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Premium pricing and transparency: Some conclusions from the existing court-precedents on pricing and readjustment of premium

It has been said that on the matter of pricing and readjustment of premium different principles collide.

Indeed, on the one hand we have the legislation on the supervision of insurance undertakings[1], which provides that pricing of premium is free, according to the techno-economical requirements of each undertaking[2] and that, in the context of life insurance, pricing must be sufficient, on the basis of reasonable actuarial assumptions, to enable insurance undertakings to meet all their commitments and in particular to establish adequate technical provisions[3].

On the other hand, in consumer contracts, we have the judicial control of the terms which determine the price[4]. It must be made clear though that the judicial control does not refer to the pricing per se, but to the manner, according to which the relevant term on pricing has been formulated, so that we can specify the height of the price, what it consists of and how it has arisen[5].

Such control is made by the courts on the basis of the provisions of the law on consumer protection, which, as we know, introduces a fundamental principle, the principle of clarity or transparency[6].

There are several court precedents on the principle of transparency; however, in the context of pricing and readjustment of insurance premium under Greek law, probably the most important precedent is the decision of the Greek Supreme Court No. 1030 of 2001. The importance of that decision becomes even greater by the fact that by virtue of a relevant authorization of the consumer law[7], there was a ministerial decision issued in 2011,

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[1] Legislative Decree (L.D.) No. 400 of 1970 On Private Insurance Undertaking, as amended from time to time and in force today.

[2] Art. 30 par. 1 of L.D. No. 400/1970.

[3] Art. 30 par. 3 of L.D. No. 400/1970.

[4] According to Art. 2 of Law No. 2251 of 1994 On Consumer Protection as amended by Law No. 3587 of 2007.

[5] See among others e.g. Decision of the Plenary Meeting of the Greek Supreme Court-Arios Pagos (A.P.) No. 15 of 2007, Decision of the Plenary Meeting of the Greek Supreme Administrative Court-Council of State (StE) No. 1210 of 2010 et al.

[6] The principle of transparency can be found in many provisions of Law 2251/1994 as amended by Law 3587/2007. See e.g. Art. 2 par. 2 of Law 2251/1994 which provides that the general contract terms must be in the Greek language and must be formulated in a clear, specific and easy to understand manner.

[7] Art. 10 par. 21 of Law 2251/1994 as amended by Law 3587/2007, allows the Minister of Development to determine, by virtue of a Ministerial Decision published in the Government Gazette, the terms and presuppositions of compliance by suppliers/providers to irrevocable court judgments and decisions (i.e. judgments and decisions that are not subject to any methods of review or attack) and that have been issued upon class actions filed by consumers or

incorporating the rulings of the decision of the Supreme Court No. 1030 of 2001 and obliging all the insurance undertakings from now on to comply therewith under penalty of fines[8].

The Supreme Court issued the decision in question upon a dispute that had begun with a class action filed by a consumer's association in relation to a general term of a hospitalization health policy, coming as an addendum to a life insurance policy. The general term that was challenged provided that the insurer had the right to unilaterally proceed to readjustment of the premium at any renewal date of the policy.

The consumer's association requested the Court of First Instance to acknowledge the abusiveness and nullity of the above general term and to condemn the insurance undertaking that was using such term to pay monetary compensation for moral harm, as provided for by the law. The Court of First Instance and later the Appeal Court[9] accepted the above class action and granted both the above requests.

The Supreme Court that looked into the matter following an application of cassation by the insurer upheld the rulings of the Appeal Court.

The Supreme Court ruled that the principle of transparency must govern the formulation of all the general terms of an insurance policy. In the case of a term allowing the insurer to unilaterally proceed to increase or readjustment of the premium during the term of the policy, the policyholder must be in a position to understand the extent of the premium increase and to appreciate whether such increase was made in accordance with the relevant term of the policy or not. For this reason, the Supreme Court goes on, the presuppositions and the framework of the readjustment need to be specified in the policy as far as possible. Also, the policyholder must be able to have an adequate understanding of the financial burdens that he undertakes when he concludes the policy.

Any insurer who does not conform to these principles is acting in an abusive manner and violates the law on consumer protection.

According to the rulings of the Supreme Court, the policy term that allows the insurer to unilaterally change the amount of the premium at any renewal date is abusive and prohibited, because the insured surrenders to the judgment of the insurer regarding the correctness and the necessity of the readjustment, without the insured being in a position to foresee the presuppositions and the extent of the additional burdens that he undertakes.

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consumer organizations, if such court judgments/decisions have a wider public interest for the smooth functioning of the market and consumer protection.

[8] Ministerial Decision No. Z1-74 dated 4 February 2011 (published in Government Gazette issue B' No. 292/22.02.2011) On Amendment of Ministerial Decision No. Z1-798/25-06-2008 regarding prohibition of using general contract terms that have been found abusive by virtue of irrevocable court judgments/decisions.

[9] Appeal Court of Athens Judgment No. 7950/1999.

The abusive nature and nullity of the above policy term is based on the general clause of the law on consumer protection[10], which prohibits the conclusion of general contract terms that have as their result the significant imbalance, between the rights and obligations of the parties to the contract, to the detriment of the consumer.

In addition, above term of the policy (which allows the insurer to unilaterally proceed to readjustment/increase of the premium) falls into at least two categories of the list of the law on the per se abusive and void terms[11], specifically:

a) The terms that allow the supplier (in this case the insurer) the right to unilaterally amend the contract without a specific and important reason which must be mentioned in the contract[12], and
b) The terms that leave the price vague and do not allow the specification of the price to be made with specific criteria, which must be mentioned in the policy and be reasonable for the insured[13].

According to the Supreme Court, the abusiveness of the above term cannot be removed by the right on the part of the insured to terminate the policy, because such right does not change the uncertainty of the future additional burdens of the insured.

The Supreme Court in its above decision has made it absolutely clear: readjustment of premium in life insurance-hospitalization policies not only must be made on the basis of fair and reasonable criteria, but also such criteria must be specifically and explicitly laid down in the policy.

The question is how far the above requirements for specificity and definiteness must go. Because a further question is whether in a life term policy we can find reliable, objective criteria for the readjustment of the premium that can be agreed by the parties at the conclusion of the policy, which are fair and reasonable on the one hand, and specific and definite on the other hand, allowing the consumer, throughout the term of the policy, to foresee and to understand the extent of the increase of the premium and to appreciate whether the increase was made in accordance with the relevant term of the policy or not, as the Supreme Court requires.

It is arguable whether the readjustment criteria that are currently in use by the insurance industry meet the standards of specificity and definiteness set by the above decision of the Supreme Court.

In April 2014, the General Secretariat for Consumer of the Ministry of Development and Competitiveness announced that once more it imposed big fines to five major insurance undertakings on the grounds that the criteria

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[10] Art. 2 par. 6 of Law 2251/1994.

[11] Art. 2 par. 7 of Law 2251/1994 contains an indicative list of 32 abusive and prohibited contract terms which are null and void by operation of the law.

[12] Art. 2 par. 7 (e) of Law 2251/1994.

[13] Art. 2 par. 7 (ia) of Law 2251/1994.

used for the readjustment of premium in hospitalization policies were vague and did not allow the consumer the possibility to check and verify the premium increases[14]. As far as I know there is no court judgment in relation to these latest developments and the fines imposed.

There is a view in legal theory that in case of a long-term, usually a life-time, insurance policy, it is impossible to become entirely definite and specific, regarding the readjustment criteria of the premium and that the obvious limit of the principle of transparency is that it must not frustrate the right of the insurer to readjust the agreed premium.

Striking a balance between the above conflicting interests seems to be indeed a tough matter, which, I believe, is still open. The answer to this conflict has to be given in the framework of the principle of transparency. Assuming that fair and reasonable premium readjustment criteria are selected in the first place, one possible option could be that the insurer must then be required, on the basis of a relevant term of the policy, to provide to the insured a breakdown of the calculations and data, on the basis of which any readjustment of the premium was made. The provision by the insurer of the above calculations and data, however complex they might be, will enable the insured to do his checks and verifications, possibly with the assistance of an expert, and thus have the requirement of transparency satisfied.

Unfortunately, there is no time to discuss this and other options further, but we may have the opportunity to do that at the discussion that will follow.

Thank you for your attention.

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[14] Press Release dated 8 April 2014 in www.efpolis.gr, where also a list of fines imposed during 2013 and 2014 can be found.