The Development towards the Swedish 2005 Insurance Contracts Act
– Legal Obstacles and Political Objections. A Retrospect with Comments

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The aim of this article is to shed light upon the steps that were taken some years ago in introducing new legislation on insurance contracts in Sweden, the Insurance Contracts Act (försäkringsavtalslagen, 2005:104).

To offer a better understanding of the creation of the Act, I will start by giving a short presentation of the Act itself. It will be succeeded by a historical survey describing the background: the development of civil law insurance legislation. In this context the appointment of the Insurance Law Committee will be mentioned, and after that the birth of the Consumer Insurance Act of 1980 and two reports on insurance of persons and on property and liability insurance. This will be succeeded by the presentation of a report proposing an Act that covered all kinds of insurance – life and other personal insurance as well as property and liability insurance, both individual and collective. Finally, I will conclude my presentation by describing the last act of the drama: the preparation of the last draft Act and its reception in Parliament.

1 Introduction: the Insurance Contracts Act. Some General Traits

Most Swedish insurance contracts are legally regulated by the Insurance Contracts Act (2005:104).[1] This act contains provisions about the contractual relations between the parties. It deals with almost all kinds of private insurance.

1.1 The structure of the Insurance Contracts Act

The Insurance Contracts Act is devided into four articles and composed of 20 chapters:[2]

ARTICLE ONE. *Introductory provisions*

Chapter 1. Scope of the Act and mandatory provisions[2a)]

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1 In certain areas the Insurance Contracts Act is not or only partly applicable, i.e concerning traffic accidents, that are regulated by the Motor Traffic Liability Act (1975:1410, trafikskadelagen). Swedish insurance law is also regulated by the Insurance Companies Act (2010:2043, försäkringsrörelseslagen, that contains i.a. rules regulating insurance companies and the supervision of their business.

2 The reader of the English version of the 2005 Insurance Contracts Act may feel somewhat confused by the fact that some of the terms do not adequately correspond with the Swedish wording. One example is the Swedish word *skadeförsäkring***.** This was a quite common term already in the first Insurance Contracts Act of 1927, where Part II §§ 35-96 contained rules on skadeförsäkring only. That Act was translated into English by the same business firm as has accomplished the translation of the Act of 2005, and this firm´s corresponding words in English were *indemnity insurance***2** (cf. Swedish Commercial Legislation 1995).

As will be described in this essay, the Insurance Contracts Act of 2005 that was based on i.a. two Government reports that were prepared by the Insurance Law Committee. In the Summary of one of the reports, Personförsäkringslag, the Swedish word skadeförsäkring is translated into the English words *damage insurance* (SOU 1986:56 p. 37). The Committee later, in its final report Skadeförsäkringslag, changed views concerning the wording by using the English term *property and liability Insurance* (SOU 1989:88 p. 29).

According to the Swedish version of the Insurance Contracts Act of 2005, Ch. 1 § 1, the definition of the technical term *skadeförsäkring* means "försäkring mot ekonomisk förlust genom sakskada, ersättningsskyldighet eller ren förmögenhetsskada i övrigt", in English (roughly) financial loss due to damage of property, to liability or otherwise without involving persons or property (the English term signifying the latter kind of loss seems to be *pure economic loss*, cf. Kleineman, J., *Ren förmögenhetsskada* …, 1987 pp. 331).

In the present English version of the 2005 Insurance Contracts Act the term *liability insurance* is used to cover the kinds of financial losses – covered by "skadeförsäkring" - that were just mentioned. This is the case in different parts of the Act, like Ch. 1 Sections 1, 4, 7 and 8 as well as concerning the heading of Article two. When it comes to the provisions on collective insurance, on the other hand, the English term *property insurance* is proposed to correspond to "skadeförsäkring", see i.a. the subheading of Article four (Group Insurance) and the heading of Ch. 18 (so-called collective bargaining-based property insurance).

By obvious reasons the author of this essay has neither been entitled nor been asked to make adjustments of the translation. Hence, I have no responsibility for the result. I, however, hope that was has been said now may facilitate the understanding of the English text.

2a Section 1 contains a definition of the term "skadeförsäkring". According to that definition such insurance covers "ekonomisk förlust genom sakskada, ersättningsskyldighet eller ren förmögenhetsssskada i övrigt". I have tried to give a rough interpretation in English of the

ARTICLE TWO. Individual consumer and business insurance

Consumer insurance

Chapter 2. Information
Chapter 3. The insurance contract
Chapter 4. Limitations of the insurance company´s liability
Chapter 5. The premium
Chapter 6. Insurance indemnity
Chapter 7. Settlement of claims, etc.

Business insurance

Chapter 8. Business insurance

Third party rights

Chapter 9. Third-party rights according to the insurance contract

ARTICLE THREE. *Individual personal insurance*

Chapter 10. Information
Chapter 11. The insurance contract
Chapter 12. Limitation of the insurance company´s liability
Chapter 13. The premium
Chapter 14. Disposals of the insurance
Chapter 15. The relationship to the creditors
Chapter 16. Settlement of claims, etc.

ARTICLE FOUR. Collective insurance

Collective property and liability insurance

Chapter 17. Group property insurance
Chapter 18. Insurance based on collective agreemens

Collective personal insurance

Chapter 19. Group personal insurance
Chapter 20 Insurance based on collective agreemens

Entry into force- and transitional provisions

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expression (see footnote 2). As a nabbreviation – in line with what was proposed by the insutance Law Committee (see SOU 1989:88 p. 29) – I suggewst “property and liability insurance”.

1.2 Some Elements of the Act

Mandatory Rules and Freedom of Contract
The rules are to a great extent mandatory. As for consumer insurance (above all property and liability insurance) and insurance of persons (life, accident and sickness insurance) this is the general principle. Even concerning business insurance, where different rules apply to some extent, there are several prescriptions of that type. However, in marine insurance, transport insurance and credit isurance, there is a freedom of contract. This is also the case when it comes to labour market insurance based upon certain collective agreements.

What does the Act Regulate?
The Insurance Contracts Act mostly regulates the obligations of the parties and the sanctions if such duties are neglected. It does not describe or in other senses regulate the risks that the insurance should cover. In this respect, the insurer can freely decide upon the terms of the insurance.

How to Close a Contract
There are no requirement as to the form for closing an insurance contract. General rules of offer and acceptance apply. However, - concerning consumer insurance and insurance of persons - the insurer has a duty to inform the consumer about the terms of insurance. Further, the consumer is entitled to obtain such types of insurance that the company normally provides for the public, unless there are particular reasons for denying it.

Consequenses of Negligent Non-disclosure and Misrepresentation
Concerning the consequenses of negligent non-disclosure and misrepresentation, the Act contains a pro rata rule that is applicable to insurance of persons and business insurance. The indemnity will thus be reduced according to that. The sanction provided in consumer insurance is more flexible. The Act prescribes a discretionary reduction in case of negligent breach of the consumer´s duty to inform.

Safety Regulations
The mandatory rules concerning safety regulations in consumer insurance prescribe that the indemnity may be reduced if the insured has acted with negligence. In the case of business insurance such a case is valued by a principle on causality. In life insurance the insurer is liable even in case of suicidal death, provided that the insurance has been in force more than one year or there is no causal link between the the insurance contract and the suicide.

Delayed Payment of Premium
Also in case of delayed payment of the premium the sanctions are constructed differently according to the type of insurance, depending upon whether it is consumer or business insurance. The sanctions are much more liberal towards a careless individual who does not pay the premium in due time in consumer insurance or insurance of persons than towards somebody doing the same thing concerning business insurance.

Group Insurance and Labour Market Insurance
The provisions in the Act on group insurance and labour market insurance based upon collective agreements are quite detailed. Rules have been set up especially to protect the insured in cases where the entering into and the termination of the contract are decided not by themselves but by some representative of the members.

2 The Historical Context

2.1 Legislation on Insurance etc. in Ancient Times

Insurance as a method of solving financial problems was legally introduced in Sweden many years ago. A precursor of later legal systems of fire insurance were rules fixed in writing in the 11th century in several provincial codes (landskapslagar) regulating mutual responsibility among all people in a certain county (härad) regarding damage on real property caused by fire (brandstod)[3]. The provisions on this matter were in 1350 transferred to the first Swedish National code of laws for the rural parts of the Kingdom (Magnus Erikssons landslag) and almost 400 hundred years later - with certain amendments - a new National Code of 1734 (1734 års lag).

None of these codes did, however, contain rules on insurance in the sence that we recognize that term today. The first time legal provisions on insurance were introduced to Swedish law was when in 1667 a maritime code was enacted, which included a part dealing with maritime insurance. The code was later replaced by new maritime legislation in 1750, 1864 and 1891.[4]

In the 19th century, other kinds of insurance – like fire-insurance and life-insurance – were introduced on the market, though there was no legislation in Sweden regulating them.[5]

2.2 Regulation of Insurance since the Beginning of the 1900´s

The situation mentioned would remain until the end of the 1920´s and the introduction of the 1927 Insurance Contracts Act (lagen /1927:77/ om försäkringsavtal; see below). Before that happened, several acts with the aim of

3 Brandstod was a medieval, local, phenomenon - in some senses similar to insurance - that was arranged in the Swedish countryside and regulated in several provincial codes as well as later on in the national codes of law. *See* e.g. Eklund, R./Hemberg, W., *Lagen om försäkringsavtal*. 3 upp. 1957 p. 9 with reference to Sjöcrona, C. A., *Underdånigt betänkande med förslag till författningar angående försäkringsväsendets ordnande* (Sjöcrona), 1883, pp. 8.

4 *Cf*. prop. 2003/04:150 p. 96. Hellner, J., *Försäkringsrätt*, 2 uppl. 1965 pp. 17 contains several references to literature describing insurance business and legislation in the past.

5 The development of insurance business in Sweden since the middle of the 1700´s is described in e.g. Sjöcrona pp. 13 and *Principbetänkande rörande försäkringsväsendet* by 1945 års försäkringsutredning, SOU 1949:25 pp. 7.

regulating the supervision of insurance were introduced in 1903, 1917 and in 1948. The latter Act has also been replaced a couple of times, mainly due to EU-legislation on insurance supervision and related matters. The relevant act in this field is today the Insurance Companies Act.

By tradition, however, Swedish legislation dealing with private insurance can be devided into rules under regulatory law and rules under civil law. The main regulatory legislation is today the Insurance Companies Act, just mentioned. This article will not deal with that legislation but with civil law legislation only.

So, let us return to 1927.

2.3 The Insurance Contracts Act of 1927

Until the beginning of the 1980´s, the civil-law rules governing individual insurance were mainly contained in the Insurance Contracts Act of 1927. That Act was part of the corpus of uniform Scandinavian legislation, based on cooperation between the Nordic countries, and similar statutes came in force in Denmark, Finland and Norway. The Scandinavian Acts at that time also belonged to the same tradition as the German and Swiss Insurance Contracts Acts of 1908 and corresponding French legislation (dating from 1930).

Before the 1927 Insurance Contract Act came into force, the parties were free to decide how to designe an insurance contract. The insured person, especially if he or she was a consumer (a word that had no legal significance in those days), often had the position of the weaker part. Many a time this caused that the contract conditions became very severe to the insured.[6] The aim of the the 1927 Act was i.a. to protect the insured against such conditions. Although only those rules were mandatory that were specially stated in the statutes to be so, the number of such rules were considerable.

Nevertheless, it must be hold in mind that the Act reflected the state of things at the time when it was created. Therefore, more than 40 years later it seemed in many ways to be oldfashioned. Still, the Swedish Act remained virtually unchanged for many years.

Gradually, however, requirements for a modernization of the insurance contractual legislation were expressed. Some of the legal solutions in the Insurance Contracts Act of 1927 were crititized.[7] And a more political view was expressed: the protection of consumers was too weak.[8] These circumstances became more and more obvious in course of time.

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6 Hellner illustrates this fact with quite drastic examples in his essay *Försäkringsavtalslagen i ljuset av nyare utveckling* in Bör försäkringsavtalsrätten reformeras? 1968.

7 *Cf*. the essays collected in *Bör försäkringsavtalsrätten reformeras?* Uppsatser utg. m. anl. av Allmänna Brands 125-årsjubileum1968.

8 Already at the beginning of the 1970´s, Bengtsson was discussing the need for a reform of insurance legislation (not only contract law) in a report, dated 23.8.71, *P.M. ang. reform av försäkringslagstiftningen* (unpublished). In the report he pointed out three reasons why insurance law ought to be amended: the strenghtening of consumer protection, the need of modernization and the strong links between insurance and tort law, which was in the limelight in those days, when an act on tort liability was to be introduced in Sweden.

3 Towards a Further Improvment of Consumer Protection

In the 1960´s and 70´s, in Sweden consumer protection became a vital issue in different commercial areas where private persons in their capacity of consumers were affected (and the word consumer was, therefore, now given a legal concept).

This was the case also in the insurance sector. The Insurance Contracts Act of 1927 was by the time regarded to have un unsufficient level of protection of the insured, especially with regard to consumers, who cannot be expected to be as strict as businessmen in their compliance with insurance conditions. This aspect became increasingly politically accepted.

3.1 An Insurance Law Committee is Appointed

Hence, in 1974 a commission – the Insurance Law Committee (Försäkringsrättskommittén, FRK) - was appointed with the task of reforming the Insurance Contracts Act. In the terms of reference, the need for improved consumer protection within the field of insurance was particularly emphasized, and it was suggested that the commission should give priority to legislation on consumer insurance in its work.[9]

The idea of appointing a commission was in line with the Swedish tradition, according to which the legislative procedure normally starts by the Government appointing a person or a legislative committee of specialists and, sometimes, polititians (often members of the Swedish Riksdag, i.e. Members of Parliament). The committee has to conduct an inquiry into the matter and is then supposed to present its findings to the Government in a report (betänkande). This was the practice also in this case.

The Committee was headed by Jan Hellner, professor at Stockholm University. In addition, the Committee was originally composed of four polititians[10] and one member representing the insurance business[11]. Throughout the years during which the Committee existed (15 years) it was also assisted by experts from i.a. trade and industry, the consumer sector and trade unions.

The Committee according to the terms of reference started its work by preparing a draft Consumer Insurance Act, that should replace the Insurance Contracts Act of 1927 with regard to the principal branches of consumer insurance. A report on the issue was presented in 1977 (Konsumentförsäkringslag, SOU 1977:84). In spite of the fact that this step was in line with the terms

9 *Cf*. the report *Konsumentförsäkringslag*, SOU 1977:84, p. 19.

10 Stig Gustafsson and Anna-Greta Skantz from the Social Democratic Party *(socialdemokraterna)*, members of parliament, Gudmund Ernulf from the Liberal Party *(folkpartiet)*, former member of parliament, and Roland Larsson from the Centre Party *(centerpartiet)*, member of parliament.

11 The Swedish Association of Insurers *(Svenska försäkringsbolags riksförbund, later on Sveriges Försäkringsförbund*, Swedish Insurance Federation*)*, represented by its managing director Richard Schönmeyr.

of reference, it was criticized by certain politicians and others on the basis that cooperation between the Nordic countries should have been given priority.[12] This kind of disapproval will soon be illustrated.

The Committee´s intention was to replace the Insurance Contracts Act – except in so far as the new Act referred expressely to the earlier one – with regard to the principal branches of consumer insurance. The provisions of the Consumer Insurance Act were largerly to be mandatory for the benefit of the insured. Which branches would then the new legislation apply to?

At the time of the Insurance Law Committee´s proposal, the main consumer insurance policies that were available in the market were combined policies covering fire, burglary, liability and certain other risks.Those bransches should naturally be included. Other policies that, according to the view of the Insurance Law Committee, had to be covered by the new Act was other motor vehicle insurance than such governed by the special statutes in the Motor Traffic Liability Act, yachting insurance, accident and sickness insurance and travel insurance.[13]

3.2 The Draft Consumer Insurance Act

The proposed Act differed from the 1927 statute in its general aims, the Insurance Law Committee claimed. The Insurance Contracts Act of 1927 took as its starting point the insurance conditions prevailing at the time of its preparation and aimed at protecting the insured against the abuse of power by the insurers, as substantiated by these conditions.

The purpose of the new Consumer Insurance Act, it was claimed in the draft, was to support and facilitate the conducting of insurance business in a way that was suitable, having regard to the needs of the insurer. The kinds of insurance to which the Act was to apply were regarded as being so important to consumers in general that social considerations, similar to but not identical with those of social insurance, should influence the contents of the legislation.[14]

At the same time, it was argued, it must be borne in mind that the insurance to which the Act was to apply was private business, conducted without the support of the State or of anyone else, and that consequently the premiums must cover indemnities and costs. Considerable leeway must therefore be left to the insurers, and the differences between various branches of insurers and various risks must be taken into account.

Furthermore, the Committee added, it should not be taken for granted that every extension of cover is an improvement from the point of view of the insured, since the benefit may not be worth the cost. The Committee also

12 Similar aspects were put forward when the Government almost 30 years later proposed a new act on insurance contracts to replace the Insurance Contracts Act of 1927 and the Consumer Insurance Act. The argument was, however, not reference to Nordic cooperation but to EU-legislation that was supposed to be introduced (which has not, so far, yet been the case).

13 *Cf.* the report *Konsumentförsäkringslag* pp. 19.

14 The report *Konsumentförsäkringslag* p. 20.

underlined the fact that the economic efficiency of the insurance lagerly depends on the competition between the insurers, and the Act should – so far as such an Act can – promote such competition.

Another difference between the 1927 Act and the proposed Consumer Insurance Act related to the role of courts and administrative authorities. The proposed Act dealt with the contractual relations between insurers and insured only. The supervisory authorities enforced the Insurance Companies Act (then in force) and were not supposed to have much to do with the application of the civil law act (that is still the case).

One important exception from this principle, however, is linked to the matter of an insurer´s duty to provide consumers with information before entering an insurance contract as well as at a later stage. A second exception concerns the control of insurance conditions. Both exceptions will be illustrated below.

3.3 The Control of Insurance Conditions

An important problem that falled within the terms of reference of the Insurance Law Committee, but outside the scope of the proposed Consumer Insurance Act, concerned the control of insurance conditions.

This issue, however, turned up to be the only one where the Committee made a proposal in disunity. In the opinion of the majority of the Committee it was not sufficient that unfair conditions should be weeded out. The control should also include the requirement that insurance conditions should satisfy the interest of the insured in having suitable insurance.

The majority, hence, proposed the introduction of a special rule in the Insurance Companies Act, stating that premiums and other insurance conditions should be fair and should in other respects also satisfy the interest of the insured in having suitable insurance.

A minority favoured having only a prohibition against unconscionable terms of an insurance contract. They i.a. claimed that legal requirements concerning the design of the contract conditions was a matter that went too far.[15]

3.4 The Consultation Procedure

The report was then, according to the normal procedure when it comes to the preparation of legislation, circulated to various bodies for comments (remissförfarande): legal bodies, the insurance branch, trade and industry, consumer organizations, trade unions etc. Since the late 19th century this consultation procedure has been considered to be a very important part of the legislative process for the purpose of achieving both a high technical quality of legislative texts and preparing for general acceptance of any adopted act.

This importance is underlined by the fact that the Instrument of Government (ch. 7 art. 2) provides that in preparing of Government business, the necessary

15 The report *Konsumentförsäkringslag* pp. 269.

information and opinions shall be obtained from the public authorities and local authorities concerned. Associations and individuals shall also be given an opportunity to express their views where necessary.[16]

Opinions obtained in this consultation procedure are collected within the Government ministry responsible for the project in question.

The opinions given were in many respects very devided.[17] Trade unions and other parties representing consumers supported the ideas presented in the report. The insurance industry, as well as organizations of employers and legal institutions, were negative on the whole. One basic argument was that a reform of insurance legislation was not necessary due to the fact that the Insurance Contracts Act of 1927 did not reflect the factual situation of consumers. As a matter of fact, the consumer´s position had been improved in many ways since the Act was introduced. Furthermore, a reform in line with the proposal would be expensive for the insured.

It was also claimed that a mere change of the state of consumer insurance would create systematic legal complications that could only be avoided by a revision of the Insurance Contracts Act on the whole.

One more argument was that a national introduction in Sweden of a separate consumer insurance act would counteract the advantages of cooperation between Nordic countries that was expressed in i.a. the Insurance Contracts Act of 1927. This aspect was highlighted when at a later stage the Government draft bill on the issue was examined by the Council of Legislation (Lagrådet). The Government had, though, in the draft bill stated that the Swedish Insurance Law Committee already at a preratorial stage of work had frequent meetings with its sister committees dealing with the same legislative matter in Denmark, Finland and Norway. The Goverment also underlined that the ministry of justice, which was the govermental body that was responsible for the bill, already during the preparation of the bill had discussed the insurance law matter with collegues at the ministries of justice in the countries just mentioned.

When discussing the different opinions (in the Government bill), the Government underlined that a majority of the opinions was in favour of introducing a consumer insurance act. It found that strenghtening the position of consumers was of importance. The conclusion of the discussion about advantages and drawbacks of enacting a separate consumer insurance act was that an act ought to be introduced.[18] The formal decision of the Government, hence, in maj 1979, was to consulte the Council of Legislation.

16 The statutes in question are to be found in English in e.g. *The Constitution of Sweden. The Fundamental Laws and the Riksdag Act*, 2016.

17 Usually, the opinions in the matter on new legislation are not published systematically (due to economic considerations), but this time they were (as an annex to the Government bill, prop. 1979/80:9, *Konsumentförsäkringslag*. Bilagedel).

18 It should be mentioned that the Government deciding the bill contained of liberals *(folkpartister)* solely, with a minority base in Parliament.

3.5 The Examination by the Council on Legislation – the Peripeteia of the First part

According to provisions in ch. 8 art. 22 Instrument of Government, the Council shall examine i.a. the manner in which the draft law relates to the fundamental laws and the legal system in general, the manner in which the various provisions of the draft law relate to one another and whether the draft law is so framed that the resulting act of law may be expected to satisfy the stated purposes of the proposed law and any problems that may arise in applying the act of law.

The examination of the draft Consumer Insurance Act took place in May/June 1979[19], and the Council of Legislation presented its report in June.

It is not easy to summarize the content of the report: the Council disagreed on the matter. One member[20] opposed the whole idea of introducing a separate Swedish Consumer Insurance Act. According to him, it was a fundamental mistake to make a major change of Swedish insurance legislation without regarding mutual Nordic views. He reminded that the Insurance Contracts Act of 1927 was introduced on the basis of Nordic cooperation. He did not support any idea of regulating insurance without doing it in conformity with other Nordic countries. So, according to his view, the project should be aborted.

His collegues in the Council, two of them members of the Supreme Court[21] and the third member of the Supreme Administrative Court[22] were, however, not opposing a new Consumer Insurance Act. Yet they had some proposals – not so many and in no means of fundamental importance –with the aim of improving the Act, that need not be further commented.[23]

3.6 A Government Bill is Introduced in Parliament

The final bill to Parliament in certain details reflexes the Governments conclusions on the opinions made by the Council of Legislation. The preliminaries althogether led to a draft bill on a new Consumer Insurance Act. The next step, consequently, was the Government introducing its proposal in Parliament (Riksdagen).[24]

As indicated, all politicians did not like the proposal. Some Members of Parliament submitted motions to reject the bill. The main arguments were of two kinds. One concerned the matter on Nordic cooperation, the argument beeing

19 The proposition was reported to the Council by the government official Edvard Nilsson, later head of the legal department at the ministry of justice and, when leaving that office, member of the Supreme Court.

20 Justice of the Supreme Administrative Court, Gustaf Petrén.

21 Justices of the Supreme Court Sven Nyman and Anders Knutsson.

22 Justice of the Supreme Administrative Court Åke Martenius.

23 The opinions of the members of the Council of Legislation are all referred to in the final bill to the Parliament, prop. 1979/80:9 pp. 180.

24 The Government bill (prop. 1979/80:9) *Konsumentförsäkringslag*.

that Sweden should not introduce a separate law on consumer insurance but wait until the other Nordic countries could join us.[25] The other argument was that a reform of insurance law ought not to be limited to consumer insurance only but should include the insurance sector as a whole.[26]

The bill and Member´s motions were presented in the Chamber (kammaren) of Parliament and then referred to the Committee on Civil law (lagutskottet), one of the standing committees of the Parliament, which returned a report (betänkande) on the bill. This report submitted recommendations to the Chamber of Parliament to enact the proposed legislation.[27]

The committee report and the recommendations were debated in the Chamber and a formal vote was taken, which in this case ment that Parliament had approved that a new Consumer Insurance Act should be introduced.[28] As a last measure Parliament sent a communication to the Government.[29]

The legal drama was finalized when The Consumer Insurance Act was published in Svensk författningssamling. The Act came into force on 1 January 1981.

3.7 The 1980 Consumer Insurance Act

On the whole, the Act got the same design as was proposed by the Insurance Law Committee. In some details modifications were made according to the views presented by parties who had given their opinions at the preparatorial stage. Some amendments were also in line with suggestions from members of the Council on Legislation. Such important issues as information that shall be given to consumers or the right for a consumer to get a policy were not changed but were explitely expressed in the Act.

One important aim of creating the Consumer Insurance Act was to improve the situation of the consumer. Hence, the Act contained provisions with that ambition. The following part gives a short presentation of some of the legal solutions in the Consumer Insurance Act that differed from or had no corresponding rules in the Insurance Contracts Act of 1927.

Information

The Consumer Insurance Act contained rules concerning the duty of the insurance company to give information to the consumer at various stages, before it issued an insurance policy as well as later when a contract on insurance had been closed. Before the contract was concluded, the consumer was entitled to receive information from the insurer concerning rates and conditions for such an insurance that the insurer provided. This right should enable the consumer to

25 Mot. 1979/80:63 by Ulla Ekelund (c) and mot. 1979/80:82 by Joakim Ollén et al. (m).

26 Mot. 1979/80:82.

27 Committee report (LU) 1979/80:18.

28 Minutes (prot.) nr. 56 dec 18, 1979.

29 Notification (rskr.) 1979/80:127.

compare the rates of various insurers and also to decide what kind of insurance that met his or her own particular needs.

The Act also contained rules on information to be given at a later stage i.a. about the consumer´s possibilitis to act if there was a conflict on the insured event between him or her and the insurer.

The Right to Conclude an Insurance Contract

The Act included a provision that entitled a consumer to take out such insurance as the insurer provided, unless there were special reasons for not providing insurance. The insurer was accordingly under a duty to contract (with som exceptions).

The Duration of an Insurance Contract

Another rule prohibited the duration of an insurance contract for more than one year (with certain exceptions). The underlying idea was that at the end of the year the insured should have an opportunity to switch to an insurer who could provide insurance at a cheaper rate or on more favourable conditions.

Renewal of an Insurance Contract

In accordance with the general principle which gives the consumer a right to take out insurance which is provided by the insurer the insured was also entitled to have an insurance renewed, unless there were special reasons for refusing renewal.

The Insurers Right to Cancel the Policy Prematurely

The insurer's right to cancel the insurance contract before the end of the agreed period was strongly restricted in line with the principle on the right to conclude an insurance contract. A cancellation of the sort could be executed only in cases of gross negligance or the like.

Payment of Premiums

According to the 1927 Act, the time allowed for payment was short and the consequenses of failure to pay on due date were severe. The rules in the Consumer Insurance Act on this matter were in a couple of respects more favourable to the insured.

Firstly, the period allowed between notice of payment and the time when the premium debt falled due was extended. For the first premium period it was to be at least 14 days. For a renewal premium it was to be a month. Secondly, the consequence of non-payment of the premium would not be that the insurance cover was suspended immediately but that the insurer was entitled to cancel the insurance for the future.

Limitations of the Insurer´s Liability

The Insurance Contracts Act of 1927 contained a number of rather complicated rules that dealt with what the Insurance Law Committee called secondary duties of the insured (biförpliktelser) (the duty to pay the premium being considered to be the primary duty). In particular these rules dealt with misrepresentation and no-disclosure at the time of taking out the insurance, failure to comply with

safety regulations or similar prescriptions by the insurer, increase of risk, failure to give notice to the insurer of the occurance of the event insured, etc. The rules of the Insurance Contracts Act of 1927 were detailed, prescribing under what circumstances non-observance could lead to detrimental consequenses for the insured.

In the Consumer Insurance Act the corresponding rules were greatly simplified and loss of indemnity could be a consequense only if the insured failed to comply with the regulation intentionally or due to negligence.

The Consumer Insurance Act also contained provisions on i.a.

- under-insurance,

- double insurance,

- the settlement of losses and

- the period of limitation.

4 The Situation after the Implementation of the Consumer Insurance Act. A report drafting an Act on Insurance of Persons

The Consumer Insurance Act had been in force for 25 years when it was replaced by the 2005 Insurance Contracts Act. The reason why it was superseded was mainly not to be found in shortcomings linked to existing rules but rather to the fact that the Consumer Insurance Act had important limitations. Its scope concerned consumer insurance only. It was limited to non-personal individual damage. So, quite many forms of insurance were not covered.

These circumstanses had, as we have seen, been criticized. The instances politically responsible, the Insurance Law Committee and people who dealt with the Act after it had come into force were of course well aware of this and that the Act was an interim solution only. So, when the Insurance Law Committee had presented its proposal to a Consumer Insurance Act its next aim was to continue its work.

In the letter to the Government, where the Commission presented its draft Consumer Insurance Act, the Commission also wrote that it anticipated that its next step would be to deal with life insurance, including collective insurance.

4.1 A Political Interlude

The work of the Committee continued for a couple of years according to that statement.

As has been said earlier, members of the Committee originally partly consisted of people representing three of the political parties in Parliament: the Social Democratic Party (socialdemokraterna), the Liberal Party (folkpartiet)

and the Centre Party (centerpartiet). The chairman (at that time professor Jan Hellner) and the secretariat[30] where non-political.

The draft bill on a Consumer Insurance Act was in June 1979 presented to the Parliament by a solely liberal Government,[31] that had support by just a minority of the members of the Parliament. In practice, the Government in this matter was backed up in Parliament by the Social Democratic Party and the Left Party. A couple of months later, this Government was succeeded by one which was headed by the chairman of the Centre Party and also contained of representatives of the Liberal and Moderate parties.[32]

A matter that perhaps could seeem having no general importance was that the minister of justice of the new Government (a member of the Moderate Party)[33] in an article in Svenska Dagbladet in 1980 emphasized the importance of Nordic uniformity in the insurance sector. The minister did not inform the Insurance Law Committee in advance about his article.

Some time after this event, at the end of June 1980, professor Jan Hellner withdraw his chairmanship of the Insurance Committee [34] Three of the parlamentarian members of the Committee did the same, as well as the secretary to the Committee.[35]

Two months later, Bertil Bengtsson, Justice of the Supreme Court [36], succeeded Hellner as (non-political) chairman of the Insurance Law Committee. The Committee did not, however, meet until the end of 1982.

4.2 The Reasons for an Act on Insurance of Persons

Two basic issues that the Insurance Law Committee had to decide about was whether there was a need for new legislation on insurance on persons and, if so, if the statutes in question should form an act on their own.

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30 From start Per Assarson, succeeded by Leif Carbell and Hans Jacobson, associate judges of appeal.

31 Mr Ola Ullsten was prime minister and mr Sven Romanus minister of justice of that Government.

32 Mr Torbjörn Fälldin became prime minister for the second time.

33 Mr Håkan Winberg.

34 At the same time, the members of the Committee who represented the Socialdemocratic Party Stig Gustafsson and Anna-Greta Skanz, as well as Roland Larsson, representing the Centre Party, also resigned, cf. the interim report *Personförsäkringslag*, SOU 1986:56 pp.3.

35 *Cf. Försäkringstidningen* 8-9/80 p. 29. One of the headlines of the magazin was ”FRK har spruckit”. And the article continued: ”Ordföranden i Försäkringsrättskommittén, Jan Hellner, har tillsammans med sekreteraren Leif Carbell och tre ledamöter i kommittén lämnat sina uppdrag i protest. Bakgrunden till avhoppet är en artikel i SvD av justitieminister Håkan Winberg” etc.

36 Bertil Bengtsson was member of the Supreme Court since 1977. Before that he had been professor of law in Stockholm (1968-73) and Uppsala (1974-77). (After having retired from his office at the Supreme Court he became professor in Lund and Luleå.)

Although the Insurance Contracts Act of 1927 was generally regarded as being of a technically high quality, the Insurance Law Committee stated, the statutes appeared to be incomplete and did not provide sufficient information on the legal situation. The provisions concerning personal insurance were to a great extent very fragmentaric, a reason of which there was much uncertainty as to the state of law. That concerned i.a. matters on the disposal of the insurance and creditor´s rights.

One more disadvantage was the fact that group insurance and insurance based upon collective agreements were, according to the 1927 Act, not anticipated to exist. Both these kinds of insurance, the Committee claimed, play an essential role in the current Swedish insurance system and should, therefore, be covered by an act on insurance of persons.

Hence, there were strong reasons to replace the rules on life, accident and health insurance in the Insurance Contracts Act of 1927 with a new Insurance of Persons Act (the Committee yet reminded that The Consumer Insurance Act regulated such aspects of personal insurance that made part of a consumer´s insurance).

One other issue to consider was whether the rules on insurance of persons should constitute an act on its own. The 1927 Act contained rules on both insurance of persons and insurance of the opposite kind. There were, however, according to the Committee good reasons for regulating insurance of persons in a separate act, one beeing the fact that very many issues concerning insurance of persons had no relevance as to insurance of other kind.

Another argument for separate acts for insurance of persons and on property and liability insurance, respectively, was that some important issues linked to property and liability insurance were without relevance to insurance of persons, like certain kinds of secondary duties for the insured. So, in 1986 the Insurance Law Committee presented an interim report that contained a draft Insurance of Persons Act (delbetänkandet Personförsäkringslag, SOU 1986:56).[37]

The Committee also declared that the final part of its task would be to propose a new act on property and liability insurance that should replace both the remaining provisions dealing with these issues in the 1927 Act and those in the Consumer Insurance Act. The new act would regulate individual and collective consumer insurance as well as business insurance.[38]

4.3 The Report on a Draft Insurance of Persons Act

The proposed Act was supposed to regulate life, accident and health insurance.

One leading thought behind the rules was the individual´s need of protection against disadvantageous policy conditions. Protective legal rules were important

37 Members of the Committee when it presented the interim report were former mentioned Stig Gustafsson and Richard Schönmeyr. New members were secretary (förhandlingsombudsmannen) Sven-Olof Hägglund, representing the Social Democratic Party, and chief judge (lagmannen) Anders Palm, who represented the Moderate Party. The secretariat was composed of Hans Jacobson and Anders Beskow, both of them associated judges of appeal by that time.

38 *Cf*. the report *Personförsäkringslag* pp. 217.

in many respects, considering the great value that insurance usually has for the policyholder as well as for the members of his or her family. The policyholder´s difficulties both in penetrating what are often complicated types of insurance and in influencing the policy wording also called for such rules. From this point of view the Committee discussed the supervision of insurance conditions but stated that it did not find it necessary to suggest any compulsury advance review of the sort.

4.3.1 Individual Insurance

Some of the proposals concerning individual insurance presented in the draft were:

Information
The Committee in this matter was inspired by the Consumer Insurance Act. The report, hence, contained rules concerning the duty of the insurance company to give information at various stages in its contacts with the policyholder, similar to what was prescribed in the case of consumer insurance.

A provision without correspondance with the Consumer Insurance Act was proposed concerning significant liability of the insurance company in the event of insufficient information on essential limitations in the insurance cover. If the policyholder was not properly informed about these limitations a certain time before the insurance falled due (före försäkringsfallet), the limitation could not be invoked by the company.

The Right to Conclude an Insurance Contract and to Cansel it
The Committee proposed a rule that corresponded with that of the Consumer Insurance Act. The party applying for insurance should have an independant right to take out that kind of insurance which the actuarial technique permitted, taking into consideration the state of his or her health, etc. If there were no objective reasons for declining the application, the insurance cover should not be dependant on the insurance company`s good will. Conditions of cover should be decided on the basis of the state of health of the applicant at the time of the application (hence, a deterioration of health must not be taken into consideration).

The policyholder should be allowed to cancel the insurance policy and stop paying the premium at any time.

The Premium
The stipulations on the premium had according to the Committee been designed partially in accordance with the rules of the Consumer Insurance Act. The first premium for the policy should be paid within 14 days after the premium advice had been sent out. Subsequent premiums were to be paid on the first day of the premium period; generally, however, not until one month after a written premium advice. In connection with delay in the payment of premium, the company was free to cancel the insurance with a cancellation period of 14 days. If the premium was paid during this period, the cancellation did not take effect.

Limitations of the Insurer´s Liability

Just in line with the Consumer Insuranc Act the draft did not stipulate which kinds of risk that an insurance policy should cover, so that kept to be att matter of freedom of contract. On the other hand compulsury rules were proposed on such limitations of coverage as can arise when the policyholder or the insured has failed in the obligations to the company e.g. by not observing the duty to supply information or by causing the insurance claim. The proposal contained rules with the aim of protecting the policyholder against conditions that prescribed all too strict sanctions, which also corresponded with the Consumer Insurance Act.

When it came to information, the policyholder and the insured were obliged to provide correct and complete answers to questions from the company, but not to spontaneously provide information on particulars about which they had not been asked (fraud and similar cases excepted).

Issues relevant to insurance of persons only

There are, of course, aspects of insurance that are relevant in the scope of insurance of persons but not of such insurance that was covered by the Consumer Insurance Act. Some examples are as follows.

Unimpeachability

In the draft on insurance on persons a rule on unimpeachability (oantastbarhet) was suggested. This rule meant that, for life insurance, incorrect information could not be invoked when more than two years had passed since the policy was taken out.

Suicide, etc.

Another matter was that of causing the event insured. The most important problem in connection with life insurance was how the insurance cover should be regarded in connection with suicide. The idea expressed in the draft was that compensation should be payable in connection with suicide within a certain time after the signing of the insurance contract, only if it must be assumed that the suicide had no connection with the application for the insurance. That waiting period should be one year. When it came to an insurance that was renewed, the waiting period should start at the point when the first policy was signed and not when the insurance was renewed, a view that would cause objections.

For health and accident insurance the proposal meant that the company would be free from liability, if the insured intentionally caused the event insured. In case of gross negligence (including attemted suicide) it should be possible to reduce the compensation in accordance with an assessment of reasonableness.

Disposals of the Insurance

Life, accident and health insurances are generally disposed of through a particular legal act, a so called beneficiary clause (förmånsrättsförordnande) whereby the policyholder indicates who skall receive the sum insured (or become owner of the insurance policy after the policyholder).

Creditor´s Rights

This is a matter that has its greatest practical significance in connection with life insurance. The need of security for the policyholder and his survivors demands that the insurance policy, as well as the compensation payable, to a certain extent be protected against seizure.

The Committee proposed one solution before the insurance falls due and another one after the insurance has fallen due. In the first case a life insurance policy should be protected against seizure if it covered the life of the policyholder or his spouse and the premium payments were relatively evenly distributed over time. If too large premium sums had been paid, seizure should only apply to the sum in excess of the premium just referred to. – After the insurance has fallen due, the insurance policy and the payable compensation should to a certain extent be protected against seizure, the prerequisites being that the party to receive the amount payable needed it for his or her support and that the insured supported or was liable to support the entitled party before the insurance fell due.

4.3.2 Group Insurance

In group insurance, consumer protection to a certain extent is guaranteed since the policy conditions are most often negotiated by representatives for the group, whose expert knowledge and ability to protect the interests of the members widely surpass those of the ordinary consumer, but there was still, however, a significant area where legislation seemed justified, the Committee claimed. The proposed Act, therefore, contained a number of special rules regarding group insurance, which had no counterpart i the 1927 Insurance Contracts Act.

The Committee reminded of the fact that there is an important dividing line between voluntary group insurances, where the members themselves decide on their participation, and mandatory group insurances, where the members are automatically included in the insurance.

Where voluntary group insurance was concerned, the proposal meant that the member should always by protected by a right to terminate the insurance at any time. And in connection with mandatory insurance, the member should not be obliged to pay a premium to the company.

Closely connected with this issue was the fact that in the Committee´s view insurance legislation should regulate only the relations of the insured to the insurance company. His or her legal relations to the party arranging for the group insurance – e.g. an organization to which they belonged – falled within the sphere of association or labour law.

Information to group members the Committee regarded beeing an important issue. Hence, the proposal contained provisions on what information that the company ought to provide to members of the group.

4.3.3 Insurance based on Collective Agreements

Another kind of collective insurance besides group insurance is insurances based on collective agreements in the labour market. The Committee saw it as an important task to indicate the place of these insurances in the system of insurance law and to give the support of legislation to certain constructions and policy conditions which differed from what was otherwise common.

4.3.4 Nordic Co-operation

Already from the beginning and throughout the years, the Commission had several meetings with committees in Finland and Norway that were also drafting legislation on insurance of persons. The Norwegian committee presented a proposal in 1983 and the Finnish ministry of justice in 1985 did so as well.

4.4 Dissentients

As was the case concerning the Committee´s proposal on an Consumer Insurance Act, the representatives of the insurance industry opposed on certain parts of the Committee´s proposal. Yet, the criticism also at this time was quite modest. Furthermore, it was limited to three questions.

The first one related to the proposal that even in cases where the policyholder or the insured did not provide correct and complete answers to questions from the company due to fraud and behaviour in conflict with good faith and honour, the company should not bee free of liability if that would lead to a result that was obiously unreasonable to the policyholder or the beneficiary. According to the insurance industry such a principle would be contrary to general rules on voidness of contracts (avtals ogiltighet). The legislation ought not encourage acts of illoyalty.

The insurance branch did not accept the proposed rule om unimpeachability that for life insurance meant that incorrect information could not be invoked when more than two years had passed since the policy was taken out, with certain exceptions. That would give unserious persons supplying false information an advantage to the serious.

Another matter where the insurance industry disliked the solution proposed was linked to the matter of causing the event insured, i.e. suicide. The insurance industry claimed that renewal should be treated in the same way as when an insurance policy had beed signed for the first time. Thus, the waiting time should start when the first policy was signed. One argument was that it is more simple for a person intending to comit suicide to renew an already existing insurance than to sign a new contract.

4.5 The Consultation Procedure

Also this time the report was circulated to different bodies for comments.[39] The vast majority of those giving opinions were positive to the idea of legislating the area of insurance of persons. Some of the bodies were, however, critical to certain aspects of it. In many senses the views were similar to those expressed earlier when the Consumer Insurance Act was proposed. Not surprisingly, the critics were elaborated along similar lines as when that Act was discussed.

5 The Report on a Draft Act on Property and Liability Insurance Contracts

Now, when the Committee had finalized its Draft Insurance of Persons Act it had since some time worked on the next item, an act on damage and liability. There were already provisions on the matter, not only those of the Insurance Contracts Act of 1927 but also quite modern rules in the Consumer Insurance Act of 1980. Why did the Committee have concerns on that subject?

5.1 The Reasons for an Act on Property and Liability Insurance

Also in the case of insurance on property and liability the Insurance Law Committee discussed the need of new legislation. One general consideration underlying its proposal (see below) was – as was also the aim behind the former two reports – to strenghten the position of consumers. Another important directive was to modernise insurance legislation.

The need of modernisation was particularly pressing when it came to the reform of rules concerning business insurance. The Committee claimed that developments in the sphere of business and technology had meant that even a piece of legislation of such a high standard as the Insurance Contracts Act from 1927 had come to appear out of date in many respects during the more than 60 years it had been in force. According to the Committee, the mandatory rules in the Insurance Contracts Act restricted the scope for creating new insurance products and for adapting insurance policies to new risks and new insurance needs. The Committee also stressed the increased internationalisation of business insurance, which made it necessary to adapt Swedish insurance to trends abroad. The extended Swedish participation in the general EU-project was mentioned too.

One more issue that the Committee also had to face was how far the provisions of the Property and Liability Insurance Contracts Act should be mandatory for the benefit of the insured. It seemed clear that consumer insurance must still lagerly conform to mandatory rules. The real problem concerned business insurance. It was evident that big business did not need cover against

39 A summary of the comments is to be found in *Remissammanställning.* Betänkandet (SOU 1986:56) Personförsäkringslag (ministry of justice´s file nr. 87-880).

exessively burdensome rules contained in the contract. On the other hand, there were certain groups of small businessmen – farmers, craftsmen, hairdressers, etc. – who were comparable to consumers from various points of view.

However, the Committee concluded, it had proved impossible to find any acceptable, precise and, at the same time, objective limits to the mandatory provisions in the business insurance sector. References in legislation to the size of the insured business or the property´s value had been considered liable to lead to unsuitable results in many cases. The solution that the Committee finally adopted meant that the regulation of business insurance would be discretionary.

5.2 The Draft Property and Liability Insurance Contracts Act

Three years after having issued the report on insurance of persons the Insuranc Law Committee presented its final report that concerned property and liability insurance (slutbetänkandet Skadeförsäkringslag, SOU 1989:88).

The Insurance Law Committee´s idea was that The Property and Liability Insurance Contracts Act together with the Insurance of Persons Act should supersede both the Insurance Contracts Act and the Consumer Insurance Act. The Act was aimed to apply to insurance for both companies and consumers. It should contain provisions on individual insurance as well as on group insurance and insurance based on collective agreements.

5.2.1 Individual Insurance

The main ideas presented in the draft were these.

Information
As with the Consumer Insurance Act and the draft Insurance of Persons Act, the Property and Liability Insurance Contracts Act contained rules concerning the insurance company´s duty of disclosing information at various stages. The rules were drawn up in such a way as to cover the considerably smaller information needs for certain business-insurance policies.

The Right to Conclude an Insurance Contract and to Cancel it
For consumer insurance the provisions in the report were in broad agreement with those of the Consumer Insurance Act. The Committee proposed that the consumer be entitled to obtain insurance that the company normally provides for the public, unless there were special reasons against it.

The right to cancel the policy prematurely was, on the company´s part, limited to cases of gross breach of contract committed by the policyholder or where other special reasons exist. The consumer was, on the other hand, entiteled to cancel the policy prematurely on certain more favourable occations.

As for business insurance, it was not considered suitable to introduce any rights corresponding to those of consumers.

Premiums
With respect to payment of premiums, the draft Act was closely connected with the arrangement laid down by the Consumer Insurance Act and proposed in the Insurance of Persons Act.

Insurance Indemnity
According to the proposal, indemnity should in principle correspond to the the financial loss, even if the agreed sum was larger.

Limitations of the Insurer´s Liability
The Committee did not consider that the new Act should determine which risks a policy should cover. Here, contractual freedom should prevail, in line with what had been suggested in the former reports.

The Committee, however, proposed regulations (similar to what had been put forward in earlier cases) concerning limitations that may be based on the failure of the policyholder or the insured to meet his or her obligations towards the insurer, e.g. by neglecting the duty of disclosure or causing the event insured against.

Where the duty of disclosure was concerned, the rules were largely connected with the system of the Consumer Insurance Act. With respect to causing the event insured against, the insurance company would not be liable when the insured had done it intentionally.

Also in certain cases when the reason to the loss or damage was negligence the insured was entitled to reduced indemnity. In some cases the insurer had no responsibility at all.

With respect to contravention of safety regulations it should be possible to reduce the indemnity on a discretionary basis.

As was the case according to the Consumer Insurance Act, the draft also contained certain general rules concerning identification, i.e. the insurance company´s right to invoke contravention of an incidentical obligation by persons other than the insured, such as family members or employees.

Third Parties Rights according to Insurance Contracts
The Committee´s proposal specified only some categories of persons who were covered by the policy, besides the policyholder: the owner of the property; anyone who had purchased the property on credit with a cancellation clause; a creditor with a special preferential right according to the Preferential Rights Act (förmånsrättslagen), anyone else who otherwise, without beeing the owner, beared the risk of the property on its transfer. If the intention was for other interested to be covered as well, this must be specified in the conditions.

Direct Claims
The draft Act also regulated the rights of the injured party conferred by liability insurance. This form of insurance, the Committee claimed, was increasingly regarded as cover for not only the insured but the injured party as well. Consequently, the Committee proposed a right for the latter to claim direct from the insurance company the indemnity that was payable according to the contract.

The rule concerning direct claims was intended to be mandatory for consumer insurance, where the injured party´s interest in dealing direct with the insurance company was supposed to be greatest. In business insurance, on the other hand, it was discretionary except in the case of compulsury insurance and when the insured, owing to bankruptcy or the like, was unable to pay compensation.

5.2.2 Group Insurance

The legislation of group insurance within the field of property and liability insurance was something quite new when introduced in the proposal. In many respects the proposed provisions were, however, similar to those proposed in the Committe´s report on insurance of persons.

5.2.3 Insurance Based on Collective Agreements

What is recently said about group insurance in this field mainly goes for property and liability insurance based on collective agreements.

5.2.4 Nordic Cooperation

A fact that was stressed upon by the Committee was that the Committee´s reports had been drawn up in Nordic co-operation. The draft acts on property and liability insurance submitted in Finland, Norway and Sweden were based on the same reasoning and lagerly corresponded with one another.

5.3 Dissentients

The representative of the insurance industry was not fully satisfied with the Committee´s proposals. One issue that was critiziced was the idea that the insurer should bear a responsibility of private law nature for failures when giving information before an insurance contract has concluded.

One other target for criticism related to the length of the period during which the insured was entitled to revoke the contract in certain cases. A third point of disagreement concerned, as it was regarded by the insurance branch, the liberal rules in favour of the insured giving him or her a right to indemnity even in som cases where the loss or damage was caused by him or her by quite a high degree of negligence.

Finally, the representative of the insurance sector also criticized the idea of direct action, but for som very limited situations.

5.4 The Consultation Procedure

The Insurance Law Committee´s report proposing a Property and Liability Insurance Contracts Act of 1989 was, like the former reports on legislation relating to consumer insurance and to insurance of persons, sent out for consultation.[40]

6 The Ministry report on an Act covering Insurance of Persons as well as Property and Liability

Time passed and no proposal for a new act on insurance contracts was presented for Parliament. So, the ministry of justice decided to make an updated investigation to find out how to design a modern act on the subject.[41] The main reasons why the investigation was carried out were, it was stated in the report, the internationalization of the insurance market and the attempts within the EU to harmonize insurance legislation (attempts that have so far, 25 years later, resulted in failure).

6.1 The Report on New Insurance Contract Legislation

The result of the investigation was presented in the ministry report A new Insurance Contracts Act (Ny försäkringsavtalslag, Ds 1993:39). The ministry report was in many senses based on the two former reports (Personförsäkringslag and Skadeförsäkringslag,).

Yet, it was emphasized that the requirements for new legislation in the area had partly been changed. In the terms of reference given to the governmental officials who were appointed to make the investigation[42], some changes in the insurance world were specially pointed out. One was called ”the general European development” (referring, of course, to the European Commission´s efforts to work out directives on legislation on insurance contracts). The EU-directives on insurance that existed at that time had mainly the character of regulatory but not civil law. Nevertheless, some rules on i.a. information that the policyholder shall be provided with according to the third Council non-life and third life directives, respectively,[43] were later on included in the Insurance Contracts Act of 2005.

Another issue that was mentioned in the ministry report was the introduction of new insurance products on life- and non-life insurance (that might have been

40 A review of the answers are printed in the report *Remissammanställning*. Betänkandet (1989:88) Skadeförsäkringslag. 1992-11-18 (the ministry of justice´s file nr. 89-3379).

41 The ministry of justice was at the time headed by Mrs.Gun Hellsvik of the Moderate Party.

42 At this time no committee was set up, so the investigation was made by governmental officals, i.a. the associate judge of appeal Per-Anders Broqvist, and people otherwise linked to the project, i.a. professor Bertil Bengtsson.

43 Council Directive 92/49/EEC and Council Directive 92/96/EEC.

a reference to i.a. so called unit-link insurance). It was also claimed that new ideas and values concerning the importance and impact of insurance had to be regarded. One reflexion of this was the fact that especially when it came to business insurance, the insurer must have greater freedom to design an insurance according to his or her mind than was allowed by existing legislation and according to the proposals presented by the Insurance Law Committee.

At the same time, the report stressed the importance of strenghtening the position of consumers and of modernizing especially the rules concerning the insurance of persons. One more area that had to be regulated was that of collective insurance. The most radical new idea of the ministry report was that of presenting a draft Act covering both insurance of persons and property and liability insurance.

6.2 The Consultation Procedure

The report was as usual sent for consultation to different bodies, and more than 50 of them gave their opinions.[44]

7 Supplementary Work

As a consequence of the fact that quite som time passed before a final Draft Insurance Contract Act could be presented to Parliament, a quite intensive preparatory work was carried out after the reports had been presented. The ministry of justice arranged frequent meetings with working groups where representatives of the insurance industry were participaiting as well as i.a. members of governmental bodies. The ministry also arranged a hearing with the aim of examining the need for new insurance contract legislation.

8 The Report on Insurance Law in Certain Countries Outside the Nordic Countries

On behalf of the Swedish ministry of justice professor Bill W. Dufwa carried out a review of insurance contract law legislation in some countries outside the Nordic countries. The aim was to broaden the base for new legislation. A summit of the review is part of the Government bill.[45]

Professor Dufwas presentation referred to legislation in Germany, the United Kingdom, France, Italy, Spain, Poland, the Netherlands, Greece, Portugal, Belgium, Austria and Luxemburg.

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44 The bodies in question are listed in prop. 2003/04:150 p. 836. The opinions and a compilation are available in the ministy of justice´s file nr Ju93/2420/L2.

45 *See* prop. 2003/04:150 pp. 837.

9 The Preparation of a Draft Act

Within the ministry of justice, the work on an Act on insurance contracts went on. Quite a lot of people were engaged, not least from the outside: the insurance branche, consumers, trade etc. The urgency of having the project finalized became increasingly stronger. The ministry´s ambition was also to come to an end. As usual, when it comes to legislation in Sweden, that end must, however, be based oncurrent and relevant facts.

So the work went on.

9.1 A Preliminary Draft Act sent on Consultation

With the purpose of completing the background papers, a preliminary draft Act aimed at later on beeing sent to the Council of Legislation was in 2002 sent on consultation to various bodies.[46] The majority of these expressed views only with regard to minor details.

The Swedish Insurance Federation, however, was very critical and opposed the idea of launching new legislation of the kind proposed. According to the organization, the Act did not adequately reflex the factual situation of the insurance market in Sweden. Additionally, it did regulate the market to much in detail. A reform would also be to expensive, which should have an influence on the premiums. From an international point of view, it would be negative to introduce a new Act on insurance contracts with respect to the aims of harmonizing contract law on an European level that had been expressed.

The Government did not find these arguments convincing (within the EU, for example, there was no ungoing work aiming at a common civil legislation on insurance law). So, this oppositon did not hinder the Government from continuing its legislative work.

9.2 The Committee on Personal Injuries

In its work, the ministry of justice also treated a proposal from a committee, The Personal Injuries Committee (Personskadekommittén), that had been examining the matter on subrogation.[47] The committee proposed that the legislation on insurance on property and liability should be in line with the well-established practice of insurers. That ment that concerning this kind of insurance the insurers should be fully free to subrogate insurance paid out from persons causing the damages. Concerning insurance of persons the insurers should have a right to subrogate only for an amount that corresponded to the real costs on the insured´s side.[48]

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46 Additional information can be found in prop. 2003/04:150 at p. 95.

47 The committee accounted for its considerations in the report *Samordning och regress. Ersättning vid personskada* (SOU 2002:1).

48 *See* prop. 2003/04:150 pp. 205 and 312.

9.3 The Opinion of the Council of Legislation

According to the law-making tradition, the Council of Legislation is requested to examine draft acts before they are introduced to Parliament. As a matter of fact the examination of The Council of Legislation shall, among other things, aim at the way in which the proposal relates to the fundamental laws and the legal system in general and what problems are likely to arise in applying the law.[49] In May 2003 the Government decided to request the Council of Legislation to give its opinion about the final Draft Act on Insurance Contracts. The Draft Act was, hence, sent to the Council of Legislation and also orally presented to the Council by i.a. officials at the ministry of justice.[50]

The outcome of the examination of the Council of Legislation was presented to the Government on 19 December 2003.[51] The Council´s views were unanimous (according to what is normal; the disunion between members of the Council of Legislation that was expressed in 1979 when it examined the Draft Consumer Insurance Act was something quite exceptonal).

The opinion of the Council concerned a various number of issues, some of a quite technical carachter and others with a bearing on principles. A small and in many ways incomplete choice of the Council´s suggestions will be referred here as an illustration of ideas that the Council addressed to the Government.

The Preparation of the Draft Act

Initially the Council discussed the matter whether the Draft Act had been satisfyingly prepared, considering the fact that two of the fundaments of the Act – the reports by the Insurance Committee on insurance of persons and on insurance on property and liability, respectively – were quite old. However, the Council stated, additional work had been carried out after that in the form of meetings in working groups and in other ways. Not least important was that the insurance industry had been given the opportunity to express its views and give information about the current situation within the insurance field.

Arguments against a New Act

As a second point, the Council discussed the arguments against new insurance contract legislation that the Swedish Insurance Federation had repeatedly brought forward (see above ”A Preliminary Draft Act . . . ”).[52] The only

49 Instrument of Government Ch. 8 art. 21.

50 The oral information on the draft bill started on 1 September and continued until 21 November 2003 three or four days a week. The officials providing oral information on the proposal were Bertil Bengtsson (three days), associated judge of appeal Thomas Ericsson (one day) and the author of this article (most of the days).

51 Members of the Council of Legislation were Justices of the Supreme Court Staffan Magnusson and Torgny Håstad and the Justice of the Supreme Administrative Court Bengt-Åke Nilsson. - The opinion of the Council of Legislation is to be found in appendix 17 of prop. 2003/04:150.

52 The Federation expressed these arguments directly to the Council in a paper sent to it before the ministry of justice started the oral presentation of the draft proposal, cf. prop. 2003/04:150 p. 95 and p. 1051.

argument that the Council treated more deeply was that concerning a possible conflict between the suggested legislation and EU-law. The Federation claimed that the harmonization of privat insurance law within the EU that was to be expected quite soon ought to be a hindrance to Sweden of introducing new national legislation. The Council, however, accepted the views on this matter that the Government presented and did not find that the Federation´s argument was reason not to introduce the proposed Act. The arguments against the new Act that the Federation provided besides those on EU-law were also rejected by the Council.

Matters on Property and Liability are treated Separated
Another principal issue that the Council paid certain attention to was the fact that the Act treated matters on property and liability insurance separate from insurance of persons. According to the Council, this method had certain obvious drawbacks, i.a. that many provisions were repetead frequently and the Act thereby became cumbersome.

The division between Consumer and Business Insurance
Furthermore, when it comes to property and liability insurance the division between consumer and non-consumer insurance must also be questionned. This made the Act more extensive than would be necessary.

In spite of its objections, the Council of Legislation still regarded that the proposed Act was well aimed to form an acceptable basis for new legislation. According to the Council, several adjustments of the Act ought, nevertheless, to be done, and these were also pointed out. Some of the Council's comments will now be outlined.

Information
One comment made by the Committee concerned the information that a consumer is entitled to receive and the consequenses of the loss of that right. As to consumer insurance legislation, there were already in those days rules – in the Consumer Insurance Act - partly regulating this phenomenon. They had, thus, only an administrative character.

The new Insurance Contracts Act was supposed to include a private law rule, saying that if the consumer had not prior entering the contract been informed about conditions of certain importance, the conditions were void. This regulation was strongly criticized by the Insurance Federation, but the Commission found that legal solution beeing a quite natural one and, hence, supported it. Provisions of the kind were, therefore, included in the Act (Ch 2, § 8 and Ch 10, § 9).

Statutes of Limitations
The statutes of limitations (preskription) that were suggested in the draft (Ch 7, § 4 and Ch 16 § 5) had the same factual content as those in the 1927 Insurance Contracts Act and the Consumer Insurance Act. In the Draft Act, the Government claimed that there were good reasons for modernising the rules on limitation but that this could not be done before the matter had been examined more thoroughly.

Many organizations and other bodies that had received the reports of the Insurance Law Committee for consultation criticized this fact, claiming that the provisions in many senses were too unfavourable for the insured. The Council of Legislation was also critical on the same grounds but accepted the reasons that the Government had presented and approved the proposed statutes as a provisional solution.[53]

Right to Insurance

According to the Draft Act an individual seeking insurance cover should be entitled to sign a consumer insurance contract with an insurance company which provides the public the kind of insurance that he or she wants. This principle was in the case of consumer insurance introduced in Sweden already in the Consumer Insurance Act (today that principle is to be found in the Insurance Contracts Act Ch. 3 § 1). In the Draft Act it was suggested that someone who wishes to contract on an insurance of persons should have the same right. That idea had been critizised by i.a. the insurance industry. The Council of Legislation, however, did not make any objections to it. Now there is a provision which entitles the person in question to sign such a contract (Ch. 11 § 1).

9.4 A Government Bill is Introduced in Parliament

After having considered the opinions of the Council of Legislation and made amendments in the draft proposal according to the Council´s suggestions (i.e. many but not all of them), a Government bill was submitted to Parliament.[54]

9.5 Discussions in Media

Matters on insurance are in many senses very technical, and it is often not easy to grip the political aspects that might be implicated in different solutions that insurance, insurance law and insurance contracts may offer. Insurance as protective means can be utmost important in cases where different kinds of unfortunate situations – sickness, accidents, age (sic!) etc. – occur. Any person may be the target of such situations, the character of which may in various situations differ greatly. That also means that loss of insurance cover in an individual case can be very expensive, and not only when it comes to money.

During all the years while the new insurance contract Act was processed these aspects were hardly not at all observed in the public debate. On the whole, the debate was unintense and most arguments reflected what the insurance sector already had said in connection with the presentation of the reports by the Insurance Law Committee.

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53 Some years later the provisions in question were changed. The basis for the amendments was an examination of the issue of limitation that was referred in the Government report *Preskription av rätt till försäkringsersättning m.m.* (Ds 2011:10) followed up by prop. 2012/13:168 *Preskription och information i försäkringssammanhang*. Related statutes are Ch. 7 § 4. Ch. 8 § 20, Ch. 16 § 5, Ch. 17 § 22, Ch. 18 § 4, Ch. 19§ 26 and Ch. 20 §15.

54 Prop. 2003/04:150 Ny försäkringsavtalslag.

When the final draft proposal had been reported to Parliament, for a while there was a debate in the newspapers on the question whether or not a new Insurance Contracts Act designed in line with the bill would be in conflict with work within the insurance field that was carried out by the European Commission.[55]

9.6 The Parliament´s Opinion

The Government bill was based on an agreement between the Social Democratic Government and the Left Party (vänsterpartiet), a fact that of course was reflected when it was debated in Parliament. Some Members of Parliament submitted motions, a couple of which objecting the entire proposal and another just certain parts of it. The criticism was numerous but devided.

Some members of the oppositional parties made private motions (motioner) with the purport of having the bill cancelled.

The proposed bill was firstly as usual reported to the Chamber of Parliament and then, in this case, sent to the Committee on Civil Law. The thorough, heavy work in Parliament when it comes to the examination of Government bills lies in practice on the committee in question.

Members of the Moderate Party had the opinion that the proposed legislation would make the lifes of policyholders more complicated. They also lacked a new regulation on limitation and were i.a. quite negative to the statutes that would make people entitled to contract new personal insurance.[56]

Members of the Centre Party, who were also objecting the entire proposal, claimed that the statutes that regulate business should be more similar to those covering consumer insurance. They also wanted the Act to include a provision that states that contract conditions that are discriminating should be void.[57]

Also members of the Liberal Party – a party that 25 years earlier submitted to Parliament a bill on the Consumer Insurance Act – objected to the proposal, claiming (like other politicians too) that it was to badly preparated. They also made other objections to the bill.[58]

Members of the Christian Democrats, a party that in the end would support the bill (with one exception) were, however, critical to the statutes on group insurance and objected to the bill in that part only.[59]

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55 Some of the persons debating this question belonged to the insurance industry. Two others were the professors of law Ulf Bernitz (*Dagens Industri* 13 June 2003) and Bill W. Dufwa (*Svenska Dagbladet* 16 July 2003, commenting on an editorial article in that newspaper 30 June, and *Dagens Industri* 13 August the same year). Bernitz claimed that the the Govenment bill was not adapted to the fast harmonization of legislation on insurance within the European Union. Dufwa, on the other hand, supported the bill.

56 Mot. 2004/05:L2 by Inger Rene´ et al.

57 Mot. 2004/05:L3 by Viviann Gerdin et al.

58 Mot. 2004/05:L4 by Mia Franzén et al.

59 Mot. 2004/05:L1 by Yvonne Andersson et al.

The majority of the members of the Committee on Civil Law voted in favour of the bill.[60] When they became a minority in the Committee, members of three parties (the Moderate, the Liberal and the Centre parties) submitted a joint reservation where they objected to the entire proposal.[61]

During the parlamentarial session there were also discussions outside Parliament between government officials (from the ministry of justice) and parliamentarians from different parties, especially the Social Democratic Party and the Christian Democrats.[62]

The debate in the Chamber became quite intense. Members of Parliament from the Social Democratic Party and the Left Party, as well as from the Green Party, supported the Government bill. Also the Christian Democrats did so but for the chapters on group insurance. The party was of the opinion that to lot of people group insurance is of greatest importance. But it feared that the new Insurance Contracts Act could make group insurance too expensive with the effect that it would stop to exist. – Concerning the question if somebody wanting a personal insurance should be entitled to enter an insurance contract in certain cases, the party was very positive.

The outcome of Parliament´s treatment of the bill was that it was approved by a majority.[63] Thereby it was clear that a new Insurance Contracts Act should be introduced.

10 The 2005 Insurance Contracts Act

The new Act entered into force on 1 January 2006.

60 Committee report (LU) 2004/05:4 Ny försäkringsavtalslag.

61 Committee report (LU) 2004/05:4 Res. by Inger René (m), Jan Ertsborn (fp), Bertil Kjellberg (m), Viviann Gerdin (c), Henrik von Sydow (m) and Mia Franzén (fp).

62 During the treatment of the proposed bill in and outside the Parliament, the latter party seemed to be the only party amongst the non-socialist parties that would vote for the bill.

63 Minutes (prot.) nr. 77 16 feb. 2005 and notification (rskr.) 2004/05:160.