on Civil Code of Georgia, Article 801, 2016, 2, <www.gccc.ge>, [15.03.16.].

22 Law of Georgia on Third Party Liability of the Owners of Motor Vehicles, "Parlamentis Utskebebi" ("Parliamentary Reports"), 33, 31/07/1997 (in Georgian).

insurance.[23] This insurance aims at the protection of public interests, for the patients to have access to affordable treatment.

Insurance was found to be the major instrument for the protection of public interests to prevent negative consequences of political economy,[24] like, for example, a crisis of the banking sector.[25] Age insurance is the mechanism of social protection,[26] etc.

3. Specificities of Performance of the Duty to Inform According to Types of Insurance

Experienced, strong party in insurance relationship is the insurer.[27] Policyholders mainly have to sign standard insurance contracts elaborated by insurance companies in advance and adjusted to their own interests. Ambiguous and veiled stipulations in the contract may materially impair the interests of a person. However, the policyholder may not even notice this. Hence, it is important for both the policyholder and the insured to make representations before the execution of a contract. Insuring company is required to demonstrate due diligence towards the policyholder; being the person experienced in insurance relationship, it should explain the terminology, used in the contract, to the policyholder, the meaning of these terms, because an ordinary citizen my find specific legal and insurance terms less comprehensible or even absolutely understandable. Good faith requires for standard contract terms to be formulated in a manner, as the contract not to be focused on the protection of the interests of only its maker, the dominant person.[28] An insurance contract is drawn up by an insurer.[29] According to EU Contract Law a standard term developed to the detriment of the interest of a consumer is a mala fides one.[30]

Based on the analysis of the material information received during the pre-contractual period, the insurer make a decision on the terms and conditions of the contract to be entered with the policyholder and even whether or not to execute a specific insurance contract at all.[31] Owing to specific nature of compulsory insurance contract, the insurer does not conduct risk analysis upon the execution of each compulsory insurance contract, as it is essential for the execution of this type of contract for the insurer

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23 *Jerry H.R., Richmond d.R.,* Understanding Insurance Law, 5th ed., LexisNexis, Sanfrancisco, 2012, 51, <www.Lexisnexis.com>.

24 *Leaven L*., The Political Economy of Deposit Insurance, The World Bank, Washington, 2004, March, 1-5.

25 *Demirguc-Kunt A., Kane E.J., Laeven L.,* Deposit Insurance Design and Implementation, Police Lessons from Research and Practice, The World Bank, Washington, July 2006, 1-5.

26 *Valdivia V.H.,* The Insurance Role of Social Security: Theory and Lessons for Police Reform, USA, 1997 September, 5-6.

27 Ruling of the Supreme Court of Georgia № AS-1643-1540-2012 of June 28, 2013, <http://prg.supremecourt.ge/DetailViewCivil.aspx> (in Georgian).

28 *Markensinis B*., *Unberath H., Johnston A.,* The German Law of Contract, 2nd ed., Oxford and Portland, Oregon 2006, 165.

29 *Campbell D*., International Insurance Law and Regulations, Vol 1, Austria, Salzburg, 2015 March, 732.

30 Project Group, Principles of European Insurance Contrast Law (PEICL), 2009, 44.

31 *Tsiskadze M.,* Legal Regulation of Voluntary Insurance, Meridiani Publishing House, 2001, 28 (in Georgian).

to obtain such information from the policyholder, which identifies the object of insurance according the special law on compulsory insurance. All the foregoing is conditioned by the fact, that basis for the execution of insurance contract by insurer is not requesting detailed information by insurer and provision of this information by the policyholder, but rather the establishment, whether or not the object to be insured meets criteria, set by law. Despite the foregoing, both in voluntary and compulsory insurance the parties have the obligation of 'the most perfect frankness'[32] towards each other.

Insurer has the legitimate right to get answers from the policyholder to all questions, that are necessary to obtain material information about the object of insurance, be it the information about health status, genetic underlying risk, value of the assets, criminal records, etc.

For the policyholder to enter into contractual relationship with insurer, he makes a choice at his own discretion, whether or not to disclose information,[33] which frequently constitutes personal data of special category.

Hence, the insurer can continuously provide the policyholder with information during both pre-contractual and contract period and remind the latter of his duty to inform about the status of insured wealth, be it human life, health, property or third party liability. As a result, insurer becomes the holder of the most valuable information about the insured. Owing to the very principle of good faith he is obliged to treat obtained information with particular care and guarantee its confidentiality.

The scope of information requested by insurer should not be limitless to prevent gross intrusion into human rights. Any such action will constitute mala-fides behaviour in itself. Hence, the word 'essential' used in Article 808 of the Civil Code of Georgia should not be broadly interpreted and the insurer should have the right to request only the information that is necessary for the assessment of insurance risks and prediction of negative consequences.[34]

Owing to its specific nature compulsory insurance contact grants more freedom to policyholder upon the execution of a contract not to allow excessive access of the insurer to his personal data.

During the insurance period the insurer is required to warn the policyholder against legal consequences of non-payment of insurance premium,[35] to give him directions in the case of occurrence of an insured event with a view to minimization of loss.[36]

Insurer will be entitled to freely enjoy the substantive law instruments only in the case of observance of the duty to inform (meaning the obligation to inform the policyholder about the representations to be made and actions to be performed thereby). Otherwise the reliance on these rules by insurer may be regarded as mala-fides behaviour in the light of factual circumstance of a specific insured event.

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32 *Rogan P.,* The Insurance and Reinsurance Law Review, United Kingdom, 2013, 92.

33 *Motsonelidze N.,* Role of Contemporary Biomedicine in Insurance Law. Law Journal №2, 2013, 122 (in Georgian).

34 Ibid, 122-123.

35 Official Electronic Source: <prg.supremecourt.ge>, Decision of the Supreme Court of Georgia of 21, February, 2013, Case №AS-85-81-2013 (in Georgian).

36 Commentary on Civil Code of Georgia, Article 830, 2016, 1-2, <www.gccc.ge>, [16.03.16.] (in Georgian).

3.1. Correlation Between the Means of Performance of the Duty to Inform in Compulsory and Voluntary Insurance

"Unlike other commercial contracts, insurance contracts are contracts of utmost good faith, which imposes an obligation of 'the most perfect frankness' on the parties,"[37] no matter the form of its performance and type.

During the insurance period the insurer is required to the provide the policyholder without undue delay with information concerning circumstances that are relevant for policyholder to freely exercise his rights and have changed after the execution of the contract, be it the data about the address, name or legal form, etc. of the insurer.[38]

As per Part 1 and 2 of Article 808 of the Civil Code of Georgia, for the execution of a contract an insurer is required to request a policyholder to provide all the known thereto material information. For the information to be regarded material, the insurer should ask the policyholder a question about it in writing, clearly and unambiguously. The forgoing is conditioned by the fact that "In insurance relationship the legislator grants the insurer, as the strong party to insurance contract, with an active role, what is manifested in defining certain rights for it. Respectively, an insurance company should exercise the rights, granted thereto in good faith and should not place the policyholder in worse conditions within the framework of insurance relationship."[39] Hence, it is important for the insurer to ask all the questions, relevant to insurance contract concerned before the execution of such insurance contract, in order to obtain all the material information. Insurer makes a decision on the basis of representations of the policyholder. The questions that are not related either to the hazard o occurrence of the event covered by insurance, will not be regarded material. Material are the circumstances, which may influence the insurer's decision, to denounce the contract or execute is with amended content.[40] When asking questions the insurer is required to abide by the principle of good faith. The questions should be posed in writing, clearly and unambiguously, as ambiguous or unclear question may mislead the policyholder and make him answer the question incorrectly, what later may become grounds for a mala fides behaviour on the part of the insurer.

Provision of information by insurer to policyholder is important not only during pre-contractual period, but also during the contract term. In the case of non-payment of premium, the insurer is required to timely notify the material information to policyholder that non-payment of the premium may result in the cancellation of the contract after futile expiry of the timelines set by the insurer. The Supreme Court of Georgia explained, that "Articles 817 and 818 are not binding, but the principle of good faith obliges the insurer to eightfully exercise the right, granted thereto and in the case of non-payment of the

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37 *Rogan P.,*The Insurance and Reinsurance Law Review, United Kingdom, 2013, 92.

38 Project Group, Restatement of European Insurance Contract Law, Principles Of European InsuranceContractLaw (PEICL), Article 2:702, 2015, 1 November, 23.

39 Official Electronic Law Library (ELL), <www.library.court.ge>, Tbilisi Appeals Court, Civil Chamber, 21 November, 2012, Case №2b/3080-12 (in Georgian).

40 *Emmett J.,Vaughan T.,* Fundamentals of Risk and Insurance, 10th ed., 2007,176.

insurance premium, warn the policyholder about the cancellation of the contract, not to wait until the expiry of the contract term and then demand the payment of the insurance premium."[41]

The insurer is entitled to request any certificate, that is required for the establishment of the scope of insured invent or liability after the occurrence of the insured event.

Hence, the insurer has the right to inform the policyholder, request information from the policyholder and the duty to warn him about consequences of his failure to abide by the principle of good faith.

For the exercise of the principle of good faith in property insurance contract it is important to take account of two fundamental purposes of the principle of indemnity. "The first purpose is to prevent the insured from profiting from a loss. For example, if Kristin's home is insured for 200.000 USD and a partial loss of 50,000 occurs, the principle of indemnity would be violated if 200.000 USD were paid to her. She would be profiting from insurance .

The second purpose is to reduce moral hazard. If dishonest insureds could profit from a loss, they might deliberately cause losses with the intention of collecting the insurance. If the loss payment does not exceed the actual amount of the loss, the temptation to be dishonest is reduced."[42] „Moral hazard ... related to human behaviour (in French "*les moeurs*" means the customs of a society)."[43] In economy the theory of moral hazard is based on the prevention of hazard, that may be conditioned by a contract executed in violation of market rules.

In general, the interest in the insurance of property, and particularly of real estate has considerably increased together with the rise in the number of natural disasters.[44] The employment of agricultural insurance is considered to be one of the most important and efficient means for combating poverty.[45]

Although the policyholder has his property insured, he is still required to take care of insured property. The duty of the insurer and policyholder to mutually cooperate with regard to taking case of insured property is regulated on the legislative level. The policyholder's interest should mainly be manifested in the desire to keep the insured object safe.[46]

The insurer is entitled to give directions to policyholder to prevent or mitigate loss as far as possible upon occurrence of an insured event.

According to Paragraph 1 of Article 5 of the Law of Georgia on Compulsory Fire Insurance (was invalidated on 18.07.2005), an insured event was the damage inflicted upon insured property as a result of fire, also the measures carried out for its extinguishment.[47] Hence, the damages resulting from

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41 Official Electronic Law Library (ELL), <prg.supremecourt.ge>, Decision of the Supreme Court of Georgia of 21 February, 2013, Case №AS-85-81-2013 (in Georgian).

42 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 175.

43 *Zweifel P., Roland E.,* Insurance Economics, Berlin, Heidelberg, 2012, 268.

44 *Cummins J.D., Mahul O.,* Catastrophe Risk Financing in Developing Countries, The World Bank, Washington, 2009 ,0-3.

45 *Gurenko E., Mahul O.,* Enabling Productive but Asset-Poor Farmers to Succeed, A Risk Financing Framework, The World Bank, Washington, 2004 February, 1.

46 Commentary on Civil Code of Georgia, Article 830, 2016, 1-2, <www.gccc.ge>, [16.03.16.] (in Georgian).

47 Law of Georgia on Compulsory Fire Insurance, SSM, 3(10), 19/02/1999 (in Georgian).

measures undertaken with a view to extinguishing the fire according to directions of the insurer, were subject to coverage by the insurer.

Thus, the directions of the insurer should be followed to minimise loss if the policyholder is objectively capable of undertaking them.

According to Article 839 of the Civil Code of Georgia, under a third party liability contract an insurer is required to exempt a policyholder from duty imposed thereon as a result of his liability to a third person arising during the period of insurance.

Insurance of third party liability against property loss mainly aims at the protection of third persons - victims.

It its turn, there can be two grounds for third party liability insurance - contractual and tort. The consequences of unlawful behaviour may vary according to the form of insurance contract. In a voluntary insurance contract mala fides behaviour of policyholder may become grounds for the exemption of the insurer from liability. Specifically, according to Article 842 of the Civil Code of Georgia an insurer is exempted from the liability if policyholder wilfully caused the occurrence of the circumstance, for which he is liable to a third person. As per Part 1 of Article 843 if an insurer is fully or partially exempted from liability to policyholder in a compulsory insurance contract, its liability to a third person is valid in cases envisaged by law on compulsory insurance. Hence, the interest in the protection of a third person is prevalent in a compulsory insurance contract and is performed irrespective of unlawful behaviour of the insured person.

The Constitutional Court of Georgia explained with regard to the Law of Georgia on Third Party Liability of Motor Vehicles Owners,[48] that compulsory insurance contract "is based on the principle of universality and extends to every owner of motor-vehicle. Unlike voluntary insurance it promotes the development of stable and regulated civic relationship.[49] In fact, this decision demonstrated the purposes and importance of influence of a compulsory insurance contract on civic relationship.

Liability insurance is widely applied in the EU Member States. For example, motor vehicle liability insurance, construction insurance, professional liability insurance and insurance for midwives. When going to other countries, the citizens of Member States, professionals of various fields conclude local insurance contracts to receive insurance services.[50]

As per Article 840 of the Civil Code of Georgia, in third party liability insurance contract the insurer enjoys the right to request information not only with regard to policyholder, but also the persons, who suffered damages, provided that the victim addresses insurer with a claim. Owing to the specific nature of its activities, an insurer cannot be regarded as a simple economic unit, focused only on economic purposes. Unlike other economic units it is required to demonstrate particular sympathy

48 Law of Georgia on Third Party Liability of the Owners of Motor Vehicles, Parlamentis Utskebani (Parliamentary Reports) 33, 31/07/1997 (in Georgian).

49 Official Electronic Law Library (ELL), <http://www.constcourt.ge>, Decision of the First Chamber of the Constitutional Court of Georgia №1/2/106, Tbilisi, 31 October, 2001 (in Georgian).

50 European Commission - Directorate-General for Justice, Final Report of the Commission Expert Group on European Insurance Contract Law, European Union, 2014, 29.

towards the interests of the insured and give preference to the interest of the policyholder and good faith expectation for insurance payment. For example, if the economic standing of the insurer has deteriorated that much that there is a risk that is will not be able to make insurance payments upon occurrence of an insured event, "it can be doubted whether or not the insurer is obliged to provide such information to policyholder. Taking account of business interests, it is not reasonable to impose such an obligation on the company. However, in certain cases, it is possible for a judge to impose such obligation upon insurer on the basis of interpretation of the principle of good faith."[51]

In the event of life insurance for the benefit of a third person an insurer should request the consent of the insured person or a legal representative thereof. In this case the consent of the insured person or a legal representative thereof is a kind of authorization for the insurer concerned to insure a person. In the case of absence of such a consent the risk of dishonest behaviour of the insurer would have increased greatly. According to the USA doctrine there are two different cases: [52] a) when the policyholder insures own life and nominates a third person as a beneficiary, and 2) when policyholder insures some other person's life and pays insurance premium himself.

In the first case the risk of dishonest behaviour (of the policyholder or beneficiary intention to take life of the policyholder) is minimal. It is less probable that policyholder will plan the "enrichment" of third persons at the expense of taking his own life. Also it is also less probable that the person nominated by the policyholder as a beneficiary would turn out to be potential "murderer." However such a risk cannot be excluded.

In the second case the risk of taking life of the insured is rather big. Respectively, the existence of insurance interest within strong family or economic union is very important.[53] Hence the existence of insurance interest is necessary for the reduction of moral risk, what constitutes grounds of bona fides behaviour.[54]

Bona fides behaviour is particularly important in life insurance, as in this case subject to protection against mala fides behaviour is human life.

The basis of insurable interest may vary. For example: "Close family ties or marriage will satisfy the insurable interest requirement in life insurance. For example, a husband can purchase a life insurance policy on his wife and be named as beneficiary. Likewise, a wife can insure her husband and be named as a beneficiary. A grandparent can purchase a life insurance policy on the life of a grandchild. However, remote gamily relationships will not support an insurable interest. For example cousins cannot insure each other unless a pecuniary relationship is present. In life insurance the existence of relationship by blood or marriage is not mandatory. If there is a pecuniary interest the insurable interest in life insurance cab ne met."[55]

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51 Commentary on Civil Code of Georgia, Article 819, 2016, 1, <www.gccc.ge>, [15.03.16.] (in Georgian).
52 *Iremashvili K.,* Irmashv Doctrine and Analysis of its Criticism, Law Journal №2, 2013, 60 (in Georgian).
53 *Iremashvili K.,* Irmashv Doctrine and Analysis of its Criticism, Law Journal №2, 2013, 60 (in Georgian).
54 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 178.
55 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 17.

In life insurance contract concluded in the form of a compulsory insurance, it does not depend on the consent of potential insured whether or not the insurance policy will be purposed for his/her life. Respectively, neither the insurer has the duty to request his/her consent. The law directly provides, that his/her life should be insured on a compulsory basis, who should be the insurer and who should be the beneficiary of insurance payment (after occurrence of an insured event). For example. according to Article 8 of the Law of Georgia on Compulsory Insurance of the Life and Health of a Member of Parliament, an insured risk is the death of a Member of Parliament, in which case the insurance amount is received by a legitimate heir of the Member of Parliament.[56]

Every law on compulsory insurance serves the purposes of protection of public interests. For example, social insurance, the so-called "SHI" is widely applied throughout the world. It was established in Germany more than one century ago - in 1883. It aimed at the protection of the society against diseases treatment of which could not have been afforded by population or, at best, the family would manage to get treatment at the expense of bankruptcy.[57]

Fundamental human rights and freedoms are guaranteed by the Constitution of Georgia. However certain circumstances cast doubt on the protection of the wealth guaranteed by the supreme law of the county - the Constitution of Georgia and other laws. Specifically, according to Part 1 of Article 37 of the Constitution of Georgia everyone has the right to enjoy health insurance as a means of accessible medical aid. However, for the execution of health insurance contract the requirement of the insurer should be met at pre-contractual phase and it should be informed about health status of the person. According to Paragraph "b" of Article 2 of the Law of Georgia on Personal Data this information constitutes personal data of special category. Hence "Granting insurer with the right to obtain personal data about the health of an individual and providing for the duty of an insured to inform, the legislator restricts general personal right. In the case of pre-contractual duty the case concerns one of the most important datum, which is naturally, and quite legitimately, regarded by the insured as a part of his/her intimate field. In this situation the insured is induced to chose between two types of wealth - to enter into insurance relationship and provide the insurer with personal data, or deny the issuance of personal data and, respectively, insurance relationships, as a result of what he/she will lose the right granted thereto by the Constitution."[58]

In accident insurance contract making of insurance payment may depend on wilful inflicting injury to health. According to Article 855 of the Civil Code of Georgia ia insurer's duty depends on wilful inflicting damage (injury) to health, then the absence of intent is presumed until the opposite is proved. Hence, in similar situations, insurer is entitled to demand the provision of valuable information about

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56 Law of Georgia on Compulsory Insurance of the Life and Health of a Member of Parliament, SSM, 30(37), 13/07/1999 (in Georgian).

57 *William Hsiao C., Paul Shaw R.,* Social Health Insurance for Developing Nations, Washington , 2007, 11-14.

58 *Motsonelidze N.,* Role of Contemporary Biomedicine in Insurance Law, Law Journal N2, 2013, 122 (in Georgian).

circumstances, that caused insured event. If accident insurance contract is concluded for the benefit of a third person, then the provisions regulating life insurance apply.

3.2. Consequences of Breach of Duty to Inform by Insurer According to Types of Insurance

If insurer does not properly request the provision of essential information from policyholder during the pre-contractual phase, it will not be able to refuse insurance payment upon compensation of loss in insurance on the basis of non-provision of material information or avoidance of notification. Also a contract cannot be terminated due to failure to notify circumstances, the insurer was aware from the very outset or policyholder cannot be blamed for non-notification of which. Insurer may enjoy the right to refuse the compensation of damages due to non-notification of information only to the extent that it requested information from policyholder and despite the foregoing the policyholder failed or avoided to provided material information or provided false data. After the occurrence of insured event, the insurer is not entitled to refuse policyholder from the compensation of damages if the circumstance with regard to which the duty to inform was breached, has not influenced the occurrence of insured event.

The existence of insurable interest is a necessary precondition for the conclusion of an insurance contract. "When discussing problems related to the application of insurable interest, the account should be taken of honesty of the insurer. It is possible for the insurer to be aware of the absence of insurable interest upon negotiation of the contract and/or improperly warn a policyholder about the importance thereof and then, after the occurrence of insured event, refuse the compensation of damages upon on the basis of the absence of insurable interest. The doctrine of insurable interest should not become an instrument for the insurer to gain unlawfully. Such application of the doctrine contradicts the idea of public order and protection of good faith contractual relationships from the very outset."[59]

It the insurer fails to warn the policyholder in the case of non-payment of insurance premium thereby and set a period for the payment of the premium, it will not be entitled to exercise the right to break the contract.[60]

The foregoing does not concern a lump-sum or the first insurance premium, because if a policyholder does not pay the first or lump-sum insurance premium, the insurer's obligations will not originate even if the contract is signed by both parties.[61]

In compulsory insurance, the insurer will not be able to enjoy the right to break contract if policyholder does not pay the insurance premium. Payment of the premiums should be claimed through judicial procedure. Non-payment of the premium will not exempt the insurer from the indemnification of occurred damages.

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59 Commentary on Civil Code of Georgia, Article 799, 2016, 18, <www.gccc.ge>, [14.03.16.] (in Georgian), Jerry/Richmond , Understanding Insurance Law, 2007, 311.

60 Official Electronic Law Library (ELL), <prg.supremecourt.ge>, Decision of the Supreme Court of Georgia on 21 February, 2013, Case №AS-85-81-2013 (in Georgian).

61 *Hodgin R.,* Text and Materials, 2nd ed., Great Britain, 2002, 121-122.

It is true, that the law does not say anything about potential consequences of failure to abide by the directions of the insurer to reduce or avoid loss in property insurance contract, but if the directions, given by the insurer to policyholder were not followed and there is a causal link between occurred consequence and non-abidance by the directions, the insurer will have the right to refuse the policyholder to compensate damages.[62] Respectively, if the insurer fails to give directions to policyholder to reduce loss, at the phase of compensation of damages it will not be able to complain about this issue and refuse the compensation of damages.

If upon insurance of the life of a third person the policyholder failed to perform the duty to inform irrespective of the warning of the insurer, the insurer will be entitled to refuse the execution of the contract. It would have been reasonable for the legislator to explicitly provide for insurer's obligation before the policyholder for the latter to request the consent of the third person and, failing that, to refuse the execution of the contract. (Article 845 of the Civil Code of Georgia deals with the case, when policyholder fails to abide by the duty to inform, but the contract is still executed).

If insurer fails to properly inform the policyholder about contract terms, the information to be provided by policyholder, the actions to be undertaken thereby both in voluntary and compulsory insurance relationships, this will be regarded as a mala fides behaviour on the part of the insurer and the latter will not be entitled to refuse a bona fides policyholder from the execution of the contract at pre-contractual phase due to non-performance of the above actions by policyholder, from compensation of damages during the insurance period and upon occurrence of an insured event or enjoy the right to break contract.

In compulsory insurance relationships "The state declares its will through the provisions of insurance law, how to conduct insurance activities and also determines the behaviour of the subject of legal relationship by these provisions. The state protects insurance relationships regulated by these provisions through guaranteeing the fulfilment of the provisions of insurance law."[63] Hence, in compulsory insurance contract a policyholder does not depend only on the bona fides of the insurer. If insurer acted untruthfully in the course of execution of a compulsory insurance contract and made representations to policyholder through obscure, veiled stipulations in a manner that the policyholder failed to understand that the execution of the contract would have worsened his position as compared with the one, prescribed by law, the policyholder is protected by law in this case. According to Part 2 of Article 6 of the Law of Georgia on Insurance, if s policyholder has not executed an insurance contract, or executed is under such terms and conditions, that deteriorate the standing of the insured as compared with the conditions, prescribed by law, the insurer is required to compensate damages to the insured in the case of occurrence of an insured event in amount, that the latter would have received in the case of existence of the insurance policy concerned. The policyholder is entitled to claim the insurance from the insurer through judicial proceedings.

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62 Commentary on Civil Code of Georgia, Article 830, 2016, 1-2, <www.gccc.ge>, [16.03.16.] (in Georgian).

63 *Ketsbaia E.,* Subject and Obsejct of Legal Relationship, Journal Justice and Law, №4(43)'14, 2014, 86 (in Georgian).

4. Specificities of the Performance of Policyholder's Duty to Inform According to Types of Insurance

A policyholder, who wants to buy an insurance policy from the insurer is required to provide the insurer with relevant representation. Naturally, unlike policyholder, the insurer cannot hold sufficient information about the object to be insured. This informational privilege[64] in legal literature is called "informational asymmetry"[65]. The policyholder is required to provide inform to the insurer before the execution of the insurance contract (during pre-contractual relationships) and at every stage of its operation. The performance of this duty is directly related to the exercise of legal rights.

In compulsory insurance contract the concurrent desire of a policyholder and an insurer to enter into contract does not constitute grounds for the execution of a contract. On the contrary, irrespective of policyholder's desire, he/she is required to enter into insurance relationship with the insurer pursuant to the provisions of special law. And failure to perform the duties, prescribe by law, is subject to relevant sanctions.

"For the interpretation of an insurance contract, it is important to take account of the legal status of the policyholder. In this respect insurance practice differentiated between commercial insurance contracts and adhesion contracts. Owing to difference in legal nature they are subject to different types of legal regulation. It is not reasonable for a judge to apply the same approach in two different cases, when: in the one case the policyholder is an economic unit and in the other - an "inexperienced" consumer. In the first case the contract terms are negotiated between the parties in details, while mainly the standard contracts are applied with regard to non-legal entity policyholders, correct understanding of the content of which terms is often problematic for a consumer. Hence, it will not be reasonable to consider a non-legal entity policyholder as an informed counterparty, capable of protection of his/her own interests. Sometimes such unequal position of counterparties has impact on the determination of burden of proof, causal link and other important circumstances."[66]

4.1. Correlation between the Means of Performance of the Duty to Inform by Policyholder in Voluntary and Compulsory Insurance

"Everyone, who is willing to enter into insurance contract, is required to inform the insurer in advance about circumstances, which are related to insurable risk.

In the world of law the above duties are called pre-contractual duties and they are accorded particular attention just in insurance law. Pro-contractual duties are the rules set by contract or law with

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64 Commentary on Civil Code of Georgia, Article 808, 2016, 2, <www.gccc.ge>, [15.03.16.] (in Georgian).

65 *Loshin J.,* Insurance Law's Hapless Busybody: A Case Against the Irmashv Requirement, The Yale Law Journal, 2007, 294.

66 *Squires*, Recent Development: Autopsy of a Plain English Insurance Contract: Can Plain English Survive Proximate Cause? 1984, 6. Commentary on Civil Code of Georgia, Article 799, 2016, 13, <www.gccc.ge>, [14.03.16.] (in Georgian).

regard to a parties to a contract, which rules create the precondition for the origin of a subjective, i.e. real right. And real right means the right to claim insurance payment upon occurrence of an insured event."[67]

"Insurance is based on mutual trust of the parties and goof faith. Due to this very reasons, according to foreign legislation, a policy holder is required to voluntarily notify all those material circumstances to the insurer, which may influence the terms and conditions of the contract executed between them. Quite often the representations, made by policyholder determine the basic terms of the contract and even the fate of execution of this contract."[68] The information can be provided not only about the counterparties, but also the third person, who is not an equal party to this contractual relationship, but rather a beneficiary (contract made for the benefit of a third party). [69]

As per Part 1 of Article 808 of the Civil Code of Georgia a policyholder is required to inform the insurer about all known to him/her circumstances of essential importance for the occurrence of hazard or an event, covered by insurance. "Representations are statements made by the applicant for insurance. For example, if you apply for life insurance, you may be asked questions concerning your age, weight, height, occupation, state of health, family history, and other relevant questions."[70]

A person, who hides or misrepresents facts - lies - with the intent to negotiate a contract, is acting against the principle of good faith. The insurer relies on data provided thereby.[71] Hence, "If the insurer knew the true facts, the policy would not have been issued, or it would have been issued on different terms. False means that the statement is not true or is misleading. Reliance means that the insurer relies on the misrepresentation in issuing the policy at a specified premium.[72]

The factual circumstances existing for the moment of execution of a contract may change, as events are developing dynamically. However, "Part 1 of Article 813 of the Civil Code of Georgia obliges a policyholder to immediately inform the insurance company about increased risk of occurrence of insured event only when this will have material influence on the execution of insurance contract. Hence, the following situation should be taken into account in every single case - would the insurance company have executed contract had the later increased hazard existed from the very outset."[73]

Policyholder is required to immediately notify the insurer of occurrence of an insured event.

In compulsory insurance it does not matter whether or not the insurer is notified, the object envisaged by law will still be on the list of persons, subject to insurance, and the policyholder will automatically become liable to pay insurance premium. However, a good faith policyholder should be responsive to the interests of the insurer in compulsory insurance as well, cooperate with the latter and duly inform it.

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67 *Motsonelidze N.,* Role of Contemporary Biomedicine in Insurance Law, Law Journal №2,2013, 120 (in Georgian).

68 *Tsiskadze M.,* Legal Regulation of Voluntary Insurance, Meridiani Publishing House, 2001, 28 (in Georgian).

69 *Martin A., Hurley P.,* Introduction to the Law of Contracts, 4th ed., USA 2008, 521 .

70 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 181.

71 *Emmett j., Vaughan T.*, Fundamentals of Risk and Insurance, 10th ed., 2007, 176.

72 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 181.

73 *Tsiskadze M.,* Legal Regulation of Voluntary Insurance, Meridiani Publishing House, 2001, 31 (in Georgian).

In the case of double insurance in voluntary insurance contract policyholder is required to notify the insurer that policyholder has insured one and the same interest with two different insurers. "Article 827 III of the Civil Code of Georgia contains more elaborated stipulation. For instance, a dwelling house was damaged as a result of fire. Two insurers took provided for two different risk-factors in their policies - death of fire-fighting system and death of power system. In this case, despite the fact that insured is one and the same interest, the loss will not be covered by both insurers due to existence of different terms and conditions in the policy. The insurer, responsible for loss will be determined on the basis of establishment whether the realization of which risk-factor caused fire. If in the above example the probability of occurrence of one and the same event would have been identified as a risk-factor, the loss would have fallen within the scope of insurance coverage of both insurers. In this very case the necessity of prevention of unjust enrichment - prescribed by Article 827 III - arises."[74]

One and the same insurable interest can be covered by both voluntary and compulsory insurance, but in this case as well the regulation envisaged by Part 3 of Article 827 should be taken into account. Specifically, the policyholder should not receive indemnification, that is more, than suffered damage.[75]

The policyholder also has the duty to inform the insurer in the case of alienation of insured property. This duty should be accounted for together with Article 813 of the Civil Code of Georgia (Duty to inform insurer about increased hazard). "The principle of good faith obliges the alienator to be responsive to purchaser's interest in insurance contract and not to obstruct the performance of insurer's duty to compensate damages to his."[76] Alienation of property may result in the cancellation of insurance contract if the insurer and the new purchaser lack the desire to continue insurance relationship.

In the case of compulsory insurance, insurance contract is not terminated as a result of alienation of property. The new purchaser automatically acquires the duty to get involved in insurance relationship and pay insurance premium.

If life insurance contract or voluntary accident insurance contract is executed for the benefit of some other person, the policyholder is required to provide the insurer with a written consent of the person concerned or a representative thereof. In compulsory insurance relationships policyholder is required to insure the person, falling within the scope of application of special law, irrespective of his/her consent.

4.2. Correlation Between Legal Consequences of the Breach of Duty to Inform by Policyholder According Types of Insurance

An insurer may denounce the contract if policyholder failed to provide material information, or wilfully avoided the notification of essential circumstances or concealed them. If the policyholder had to answer a written question about the hazard, the insurer is entitled to break contract due to failure to

74 Commentary on Civil Code of Georgia, Article 827, 2016, 2, <www.gccc.ge>, [16.03.16.].
75 Ibid, Article 801, 2016, 2, <www.gccc.ge>.
76 Ibid, Article 834, 2016, 1-2, <www.gccc.ge>, [16.03.16.] (in Georgian).

notify circumstances about which the policyholder intentionally withheld information, even though no questions were asked about them. A contract cannot be terminated if the insurer was aware of concealed circumstances or the policyholder is not faulty of non-notification. "To deny a claim based on concealment, an insurer must prove two things: 1. the concealed fact was known by the insured to be material and 2. the insured intended to defraud the insurer. For example, Joseph DeBellis applied for a life insurance policy on his life. Five months after the policy was issued, he was murdered. The death certificate named the deceased as Josep3 DeLuca, his true name. The insurer denied payment on the grounds that Joseph had concealed a material fact by not revealing his true identity and that he had an extensive criminal record. In finding for the insurer, the court held that intentional concealment of his true identity was material and breached the obligation of good faith".[77]

Hence , "the insurance contract is voidable if the representation is 1.material, 2. false and 3. relied on by the insurer."[78] Worth mentioning with this regard is US judicial practice. "Auto insurer denied coverage Because of material misrepresentation. Legal facts - The insured misrepresented that she had no traffic violation convictions in the prior three-year period. After an accident, a check of her record revealed that she had two seeping tickets in that period. The insured denied coverage.

Court decision - State law regarding the voiding of insurance required that the misrepresentation must be material and made with the intent to deceive. The insured claimed that she had forgotten about the two tickets, and therefore had no intent to deceive. The court ruled that it is unlikely she would forget both events. Decision is for the insurer."[79] Hence for some behaviour of a person to be regarded as mala fides, he/she should be aware from the very outset, that the representation made thereby is not correct or he/she is concealing the actual data. Furthermore, the case should concern the issue, the latter was to take care of and the fact of breach of this duty thereby should be evident.[80]

Despite mala fides behaviour, the insurance law still protects a policyholder and refers to causal link between suffered loss and non-provision of information. In the case of absence of such causal link the insurer must cover the loss and then enjoy the tight to terminate contract.

If the interests of the insurer were not materially breached as a result of non-notification of occurrence of insured event, the insurer is not exempted from the duty to cover the loss.

Non-representation or misrepresentation in compulsory insurance contract may not entail the same consequences as in voluntary insurance contract as compulsory insurance contract is focused on the protection of public interest.[81] Hence, after the assessment of an insured event the insurer should make a decision on coverage or denial the coverage of loss with due consideration of public interests. Its decision should be focused on the creation of stable civil environment.[82] For example: According to the

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77 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 182-183.

78 Ibid, 181.

79 Ibid, 182.

80 *Cook J.,* Law of Tort, 5th ed., Great Britain, 2001, 23.

81 Commentary on Civil Code of Georgia, Article 801, 2016, 2, <www.gccc.ge>, [15.03.16.] (in Georgian).

82 Official Electronic Source, <http://www.constcourt.ge>, First Chamber of the Supreme Court of Georiga, Decision №1/2/106, Tbilisi, 31 October, 2001 (in Georgian).

Law of Georgia on Third Party Liability of the Motor Vehicles Owners an owner of a motor-vehicle - any person, who owned a motor-vehicle or was lawfully disposing it, was required to buy third party liability insurance policy in accordance within this law.[83] If after purchasing third party liability insurance policy and occurrence of an insured event it would have turned out that policyholder was not lawfully disposing the car (the car was stolen), the insurer would have been entitled to deny the coverage as the person, who bought third party liability insurance policy, was using dishonestly acquired property. The making of insurance payments should not have served as an incentive for mala fides persons, what would have been detrimental for general public. But if a person misrepresented the year of manufacturing the car, but used the car in good faith and after the occurrence of an insured event it is revealed, that according to representations of the policyholder the car was manufactured in 2002 while actually it was manufactured in 1999 (in the case of technical damage and car accident an old car bears higher risk that the relatively new one) and human health was injured as a result of this car accident, the insurer should make a decision for the benefit of the victim despite the fact, that policyholder misrepresented to the insurer, because in this case of prior importance is the protection of public interests than the punishment of a mala fides policyholder - denial of coverage.

Legislator provided for voidance of double insurance as a protection against unlawful profiting. If a policyholder purchased double insurance policy with an intent to profit unlawfully, each agreement concluded to this end will be regarded null and void. Such a contract violates the principle of good faith from the very outset. The purpose of its conclusion is mala fides and any contract executed against the principle of good faith is void. Unlike this Article, the content of Article 826 of the Civil Code of Georgia is ambiguous. Under this Article an insurer is not require to pay more to the policyholder than the amount of loss even when the insurance payment exceeds the insurance value for the moment of occurrence of an insured event. The phrase "is not obliged" is worded in such a manner that is allows the insurer to pay more money to the policyholder than the amount of suffered loss. The purpose of employment of the principle of indemnity principle is to prevent the mala fides behaviour and to exercise the principle of good faith.[84] "Historically, the purpose of insurance has been set to be the restitution of *status quo* after the occurrence of loss".[85] To pay more than actual amount of loss is contrary to the principle of indemnity. It also contradicts the principle of insurable interest. Insurance contract should be based on the doctrine of insurable interest as it serves the purpose of reducing moral hazard. Respectively, it reduces the risk of mala fides behaviour. If insurance payment exceeds insurable interest of a dishonest person, he may cause loss intentionally.[86] Hence, it should be stated in Article 826 of the Civil Code of Georgia, that insurer should pay no more that the actual amount of loss even if the insurance payment exceeds the insurance value for the moment of occurrence of an insured event.

In compulsory insurance contract the above regulations apply to compulsory property insurance as well if this is not contrary to special law on compulsory insurance.

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83 Law of Georgia on Third Party Liability of the Owners of Motor Vehicles. Parliamentis Ustkebebi (Parliamentary Reports), 33, [3107.1997] (in Georgian).

84 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 175.

85 *Iremashvili K.,* Irmashv Doctrine and Analysis of its Criticism, Law Journal №2, 2013, 57 (in Georgian).

86 *Rejda G.E.,* Principles of Risk Management and Insurance, 10th ed., United States of America, 2008, 178.

In voluntary insurance contract the obligations of the parties originate on the basis of mutual promises.[87] Despite the foregoing, upon interpretation of dubious texts developed by insurer the policyholder is less protected than in the case of compulsory insurance. According to Paragraph 5 of Article 5 of the Law of Georgia on Insurance, in compulsory insurance the insurer is required to enter into contract with the policyholder under certain terms and conditions.

In life insurance or accident insurance contract, made for the benefit of a third person, on the case of failure of the policyholder to provide the insurer with a consent of the third person concerned or a representative thereof, the insurer may denounce the contract if the duty to inform was not abided by intentionally.

5.Conclusion

The milestone of insurance contract is the abidance by the principle of good faith both in voluntary and compulsory insurance during pre-contractual,[88] as well as contract validity period.

Due fulfilment of the duty to inform both by the insurer and the policyholder is one the instruments for the exercise of the principle of good faith, grounds for origin of "real right"[89].

The failure to provide information of due quality and in relevant format in insurance relationship between the parties is considered as a mala fides behaviour that will deprive one party of and equip the other party with grounds for the application a substantive law remedy. In the case exercise of the principle of good faith the account should firstly be take of the purposes of relevant insurance contract - the policyholder should correctly manage financial loss through insurance,[90] the interest of wide circle of people should be accounted for to maximum practicable extent as the main goal of a compulsory insurance contract is the protection of public interests,[91] promotion of stable and regulated civic relationship.[92] In insurance relationships a bona fides insurer should be focused on the protection of public interest[93] and should not constantly appeal to unjustified grounds to deny the coverage of loss. Insurance contract should enable a bona fides insurer to correctly manage financial loss through

87 *Kuniz C.L., Chomsky C.L.,* Interactive Case Book Series Contracts , A Contemporary Approach, West's Law School Advisory Board, USA, 2010, 14.

88 Acquis Group, Pre-Contractual Obligations, Conclusion of Contract, Unfair Terms, Germany, Munchen, 2007, 62.

89 *Motsonelidze N.,* Role of Contemporary Biomedicine in Insurance Law, Law Journal №2, 2013, 120 (in Georgian).

90 *Thorburn C.,* On the Measurement of Solvency of Insurers, Resent Developments that will Alter Methods Adopted in Emerging Markets, The World Bank, Washington, 2004 February, 2.

91 Commentary on Civil Code of Georgia, Article 801, 2016, 2, <www.gccc.ge>, [15.03.16.].

92 Official Electronic Source, <http://www.constcourt.ge>, First Chamber of the Supreme Court of Georiga, Decision №1/2/106, Tbilisi, 31 October, 2001 (in Georgian).

93 Commentary on Civil Code of Georgia, Article 801, 2016, 2, <www.gccc.ge>, [15.03.16.] (in Georgian).

insurance.[94] Bona fides attitude of insurers towards policyholders will increase trust in insurance companies, what ultimately will successfully develop the insurance market.

Legislator's right - to provide for different form Civil Code regulation in a special law of insurance - is not limitless. It is important for relevant normative act not to contradict the principle of good faith.

Although the Civil Code of Georgia does not speak about the principle of good faith in its insurance part, owing to is content and specific features the exercise of the right to insure and, in general, the future of insurance contract, depends on abidance by the principle of good faith. And to abide by the principle of good faith the parties should make appropriate representations.

Bibliography

1. Constitution of Georgia (in Georgian).
2. Civil Code of Georgia (in Georgian).
3. Law of Georgia on Insurance (in Georgian).
4. Law of Georgia on Third Party Liability of the Owners of Motor Vehicles, Parliamentis Ustkebani (Parliamentary Reports) 33, 31/07/1997 (in Georgian).
5. Law of Georgia on Compulsory Fire Insurance, SSM, 3(10), 19/02/1999 (in Georgian).
6. Law of Georgia on Compulsory Insurance of the Life and Health of a Member of Parliament, SSM, 30(37), 13/07/1999 (in Georgian).
7. *Iremashvili K.,* Commentary on Civil Code of Georgia, <www.gccc.ge>, Article 799, 4, 13-16, 18; Article 801, 1-3; Article 830, 1-2; Article 819, 1; Article 808, 2; Article 827, 2; Article 834, 1-2 (in Georgian).
8. *Iremashvili K.,* Insurable Interest Doctrine and Analysis of its Criticism, Law Journal N2, 2013, 57, 58, 60 (in Georgian).
9. 15.*Tsiskadze M.,* Legal Regulation of Voluntary Insurance, Meridiani Publishing House, 2001, 28, 31 (in Georgian).
10. *Motsonelidze N.,* Role of Contemporary Biomedicine in Insurance Law, „Law Journal" №2, 2013, 120,122,122-123 (in Georgian).
11. *Ketsbaia E.,* Subject and Object of Legal Relationship, Journal „Justice and Law", №4(43)'14, 2014, 86 (in Georgian).
12. Tbilisi Appeals Court, Civil Chamber, 21 November, 2012, Case №2b/3080-12 (in Georgian).
13. The First Chamber of the Constitutional Court of Georgia, Decision №1/2/106, Tbilisi, 31 October, 2001 (in Georgian).
14. <http://prg.supremecourt.ge/DetailViewCivil.aspx>, Case № AS-85-81-2013 (in Georgian).
15. *Beatson T., Friedmann D.,* Good Faith and Fault in Contract Law, Oxford, New York, 2002, 171.
16. *Smits J., M.,* Contract Law, A Comparative Introduction, Great Britain, 2015, 136.
17. *Rejda G.E.,* Principles of Risk Management and Insurance*,* 10th ed., United States of America, 2008, 17, 174-175, 178, 181-183.

[94] *Thorburn C.,* On the Measurement of Solvency of Insurers, Resent Developments that will Alter Methods Adopted in Emerging Markets, The World Bank ,Washington, 2004 February, 2.

18. *Zimmermann R.,* The Law of Obligations Roman Foundations of the Civilian Tradition, Oxford University Press, 1996, 1.
19. *Zimmerman R., Whittaker S.,* Good Faith in Law European Contract Law, Cambridge University Press, 2004 , 66.
20. *Thorburn C.,* On the Measurement of Solvency of Insurers, Resent Developments that will Alter Methods Adopted in Emerging Markets, The World Bank, Washington, 2004, February, 2.
21. *Jerry H.R., Richmond d. R.,* Understanding Insurance Law, 5th ed., LexisNexis, San-Francisco, 2012, 51, <www.Lexisnexis.com>.
22. *Leaven L.*, The Political Economy of Deposit Insurance, The World Bank, Washington, 2004, March, 1-5.
23. *Demirguc-Kunt A., Kane E.J., Laeven L.,* Deposit Insurance Design and Implementation, Police Lessons from Research and Practice, The World Bank, Washington, July 2006, 1-5.
24. *Valdivia V.H.,* The Insurance Role of Social Security: Theory and Lessons for Police Reform, USA, 1997, September, 5-6.
25. *Markensinis B*., *Unberath H., Johnston A.,* The German Law of Contract, 2nd ed., Oxford and Portland, Oregon 2006, 165.
26. *Campbell D*., International Insurance Law and Regulations, Vol. 1, Austria, Salzburg, 2015 March, 732.
27. *Basedow J., Bird J., Clarke M., Cousy H., Heiss H,* Principles of European Insurance Contrat Law (PEICL), 2009, 44.
28. *Rogan P.,* The Insurance and Reinsurance Law review, United Kingdom, 2013, 92.
29. Project Group, *Reicher-facilide F., Helmut H.,* Restatement of European Insurance Contract Law, Principles of European Insurance Contract Law (PEICL), Article 2:702, 2015, 1 November, 23.
30. *Emmett J.,Vaughan T.,* Fundamentals of Risk and Insurance, 10th ed., 2007, 176.
31. *Zweifel P., Roland E.,* Insurance Economics, Berlin, Heidelberg, 2012, 268.
32. *Cummins J.D., Mahul O.,* Catastrophe Risk Financing in Developing Countries, The World Bank, Washington, 2009, 0-3.
33. *Gurenko E., Mahul O.,* Enabling Productive but Asset-Poor Farmers to Succeed, A risk Financing Framework, The World Bank, Washington, 2004, February.
34. European Commission – Directorate – General for Justice, Final Report of the Commission Expert Group on European Insurance Contract Law, European Union, 2014, 29.
35. *William Hsiao C., Paul Shaw R.,* Social Health Insurance for Developing Nations, Washington , 2007, 11-14.
36. *Hodgin R.,* Text and Materials, 2nd ed., Great Britain, 2002, 121-122.
37. *Loshin J.,* Insurance Law's Hapless Busybody: A Case Against the Insurable Interest Requirement, The Yale Law Journal, 2007, 294.
38. *Martin A., Hurley P.,* Introduction to the Law of Contracts, 4th ed., USA 2008, 521.
39. *Cook J.,* Law of Tort, 5th ed., Great Britain, 2001, 23.
40. *Kuniz C.L., Chomsky C.L.,* Interactive Case book Series Contracts , A contemporary Approach, West's Law School Advisory Board, USA, 2010, 14 .
41. Acquis Group, Pre-contractual Obligations, Conclusion of Contract, Unfair Terms, Germany, München, 2007, 62.
42. *Thorburn C.,* On the Measurement of Solvency of Insurance Companies, Resent Developments that Will Alter Methods Adopted in Emerging Markets, The World Bank, Washington, February, 2004, 2.