

# Regulation of Insurance in the New Czech Civil Code

Petr Dobiáš

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## 1 Introduction

Until 1 January 2014, the legislation on contract insurance was contained in Czech law in Act No. 37/2004 Coll. (hereinafter referred to as the “ICA“), which was applied as special regulation preferentially to Act No. 40/1964 Coll., the Civil Code. The New Civil Code<sup>1</sup> (Act No. 89/2012 Coll., the Civil Code – the provisions regulating insurance are contained in Sections 2758 to 2872), entered into force in the Czech Republic as of 1 January 2014. The legal regulation of insurance is therefore reintroduced into the NCC, with the justification report arguing in favour of integrating the legislation of insurance contracts into civil law codification in line with the foreign model.<sup>2</sup> The subject of comparison will be the German Insurance Contract Act of 2008 (hereinafter referred to as the “GICA“), which, on the contrary, is based on a concept of the separate legal regulation of insurance contracts. This act was also one of the models used in drafting the legal regulation of insurance in the NCC.

Given its limited scope, this contribution shall contain an analysis of selected institutes (insurance contract, insurable interest, culpable loss event, insurance premium, termination of insurance by notice and change of insurance risk) from the field of insurance contract law.

The analysis is not limited to voluntary contract insurance, but also includes a brief discussion on the specifics of compulsory insurance (legislation regulating compulsory insurance of members of professional chambers, building contractors or transport operators etc.).

## 2 Insurance Contract

### 2.1 Definition of an Insurance Contract

The definition of an insurance contract can be found in Section 2758(1) of the NCC, which provides that “under an insurance contract, the insurer undertakes to provide the policyholder or a third party a benefit if an accidental event covered by the insurance (insured event) occurs, and the policyholder undertakes to pay the insurer a premium“. An insurance contract must be in writing only if the insurance is negotiated for at least one year. If an insurance contract has not been concluded in writing, more information will need to be provided in the contract confirmation (insurance policy) than in the case where the contract has a written form (Section 2777 of the NCC). From the definition of an insurance contract in Czech law, it follows that Czech legislators allow the negotiation of an insurance contract in favour of a third person (Section 2767 to 2768 of the NCC).

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1 Hereinafter referred to as the “NCC”.

2 See, e.g. legal regulation in Italy (Art. 1887 to 1932 Codice civile 1942), Quebec (Art. 2389 to 2628 Code civil du Québec 1991), Lithuania (Art. 6.978 to 6.1018 Civilinis kodeksas 2000) or Russia (Art. 927 to 970 Civil code of the Russian Federation).

Section 6 of the GICA stipulates that the insurer must advise the policyholder when concluding the insurance contract so that the contract meets the needs and wishes of the policyholder. If the insurer breaches this obligation, he will be liable to indemnify the policyholder for any loss or damage resulting thereto. The NCC does not contain a similar provision. The information duty of the insurer towards the policyholder prior to the conclusion of the contract is determined by the Federal Ministry of Finance on the basis of an explicit authorisation contained in Section 7 of the GICA.

## 2.2 *Content Particulars of an Insurance Contract*

The compulsory particulars of a policy and insurance contract are regulated by Section 2777 of the NCC. The NCC takes the formal obligation to familiarise the policyholder with the general insurance terms and conditions stipulated in Section 4(4) of the ICA and includes it as part of Section 2774(2). The provisions of Section 2767 of the NCC are based on the fact that, in the case of insuring a third party insurance risk, a policyholder has the obligation of informing the third party/insured of the contents of the contract. If a policyholder concludes a contract in favour of a beneficiary, he/she has the obligation to request his/her consent prior to the conclusion of the insurance contract (Section 2826(1) of the NCC). However, Section 2827 of the NCC, a special provision regulating group insurance, does not oblige the policyholder to familiarise the members of the group with the contents of the insurance contract and to seek their consent for the conclusion of the contract.

A policy, or the insurance contract, as the case may be, must contain the particulars according to Section 2777 of the NCC, because, according to Section 2778 of the NCC, it is not possible to deviate from Section 2777 of the NCC.

## 2.3 *Representation when Concluding an Insurance Contract*

Sections 2758 to 2872 of the NCC does not contain a special provision for the event of representation when concluding an insurance contract and therefore Section 436 of the NCC applies, which states that “if the agent is acting in good faith or if he/she ought to have known about a certain circumstance, this fact shall also be taken into account in the case of the party being represented“. Here, the Czech legal regulation gives greater protection, *prima facie*, to policyholder and the insured, when it imposes in Section 2788 of the NCC the duty to make true statements on the basis of the insurer’s written questions. However, it should be noted that in the event of a breach of the duty to make true statements, the insurer has the right, pursuant to Section 2808(1) of the NCC, to withdraw from the contract within two months [in comparison, Article 21(1) of the GICA sets a one-month deadline]. A similar approach is taken by the German legislators (in Section 19(3) of the GICA), allowing the insurer to withdraw from the contract if the policyholder has breached the notification duty intentionally or by gross negligence. The text of Section 2808 of the NCC

contains culpability in the form of intent or negligence – meaning that culpability in the form of unintentional negligence is sufficient.<sup>3</sup>

## 2.4 *Insurable Interest*

The NCC formulates the term insurable interest in a new way in Section 2761 of the NCC and affords it much greater significance than is the case in the ICA. Insurable interest means the legitimate need to protect against the consequences of an insured event. The GICA does not define the term insurable interest.

The insurance contract is invalid if the interested party did not have an insurable interest and the insurer knew or ought to have known about it at the conclusion of the contract. This regulation appears to be based on the Section 68 (1) Austrian Insurance Contract Act 1958, according to which, in such a case, the insurer is not entitled to reimbursement of premiums or remuneration. If a policyholder has consciously insured a non-existent insurable interest, the insurance contract is invalid, assuming that the insurer did not know of this or could not have known of it. The GICA contains almost the same provision in Section 80(3), with one fundamental difference. A contract is invalid, should a policyholder want to gain an “unlawful property benefit“ by way of concluding the insurance contract. Thus, as a general rule, Czech legislation makes a distinction in Section 2764 of the NCC between a situation when an insurer knew or did not know of the non-existence of insurable interest at the time of the insurance contract being concluded.

Under Section 2810 of the NCC, in the event of the insurable interest expiring during the course of the insurance, the insurance contract shall likewise terminate. The ICA did not contain such sanction mechanisms. The introduction of the institute of insurable interest into the NCC is intended to prevent the misuse of insurance for speculative purposes.<sup>4</sup> A case of speculative insurance, which would not be permitted under the NCC, would, for example, be the insurance of a bet. The insurable interest is defined more closely according to (Section 2762) whether the insurance covers persons or property (Section 2763). In case of property insurance, it is also possible to insure a future insurable interest. In the event that the insurable interest does not arise, the policyholder need not pay the insurance premium or remuneration to the insurer, unless the remuneration has also been agreed for this case.

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3 See also Dobiáš in Pražák, Zbyněk; Fiala, Josef; Handlar Jiří et al., *Závazky z právních jednání podle občanského zákoníku*, Leges, Praha 2017, p. 1536.

4 See, e.g. Bohman, Ludvík, Wawerková, Magdalena, *Zákon o pojistné smlouvě – komentář*, Linde, Prague 2009 pp. 33-34 and Schelle, Karel, Zárýbnická, Jana, *Die Haftpflichtversicherung in der Tschechischen Republik (Geschichte und Gegenwart)*, GRIN Verlag, Munich 2011, pp. 78-79.

## 2.5 *Culpable Loss Event*

Czech legislation allows, under Section 2799 of the NCC, that if a loss event has been caused intentionally either by the person exercising the right to an insurance benefit,<sup>5</sup> or a third person acting on that person's instructions, the right to the insurance benefit shall arise only if this has been expressly stipulated, or where provided by this Act or another statute.<sup>6</sup>

## 2.6 *Insurance Premiums*

The insurer is entitled to a premium and the policyholder is obliged to pay the premium. There is nothing surprising about this. According to Section 2801 of the NCC, the period of suspension of insurance begins two months after the insurance premium becomes due. Czech legislators are benevolent in terms of the length of the period provided to the policyholder, as the legislation provides a relatively long period in which to pay an outstanding premium.<sup>7</sup>

## 2.7 *Termination of Insurance by Notice*

The insurance can generally be terminated by notice within the time limits set out in Sections 2805 and 2806 of the NCC (specific time periods are found in some other provisions of the NCC – e.g. in Section 2792). The Czech legislation does not allow the contracting parties to waive the right to terminate the insurance contract. Unlike the Czech legislation, the provisions contained in Section 11(2) of the GICA allow the contracting parties to waive the right to terminate the insurance contract for up to two years. However, in the case of the

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5 For certain types of insurance (loss insurance, liability insurance, transport insurance, accident insurance, sickness insurance and life insurance), the German legislation provides that an insurer is not obliged to provide an insurance benefit if the policyholder has caused the loss event intentionally.

6 Section 2779 of the NCC provides that special legislation may impose an obligation upon the insurer to conclude an insurance contract, under which the insurer is obliged to provide an insurance benefit even in the case of damage caused by the intentional action of the policyholder, insured or any other person. It can be reasonably inferred from this provision that it may also be an intentional omission. In Section 2779 of the NCC, any other person was, for example, an employee of the policyholder or of the insured (e.g. an articulated clerk employed by an attorney).

7 Sections 37 and 38 of the GICA make a distinction between the non-payment of the first and the subsequent premium (i.e. premium for the first and the subsequent insurance periods). If the first premium is not paid, the insurer can immediately withdraw from the contract. If the policyholder is in arrears with the payment of the subsequent premium, the insurer shall notify the policyholder to pay the premium within a period of at least 14 days. In the event of an expiration of this time limit without payment of the premium, the insurer may terminate the contract. In the case of the non-payment of the subsequent premium, the insurance is thus suspended and the insurer is not obliged to provide an insurance benefit for loss events occurring following the expiry of at least a 14-day period provided for the payment of the premium.

German legislation, a limitation on the automatic extension of the duration of an insurance contract applies. The provisions contained in Section 11(1) of the GICA prohibit the automatic extension of an insurance contract for a period longer than one year. The NCC does not contain a similar limitation.

The insurance period is defined in Section 2783 of the NCC. Section 2783(2) of the NCC provides that the insurance period is yearly, unless otherwise agreed<sup>8</sup>. The insurance period must be stated in the insurance contract or in the insurance policy (Section 2777 of the NCC). The last interesting difference is the actual length of the notice periods. In Sections 2805 and 2806 of the NCC, the Czech legislators provide for collective notice periods for the insurer and the policyholder and special notice periods set only for the benefit of the policyholder (e.g. if the principle of equal treatment was breached when determining the amount of the premium). Section 9(3) of the German GICA is based on the fact that notice periods must be essentially the same, unless the policyholder is a consumer. Unlike the Czech legislation, the German legislation sets not only the maximum (three months) but also the minimum (one month) notice period.

## 2.8 *Change in Insurance Risk*

In relation to the institute of a change in insurance risk, it is important to first mention that German terminology (Sections 23 to 27 of the GICA) employs the term increase in insurance risk, because it is more important for the insurer to be informed in good time by the policyholder (or the insured under Section 2790 of the NCC) of an increase in the insurance risk,<sup>9</sup> i.e. an increase in the likelihood of an insured event occurring. The Czech legislators, in five out of the total of six provisions under the section headed “change in insurance risk“, regulate the issue of an increase in insurance risk. Only in one provision (Section 2794 of the NCC) is it imposed on the insurer to also reduce the insurance premium proportionally in case of a reduction of the insurance risk. The model for the provisions of the NCC pertaining to a change in insurance risk was primarily the GICA, from which some provisions were adopted almost unchanged. For example, Section 2790 of the NCC for the most part adopts the German regulation on the notification duty and the ban on the insurance risk being increased by the policyholder or a third party without the insurer’s consent. The NCC, however, clarifies the German regulation it adopted by the fact that it defines the notion of an increase in insurance risk and establishes the notification duty for the policyholder instead of the insurer when it comes to the insurance of foreign insurance risk. Of the other modifications to the adopted regulation, mention can be given of Section 2793(1) of the NCC, under which an insurer has the right to terminate insurance without the application of

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8 An identical regulation is contained in Section 12 of the GICA.

9 Section 2790(2) of the NCC establishes, in an imprecise form, that the policyholder has an obligation to report an increase in the insurance peril. In fact, it is a duty to report an increase in insurance risk, i.e. an increase in the probability of an insured event occurring.

a termination notice if the policyholder or the insured has breached his notification duty. Here, the Czech legislators has adopted a tougher approach than the German legislators, since Section 24 of the GICA allows such a procedure only in case of gross negligence<sup>10</sup> on the part of the policyholder, otherwise a notice period of one month will be set. Section 2790(2) of the NCC requires that the policyholder always gives notice of an increase of the insurance risk without undue delay. According to Czech regulation (Section 2792 of the NCC), an insurer has a relatively strong position because if it proves that, given the conditions in force at the time of conclusion of the insurance contract, it would not have concluded the contract had the increased insurance risk existed at the conclusion of the contract, it is entitled to terminate the insurance by giving eight days' notice. The insurer is also given a one-month preclusion period, during which it can terminate the insurance. In view of the stronger position of the insurer, when interpreting Section 2790(1) of the NCC the case law of the Czech courts should be aimed at favouring the policyholder if, in the case of a dispute as to the validity of the termination of the contract, doubts arise as to whether there has been a material change in the circumstances stated in the insurance contract or communicated on the basis of written inquiries to the insurer. Another means of protecting the policyholder are situations in which the effects, that the legislation associates with an increase in insurance risk, cannot occur. This logically concerns, for example, to a situation where an increase in insurance risk has not affected the occurrence and scope of the loss event. This case can be deduced *a contrario* from the text of Section 2790(1) of the NCC. Furthermore, mention is made of the provision on the increase in risk if there is an attempt to protect the interests of the insurer or as a result of conduct induced by the principles of humanity order, which corresponds to Section 2795(1) of the NCC. Exclusion of the possibility to terminate the contract in the event of protecting the insurer is a counterweight to Section 82(2) of the GICA, which stipulates the policyholder's obligation to do everything possible to minimize damage after the loss event occurs. Within this framework, if the policyholder is not him/herself in danger, the policyholder must act according to the insurer's instructions that the policyholder had previously requested. The last case not covered by the effects of an increase in insurance risk is when the insurer expressly or silently waives the right to terminate the contract (this includes, in particular, the expiry in vain of the termination period stated above). Here too we find an equivalent in the form of Section 2792 of the NCC.

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10 Gross negligence is in Germany defined in legal theory and case law. The definition of gross negligence is analysed e.g. in Röhl, Klaus, F., *Zur Abgrenzung der groben von einfachen Fahrlässigkeit*, Juristenzeitung 1974, Vol. 29, No. 17, pp. 521-528 and Pröller, Jürgen; Martin, Anton, *Versicherungsvertragsgesetz*, C. H. Beck, Munich 2010, p. 327 ff.

### 3 Compulsory Insurance in the NCC

#### 3.1 Legal Regulation of Compulsory Insurance

The common provisions for compulsory insurance are contained in Sections 2779 – 2781<sup>11</sup> of the NCC; the scope of this regulation is general.

The specific rules are contained in the laws establishing duty to conclude compulsory insurance (e.g. Section 25 para 1 lit g, Section 35 para 2 lit d Act No. 266/1994 Coll. on Railways).

The European Law is imposing and regulating the obligation to conclude compulsory insurance in the form of secondary legislation. Examples of this include compulsory insurance of carriers and aircraft operators as regards their aviation-specific liability in respect to passengers, baggage, cargo and third parties (Regulation EC No 785/2004 of the European Parliament and of Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators), or compulsory insurance against civil liability in respect to the use of motor vehicles (Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect to the use of motor vehicles, and the enforcement of the obligation to insure against such a liability). The legal regulation contained in the directives is implemented into the national laws of the Member State (e.g. Act No. 168/1999 Coll. on Liability Insurance for Damage Caused by Operating a Vehicle and on Amendments to Some Related Acts, “Third-Party Motor Liability Insurance Act”).

In a few cases, the duty to take out liability insurance is contained directly in international conventions (e.g. the Vienna Convention on Civil Liability for

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11 An unofficial translation of Sections 2779 – 2781 NCC is as follows:

Section 2779

- (1) If another law imposes the concrete person to conclude an insurance contract, it is possible to deviate from the provisions of this section only, if it is allowed by the other law and will not lead to a reduction of the scope of insurance stipulated by the other law.
- (2) The duty of the insurer to conclude an insurance contract stipulated by another law falls to him in such a manner, that the duty to provide indemnity will also fall to him in the case of a wilful act of the policyholder, the insured person or another person.

Section 2780

In the event of compulsory liability insurance, the insurer may refuse to provide indemnity only in the case that the victim or another person with awareness about the victim having participated in the disclosure of deliberately false or grossly misleading information or in an incomplete answer to questions rendered in written form.

Section 2781

The insurer has the right to withdraw from the contract, only if it is stipulated by another law. This does not preclude contractual stipulations imposing the rights of recourse in relation to the policy holder or the insured in case of the breach of his/her duties.



Nuclear Damage<sup>12</sup> 1963 or Protocol on the Privileges and Immunities of the International Seabed Authority 1998), which were ratified by the Czech republic.

### **3.2 Sources and System of Compulsory Insurance law in the Czech Republic**

There is no coherent ‘law of compulsory liability insurance’ in the Czech legal system because the duty and conditions to take out liability insurance are defined in different ways in specific laws (for examples see below). It leads to divergences in terminology (e.g. limitation of the insured sum). However, as was already mentioned, general provisions are contained in Sections 2779 – 2781 of the NCC.

### **3.3 Definition of Compulsory Insurance**

The NCC (Sections 2779 – 2781) deals exclusively with selected issues of compulsory insurance in general, which differs compared to Act No. 37/2004 Coll. on the insurance contract (repealed for the most part by the NCC). Whereas compulsory liability insurance is not defined by laws, or possibly one law, it is briefly described in legal theory by Karfíková and Prikryl as follows: “Compulsory contractual insurance originates in the same way as voluntary insurance, but in contradiction, here is an obligation to conclude a contract imposed by law. This duty is imposed by law especially for activities which may be the source of an increased risk of damage to others.”<sup>13</sup> In a similar way compulsory liability insurance is defined by Bohman and Wawerková as follows: “If a special law entails an obligation to conclude an insurance contract for someone who belongs to a group of people exercising a specific type of activity which is a source of danger for others or who is respectively in possession of a specific property, then we speak of compulsory contractual insurance.”<sup>14</sup>

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12 It should however be noted that Art. V, VI, VII, IX and XV of the Vienna Convention on Civil Liability for Nuclear Damage 1963 were transformed in Sections 36-38 of Act No. 18/1997 Coll. on the Peaceful Use of Nuclear Energy and Ionising Radiation.

13 Karfíková, Marie; Prikryl, Vladimír et al., *Pojišťovací právo*, Leges, Prague 2010, p. 285 ff.

14 Bohman, Ludvík, Wawerková, Magdalena, *Zákon o pojistné smlouvě – komentář*, Linde, Prague 2009, p. 47. This definition is also accepted in Švestka, Jiří; Dvořák, Jan; Fiala, Josef et al., *Občanský zákoník, komentář*, VI. Vol., Section 2521-3081, Wolters Kluwer, Prague 2014, p. 488 ff.

### **3.4 *The Legal Basis of Compulsory Insurance***

According to Section 2779 of the Civil Code, it is currently not allowed to lay down a duty to take out liability insurance which is not directly based on the law but on an order or decision issued by administrative authorities. According to Section 4 para 3 of the Decree of government No. 1/1988 Coll. (repealed by Act No. 127/1990 Coll.) on the Sale of Goods and Rendition of Services by Citizens Based on the Permission of the People's Committee, the state body is entitled to order the citizen to conclude a liability insurance contract for a prescribed period, which covers work injury or occupational disease.

Only in exceptional cases may the public authorities stipulate the amount of the insured sum on the basis of the law (e.g. Ministry of the Environment - Section 57 para 2 Act No. 185/2001 Coll. on Waste). It leads to the situation that in some cases (cf. e.g. Sections 6-8 Act No. 159/1999 Coll. on Certain Conditions for Assuming in Travel Services) it is left to the insurance company to judge whether the insurance sum is adequate. The aforementioned insufficient state of legal regulation was partially resolved by amendment<sup>15</sup> of the Act on Certain Conditions for Assuming Travel Services.

According to Section 2779 of the NCC it is not allowed to impose duties to take out liability insurance which are not based on the law but on the statutes of a professional or other self-governing body. Under this condition, professional or other self-governing bodies can prescribe the scope of cover and premium only on the grounds that a formal law has prescribed the duty itself (e.g. the Czech Bar Association – cf. Section 24c Act No. 85/1996 Coll. on the Legal Profession; further: The Czech Medical Chamber, Czech Dental Chamber and Czech Chamber of Pharmacists - cf. Section 9 para 2 lit e Act No. 220/1991 Coll. on Czech Medical Chamber, Czech Dental Chamber and Czech Chamber of Pharmacists; or Chamber of Patent Attorneys Czech Republic - cf. Section 42 Act No. 417/2004 Coll. on Patent Attorneys and on Modification of the Act on Measures for Protection of Industrial Property).

### **3.5 *Aims of the Rules which Impose an Obligation to Take out Liability Insurance***

The obligation to conclude a liability insurance contract is stipulated by law especially for activities, which are connected to an increased danger of damage being inflicted. The main goal is to recover damage inflicted on the victim and therefore protection of the victim, especially in the case whereby the insured person has insufficient financial funds to pay for it.<sup>16</sup>

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15 Act No. 341/2015 Coll.

16 Cf. Karfíková, Marie; Příkryl, Vladimír, *Pojišťovací právo*, Leges, Prague 2010, p. 285.

### 3.6 Content of Insurance Cover

#### 3.6.1 Scope of Application of the NCC

According to Section 2779 para 1 of the NCC, the general statutory rules contained in Part IV Chapter 2 Section 15 Subsection 2 (“Insurance”, Sections 2758-2872) of the NCC shall be applied, if the respective law that requires compulsory insurance only makes incomplete stipulations regarding the content of the insurance contract. The scope of cover is usually defined in specific laws requiring compulsory insurance.

#### 3.6.2 Scope of Insurance Cover

The rules on compulsory insurance in Czech law are designed to cover liability claims based on the statutory provisions granting protection of the insured person regardless of the non-/contractual nature of the liability. According to Section 2861 para 3 of the NCC, liability insurance may only be concluded as indemnity insurance (‘insurance against loss and damage’).

The duty to take out liability insurance is not only aimed at protecting absolutely protected rights, but also at compensating pure economic loss.

In the case of e.g. Act No. 168/1999 Coll. on Liability Insurance for Damage Caused by Operation of Vehicle and on Amendments to Some Related Acts (Third-Party Motor Liability Insurance Act) material and immaterial loss and lost profit shall be covered (cf. Section 2952 of the NCC and Section 6 para 2 lit c of the Third-Party Motor Liability Insurance Act). Pure economic loss incurred to the injured party (victim) shall also be covered by liability insurance according to Section 6 para 2 and 4 of the Third Party Motor Liability Insurance Act. Responsibility for pure economic loss is also covered by compulsory liability insurance for certain professional activities.<sup>17</sup>

According to Section 2779 of the NCC, statutory stipulations in terms of the contents of the policy are also binding in favour of the insurance holder.<sup>18</sup> According to this provision derogations *are thus allowed* in terms of the scope of insurance cover in favour of the insurance holder. Derogations to the detriment of the victim in relation to the scope of insurance cover and extent of the deductibles are not allowed in relation to the victims, since it goes against the basic principles of liability insurance (protection of the victim) and mandatory rules stipulating the minimum amount of the insurance sum.

According to Section 2779 para 1 of the NCC, it is not admissible to restrict insurance cover stipulated by special law. In special laws it is also emphasised,

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17 E.g. Section 22 Act No. 93/2009 Coll. on Auditors - auditors, Section 24 para 1 of Act No. 85/1996 Coll. on Legal Profession - attorneys, Section 6 para 10 lit a of Act No. 523/1992 Coll. on Tax Consulting and Chamber of Tax Advisers of Czech Republic - tax advisers, Section 9 para 1 lit d of Act No. 358/1992 Coll. on Notaries and their Work Activities - notaries etc.

18 Cf. Bohman, Ludvík, Wawerková, Magdalena, *Zákon o pojistné smlouvě – komentář*, LINDE, Prague 2009, p. 47.

that the extent of insurance cover stipulated by law must not be reduced in the general terms of the insurance contract (e.g. Section 48 para 1 of Act No. 449/2001 Coll. on Hunting – ‘careless conduct of the insured’ hunter must not be excluded by the general conditions of the insurance contract).<sup>19</sup>

In accordance with Section 2779 para 1 of the NCC, risk exclusion clauses are only admissible if they do not restrict the insurance cover stipulated by special law. The general terms of the insurance contract usually only contain exclusions stipulated by special law as legal (e.g. Section 7 of The Third-Party Motor Liability Insurance Act). The insurer shall not pay e.g. damages inflicted while handling the cargo of a standing vehicle (Section 7 para 1 lit e of The Third-Party Motor Liability Insurance Act), damages incurred to the vehicle by its use during a terrorist attack or act of war (Section 7 para 1 lit h of The Third-Party Motor Liability Insurance Act) etc.

### 3.6.3 Risk

The specification of the risk which shall be insured is seldom well defined. The majority of laws only stipulate the compulsory conclusion of an insurance liability contract. In most laws the insured risk is defined very generally. E.g. according to Section 6 para 2 of Act No. 26/2000 Coll. on Public Auction the auctioneer has a timeframe of 30 days from granting of the concession to conclude the liability insurance contract in relation to damages, possibly incurred by the auctioneers activities. Also in the other laws regulating activities of the liberal professions is the insured risk defined in the same matter (e.g. authorised inspector - Section 146 para 2 of Act No. 183/2006 Coll. on Town and Country Planning and Building Code, Building Act, or tax adviser - Section 6 para 10 lit a of Act No. 523/1992 Coll. on Tax Consulting and Chamber of Tax Advisers of the Czech Republic). Section 9 para 2 lit e of Act No. 220/1991 Coll. on Czech Medical Chamber, Czech Dental Chamber and Czech Chamber of Pharmacists contains no definition of the insured risk, because the member of the Chamber has a duty to take insurance in cases stipulated by the Chamber.

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19 The regulation in Section 48 para 1 Act on Hunting is illusory, because the main objective of the liability insurance here refers to compensation in the event of damage owing to negligent behaviour on behalf of the hunter. Thus the hunter must be insured in the event of careless conduct on his behalf. The purpose of this provision (Section 48 para 1 of the Act on Hunting) is insurance for damage inflicted in the course of hunting especially in the case of bodily harm or killing another person (min. insured sum 20,000,000.00 CZK) or damages to goods (min. insured sum 500,000.00 CZK).

### 3.6.4 Insurance Sum

The minimum insurance sum is usually specified.<sup>20</sup> E.g. according to Section 6 para 3 lit. b of the Act on Public Auction, the policy amount must be a min. CZK 35,000,000.00. The maximum insurance sum is never specified. An exception to this rule is contained in Section 24a of Act on the Legal Profession (The Bar shall prescribe the minimum limit for reimbursing the claim from professional indemnity insurance for Consortium), Section 22 of Act No. 93/2009 Coll. on Auditors, Section 10 para 6 lit f of Act No. 406/2000 Coll. on Energy Management and Section 45 para 2 lit n of Act No. 372/2011 Coll. on Medical and Hospital Services and the Conditions for Providing this (reasonable extent corresponding to liability which could be expected). In Act No. 360/1992 Coll. on the Professional Practice of Certified Architects and on Professional Practice of Certified Engineers and Technicians Active in Construction and in Act No. 93/2009 Coll. on Auditors no minimum insurance sum is specified (Chamber of Auditors of the Czech Republic concluded group insurance with ČSOB Pojišťovna, a. s., Kooperativa pojišťovna a. s. and Česká pojišťovna a. s.; Czech Chamber of Architects concluded group insurance with ČSOB Pojišťovna, a. s.). According to Section 22 Act on Auditors, the insured sum must be adequate in relation to possible damages, which can be predicted to a reasonable extent. In the Act on the Professional Practice of Certified Architects and on Professional Practice of Certified Engineers and Technicians Active in Construction, no insurance sum is specified. In some cases, the minimum insurance sum is not specified directly in the law, but by ministerial decree (e.g. Section 8 Decree of the Ministry of Transport on Operability of Ships on Inland Waterways No. 223/1995 Coll. in relation to Section 19, Section 30 para 2 of Act No. 114/1995 Coll. on Inland Navigation). Liability is limited exceptionally (in Section 35 of Act No. 18/1997 Coll. on Peaceful Use of Nuclear Energy and Ionising Radiation, the liability of the holder of the authorisation is limited for every nuclear incident up to CZK 8,000,000,000.00 in the case of nuclear power plants, storage facilities and repositories and for other nuclear sites and transports up to CZK 2,000,000,000.00).

The provisions of Czech law on the limitation of insurance sum relating to compulsory liability insurance may be summarized into three groups:

- a) laws prescribing a minimum insurance sum
- b) laws that do not prescribe a minimum insurance sum but allow it to be prescribed by another legal act
- c) laws which do not give any information at all or at least no sufficient information about the minimum insurance sum: such as “reasonable coverage” etc.

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20 Section 114 (4) GICA provides that the minimum sum insured shall be 1 million EUR for all claims per insurance year, unless otherwise specified in the law stipulating the conclusion of compulsory liability insurance.

No minimum sum can be found in the minority of laws and furthermore a complete lack of specifications on the insurance sum (cf. Section 146 para 2 of Act No. 183/2006 Coll. on Town and Country Planning and Building Code, or Sections 40 para 1 lit g, Section 41 para 2 lit e of Act No. 45/2013 Coll. on the victims of criminal acts).

### 3.7 Insurance Payment

According to Section 2779 para 2 of the NCC, if compulsory insurance is stipulated by a special (other) law, the insurer is obliged to conclude an insurance contract in such a way, to ensure that the duty to provide the indemnity (insurance benefit) will also arise in the case of that loss is inflicted due to a wilful act on behalf of the insurance holder, insured or other person.

Under damage liability insurance, the insured person shall be entitled to payment on his behalf by the insurer to the injured party, within the scope and to the amount set out by law or contract, upon the occurrence of an insured event, of damages or other loss for which the insured person is liable under the law up to the limit of insurance benefits agreed in the insurance contract (Section 2861 para 1 of the NCC). The injured party shall be entitled to payment of insurance benefits directly from the insurer only, if it was provided by a special law (e.g. Section 9 The Third-Party Motor Liability Insurance Act) or the insurance contract. If the insured person paid compensation for damage or other loss for which he is liable directly to the injured party, the insured person shall be entitled to reimbursement of the sum paid by the insurer up to the amount which the insurer would otherwise be obliged to pay to the injured party (Section 2865 para 1 of the NCC) directly.

According to the Section 2780 of the NCC in the case of compulsory liability insurance the insurer *may* refuse to provide indemnity only in the case that the victim or another person with an awareness of the victim participated in the disclosure of deliberately false or grossly misleading information or in an incomplete answer to questions rendered in written form. This provision contradicts Section 2809 of the NCC which contains the general regulation of repudiation of the insurance payment. This general provision does not take into account misleading or false information provided by the victim, but deals exclusively with misleading or false information given by the policyholder, the insured person or the applicant when concluding the insurance contract. Thus the intention of the legislator shall be followed, that the provision of Section 2809 NCC shall prevail over provision Section 2780 of the NCC, since there is no objective reason for repudiation of the insurance payment.<sup>21</sup> This provision prevails over Section 250 (Insurance Fraud) of Act. No. 140/1961 Coll., Penal Code (repealed by Act. 40/2009 Coll., Penal Code). The insurer has other

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21 For possible solution of the discrepancy between Section 2780 and 2809 Civil Code cf. also Haas in Švestka, Jiří, Dvořák, Jan, Fiala, Josef et al., *Občanský zákoník, komentář*, VI. Vol., Section 2521-3081, Prague: Wolters Kluwer 2014, pp. 499-502 or Jandová, Lucie, Šlauf, Petr, Svejkovský Jaroslav, *Pojištění v novém občanském zákoníku, komentář*, C. H. Beck, Prague 2014, pp. 92-95 and pp. 184-186.

instruments to protect his rights against the victim or another person with the awareness that the victim contributed to disclosing deliberately false or grossly misleading information or provided an incomplete answer (e.g. false information in relation to the amount of the damage) – legal regulation of unjustified enrichment and compensation for damage.<sup>22</sup>

### **3.8 Case Law of the Constitutional Court related to Compulsory Insurance**

In relation to the compatibility of the duty to take out liability insurance with the Constitution of the Czech Republic No. 1/1993 Coll., in specific case (File No. Pl. 4/95, 7. 6. 1995), the Constitutional Court decided that the imposition of an obligation to conclude liability insurance for chartered engineers does not constitute a breach of Art. 1 (principle of equality) Charter of the Fundamental Rights and Freedoms (No. 2/1993 Coll.). The decision of the Constitutional Court is crucial, since in the legal theory it is accepted as recognition of general compatibility of compulsory liability insurance with the Charter of Basic Rights and Freedoms.

In another case (File No. I. ÚS 603/05, 19. 4. 2006) the information duty of the user of a motor vehicle in relation to the transfer of the ownership of a motor vehicle was found to be in accordance with fundamental rights and freedoms. The complainant (first defendant in the proceedings before the Court of First Instance in Teplice and the Appellate Court in Ústí nad Labem) argued that his constitutional right on fair trial (Art. 90 Constitution of the Czech Republic and Art. 36 Charter of Basic Rights and Freedoms) was affected, because he was embroiled in court proceedings after an accident, which was caused by a car, which he had previously sold to another person (second defendant). The first defendant breached his duty to apply for registration of the transfer in ownership of the vehicle in the Central Register of Vehicles. The second defendant did not conclude any compulsory liability insurance before the car accident. The constitutional complaint of the first defendant was not successful.<sup>23</sup>

## **4 Conclusion**

On the basis of the comparison made of selected institutes of contract insurance law, it can be concluded that the compared institutes of the legislation coincide in their basic features, although they contain a number of significant differences. Interestingly, when comparing the regulation dealing with protecting the policyholder who is in the position of a consumer, we find a rather different regulation of the protection of the weaker party in Czech and German law,

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<sup>22</sup> See Explanatory Report (consolidated version) to Section 2809 of the NCC.

<sup>23</sup> For deeper analysis of abovementioned case law cf. Fenyves, Attila; Kissling, Christa; Perner, Stefan; Rubin, Daniel, *Compulsory Liability Insurance from a European Perspective*, Walter de Gruyter, Berlin/Boston 2016, p. 109 ff.

although this regulation was or ought to have been harmonized on the basis of EU directives. In German regulation of contract insurance, there is a stronger tendency to consistently protect the weaker party (policyholder), which is reflected in the extensive lists of mandatory provisions of the insurance legislation (e.g. Sections 18, 32, 42, 67, 87, 112, 129, 171, 175, 191 and 208 of the GICA<sup>24</sup>). In addition, foreign regulation has, in some instances, had to respond during the course of their development to cases of unfair arrangements to the detriment of the policyholder, which were part of insurance contracts. The Czech legislation is more concise in the area under review, which is due to the fact that it forms part of the civil law codification (NCC). The foreign regulations used as a basis of comparison contain the regulation of contract insurance law in separate acts. The required scope of policyholder protection should complement the provisions on commitments entered into with a consumer (Sections 1810 to 1867 of the NCC), which also apply to contracts concluded via remote communication (distance contracts). In fact, it is in the field of insurance that an increasing number of insurance contracts are concluded with the help of electronic communication devices (e.g. travel insurance contracts). This protection is of course only afforded to persons meeting the definition of a consumer under Section 419 of the NCC. The application of the Principles of European Contract Insurance Law (as amended in 2016)<sup>25</sup> instead of national legislation can serve to bridge these differences and shortcomings.

The NCC only contains the general regulation of compulsory insurance which is linked to the specific provisions on liability insurance (Sections 2861 of the NCC). The general regulation contained in the NCC is subject to the specific regulation in individual laws on compulsory insurance.

The general character of the new insurance contract law may lead to difficulties in the course of applying new insurance contractual obligations. The interpretation should be thus provided in favour of the weaker party, if the insured/policyholder will be in the position of the weaker party - consumer.

The revolutionary changes of the Czech private law brought by the NCC are connected with the need to amend certain specific laws on compulsory liability insurance.

The new complicated regulation of private law contains errors and omissions. A clear example to mention here is Section 2780 and 2809 of the NCC. The legislator shall choose carefully between the two possibilities of the solution of this problem. The amendment of the NCC could be detrimental to the stability of the legal regulation. But waiting for the development of the case law could go against the legal expectations of the recipients of the legal regulation and their legal certainty.

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24 In the case of the GICA, these are so-called unilateral mandatory provisions, from which it is not possible to deviate to the detriment of the policyholder or the insured, as the case may be.

25 Basedow, Jürgen; Birds, John; Clarke, Malcolm; Cousy Herman; Heiss, Helmut, Loacker, Leander, D. (ed.), *Principles of European Insurance Contract Law (PEICL)*, Otto Schmidt, Cologne 2016.



With regard to current developments on the Czech insurance market, insurmountable difficulties in the field of the compulsory insurance cannot be expected, because Czech insurance companies have enough time streamline their model contracts and general contractual conditions.

