



Damage insurance: legal study according to the decisions of the supreme court



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Abstract

Damage insurance is insurance in which the insured risk relates to the property of the insured and not to his person, unlike personal insurance, which relates to the person of the insured and not to his property. Accordingly, it is subject in all its forms to the compensatory principle. According to the text of Article 623 of the Civil Code, compensation is always in The limits of damage are limited and do not exceed it. According to the general theory of liabilities, damage is all the losses that a person has suffered and all the gains he has lost. Accordingly, the insured only receives the value of the damage insured against, as the damage must be proportional to the compensation, and in accordance with the law. Modified and supplementary insurance: Damage insurance is of two types: property insurance and liability insurance, which is consideredThe most important types of damage insurance contracts due to the breadth of its fields, as industrial progress, the intertwining of service and commercial relations, and the multiplicity of liberal professions, was a reason for the emergence of this type of insurance, where the need arose to cover the risks resulting from all these activities.

Keywords

Object insurance ;
liability insurance;
Fire insurance ;
Theft insurance;
indemnity.

الكلمات المفتاحية

التأمين على الأشياء ؛
التأمين على المسؤولية ؛
التأمين على الحريق ؛
التأمين على السرقة ؛
التعويض.

التأمين على الأضرار- دراسة قانونية –وفق قرارات المحكمة العليا ملخص

التأمين على الأضرار هو تأمين يكون الخطر المؤمن منه يتعلق بمال المؤمن له لا بشخصه على خلاف التأمين على الأشخاص الذي يتعلق بشخص المؤمن لا بماله ، و عليه فهو يخضع بكل أنواعه الى المبدأ التعويضي ، و وفقا لنص المادة 623 من القانون المدني فان التعويض يكون دائما في حدود الضرر و لا يتجاوزه ، و الضرر حسب النظرية العامة للالتزامات هو كل ما أصاب الشخص من خسائر و كل ما فاتته من كسب ، و عليه فان المؤمن له لا يتقاضى الا قيمة الضرر المؤمن منه ، حيث يجب أن يتناسب الضرر مع التعويض ، و وفقا لقانون التأمينات المعدل و المتمم فان التأمين على الضرر يتمثل في نوعين ، التأمين على الأشياء و التأمين على المسؤولية و الذي يعتبر أهم أنواع عقود التأمين على الأضرار بسبب اتساع مجالاته، حيث أن التقدم الصناعي وتشابك العلاقات الخدمائية والتجارية وتعدد المهن الحرة، كان سببا لظهور هذا النوع من التأمين، أين استدعت الحاجة إلى تغطية الأخطار الناتجة عن كل هذه الأنشطة

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Doi:

I- Introduction :

For a long time, man has tried to avoid the constant dangers to which he is exposed. Therefore, he has tried to use preventive means to provide security and safety to confront the consequences of the potentially occurring dangers that haunt him, in every place and time. Accordingly, the idea of agglomeration, solidarity, and assembly was embodied, and this is through cooperation to compensate for the damages that befall those who occurred. He must be harmed by all those in solidarity, in order to erase its effects. However, these first attempts are not sufficient to avoid all harm.

The importance of this topic is evident. From this idea, i.e. solidarity to confront danger, the idea of insurance emerged and developed, due to scientific and technological development, and the development of social and economic life, where insurance has become one of the necessary human needs. Recent years have witnessed a wide expansion of the insurance market through the spread of multiple types of insurance coverage, whether it is insurance on Persons or damage insurance.

In the end, people also tended to obtain insurance coverage from institutions qualified to cover potential risks, as the latter use technical legal means to achieve their goals. The state also intervenes through regulatory bodies and agencies to control the insurance market to protect the weak party in the contractual relationship on the one hand, and to protect the national economy. On the other hand.

Insurance, as stated in Article 619 of the Algerian Civil Code, is "a contract under which the insurer or the beneficiary for whom the insurance was stipulated is obligated to pay a sum of money, revenue, or another financial offer in the event of an accident or the realization of the risk stated in the contract, in exchange for a premium or financial payment." Others paid by the insured to the insurer. Therefore, it is necessary to search for the truth about insurance, especially from its legal aspect, as it is a contract that is foreign to the navigator and the private parties. It is not limited to the contractual relationship between its two parties, but rather it is also a technical process that is essentially based on cooperation between a number of people regarding a risk that may occur and sharing among them what befalls them. Damages.

The aim of this study is to know the scope of insurance, since the relationship between the insurer and the insured is based on the principles of organizing cooperation between the insured by the insurer, who relies on the calculation of probabilities, the law of large numbers, and the parts of clearing. This organization may resort to other techniques, namely reinsurance or joint insurance. Hence, insurance has several definitions, so it is not possible to be satisfied with the legal concept without the concept. Technically, some believe that the aim of insurance is to compensate the individual for loss, while others see that its aim is to reduce the phenomenon of uncertainty, and they neglect the cooperative relationships that bind the group of insureds, and from this we reject the hypothesis that insurance has a legal definition only because their definition must be well-informed. In all aspects.

Research into this topic makes us wonder about many problems related mainly to:

- **The most important measures that the Algerian legislator introduced to regulate the relationship between the insured and the insurer?..**
- **How can the various damages resulting from the insurance contract be redressed and compensated?**
- **Question about the position of the Supreme Court on the various damages that the Algerian legislator did not address within the framework of the insurance contract?..**

On this basis, and in order to reach a solution to these problems, this requires an exceptional effort due to the great expansion and differentiation of the legal texts that address this topic, in addition to the fact that the research requires us to be familiar with what jurisprudence has stated, as well as the decisions of the Supreme Court, and therefore it was necessary. We have to, in order to answer these questions, and out of my desire to cover all aspects of the topic, I wanted to rely on more than one scientific method, because the nature of this research requires that.

for that. At the beginning of this study, I relied on the descriptive approach to know the most important types of insurance and the damages associated with the insurance contract. Then, I relied on the analytical approach in order to analyze various legal texts, Supreme Court decisions and jurisprudential opinions in the field of insurance, and devising appropriate rulings, by relying on a bilateral plan represented in: (**insurance on things** - **liability insurance**)

II- Insurance for things

Objects insurance is insurance against risks that directly affect money and property, such as insurance against fire, theft, damage, and similar damages to the money and property of the insured. Therefore, it is a document related to guaranteeing the money of the insured and focuses on the risk that threatens the thing (money) owned by the insured. for him.

Insurance on things may relate to a sum of money or precious jewelry, or it may also focus on guaranteeing a commercial loan in the broad sense.

And accordingly, we will discuss forms of insurance on items as regulated by the Algerian legislator in the Insurance Law. Then we discuss fire insurance and the risks associated with it, while we discuss... Other types of insurance for items.

II.1 Insurance against fire and related risks

Fire insurance is the first type in which land insurance appeared and the reason for its emergence was the famous London fire that broke out in 1666. The first company to be established was in Paris in 1754 and it is called the General Chamber of Insurances.¹ The Algerian legislator has regulated insurance against fire and the risks associated with it in Articles 44 to 48 of the Amended and Supplemented Insurance Law, and accordingly, in accordance with what these articles stipulate, we will discuss insurance against the risk of fire, then insurance against the risks associated with it.

II.1.1 Insurance against fire risk

Fire insurance is a contract intended to compensate the insured against loss or damage to his property due to fire².

Fire is defined from a chemical standpoint as an ignition resulting from the combination of a fuel such as carbon or hydrogen, oxygen in the air, and combustion energy. The combination of these three elements forms a fire.³

As for the legal aspect, there is no definition that precisely defines the meaning of fire. When the Algerian legislator stipulated insurance against the risk of fire, he merely said in Article 44 that “the insurer is insured against fire for all damages caused by fire...”

It follows that everything that burns in fire requires compensation, but this formulation raised a problem in its application and a sharp controversy in France, which prompted the French Insurance Companies Association to develop a definition of a fire that deserves compensation, and later the Algerian insurance companies adopted it, which says: “A fire is the ignition of a fire.” “outside its normal scope”⁴.

Accordingly, the fire insurance contract does not cover the insured for damage to the furniture that is close to the fire stove due to its exposure to heat, because the fire remained in the stove and therefore it is called a familiar or friendly fire, but if the furniture glows and ignites as a result of the excessive heat, the fire is considered to have escaped. From the stove to the furniture and it became an aggressive fire, which entails the insurer to compensate the insured for the damages he suffers resulting from such a fire.⁵

In order for the loss resulting from a fire to be covered by a fire insurance contract, there must be a real flame or combustion in it, meaning that the fire must be aggressive. The aggressive nature of fire is easy to estimate, as this fire arose from an accident such as an electrical short circuit in an electrical circuit, but it is sometimes difficult. Determine whether the fire is intentional if it is used for heating or cooking. Aggressive fire in such a case is a fire that becomes out of control or leaks from the place prepared for its storage.

Article 44 of the Insurance Law excludes damages resulting from fire caused by heat effects or direct and immediate contact with fire or a combustible material. These damages are not guaranteed by the insurer unless there is an agreement to guarantee them, but the insurer is obligated to guarantee them without there being an agreement if they result. From the beginning of a fire that can turn into a real fire. In general, the insurer is obligated to compensate for the material damages resulting directly from the fire. This is what is stipulated in Article 45 of the Insurance Law, which stipulates that: “The insurer shall bear the material damages resulting directly from the fire, explosion, lightning, or electricity.”

The insurer is not responsible for damages caused intentionally or fraudulently by the insured or the beneficiary, even if they agree otherwise. This is a provision of public order against which it is not permissible for the two parties to agree. An intentional mistake in the field of fire insurance is when the insured intentionally resorts to burning down the insured house. In the hope of obtaining the insurance amount mentioned in the insurance contract, and on the contrary, the insurer is not responsible for the mistakes of the people for whom the insured is responsible, regardless of whether their mistake is intentional or unintentional, serious or minor, unless the mistake made by the insured's subordinate has occurred. In collusion with the latter, then it is considered fraud⁶.

From the above, it is concluded that fire insurance, in accordance with Article 45 of the Order Concerning Insurances, basically only covers direct material damage. Therefore, the guarantee must establish a causal relationship between the fire and the damage, and therefore the insured must accurately describe the insured items.

Also The risk of fire is not considered a natural disaster, as it is covered by mandatory insurance for the effects of natural disasters, including the following natural accidents Earthquakes, floods, mud fluids, storms and strong winds, movements of plots of land, and damage caused by fire can also be guaranteed, as Supreme Court Decision No. 777983 was issued, dated 04/19/2012, in the case (B.C) against the Algerian Insurance and Reinsurance Company. CAAR insurance.

Where it says⁷ “... Whereas, in support of his appeal, the appellant filed, through his lawyer, a petition containing two aspects of cassation.

-The first aspect: taken from the lack of legal basis It was stated in it that it was decided, in accordance with the provisions of Articles One, Two, and Eight of Order 03/12 dated 08/26/2003, which includes the compulsory insurance for natural disasters, that insurance for natural disasters represented by earthquakes, floods, storms, and any other disaster is obligatory, and that no insured may That the same property be underwritten except for one insurance contract of the same type against the effects of natural disasters, and the appellant insured his property, which contains the commercial store, from natural disasters, of which fire is one of them, contrary to what the judges of the matter said, who interpreted the above-mentioned matter in a narrow manner and tainted their decision with a lack of basis. Legal.

-The second aspect: taken from violating a fundamental rule in the procedures. It was stated that, by referring to the decision under appeal, it appears that it did not refer to depositing the written report with the police department before the pleading session, as required by the provisions of Article 553 of the Civil and Administrative Procedures Law.

Accordingly, the Supreme Court on the first aspect: taken from the lack of legal basis

It can be concluded from the facts of the file and the decision under appeal that the case of the case aims to request the appellant to oblige the appellant to compensate him for the losses incurred in his commercial store as a result of the fire that occurred on 04/25/2008, and in reserve to appoint an expert to estimate these losses. The latter responded that the insurance contract The agreement between them does not guarantee the risk of fire, and she sought dismissal of the lawsuit for lack of incorporation.

Whereas the appellant's defect in the decision under appeal is misplaced, because natural disasters are in accordance with Article Two of Order 03/12 dated 08/26/2003 relating to the compulsory insurance for natural disasters and compensation for victims, and Article Two of the Implementing Decree No. 04/268 dated 08/29/2004, which includes the diagnosis of natural accidents covered by the obligation of insurance for the effects of natural disasters, which are earthquakes, floods, mud fluids, storms, strong winds, and movements of plots of land. Accordingly, when the judges of the matter declared that the risk of fire is not considered a natural disaster, they applied The provisions of the two articles mentioned above must be properly applied.

Whereas what is established in the current case is that the insurance contract invoked by the appellant guarantees the damages resulting from the effects of natural disasters, and not the damages resulting from the fire. Accordingly, the judges of the matter, in ruling to reject the appellant's claim, did not lose their decision's legal basis, so this aspect had to be rejected as it is not founded. .

-The second aspect is derived from violating a fundamental rule in the procedures

It should be noted that Article 553 of the Civil and Administrative Procedures Law, the violation of which is claimed, does not stipulate that the decision must include a reference to depositing the written report with the chamber's control secretariat. Likewise, Article 554 of the same law, even if it required that, is that the legislator did not arrange any A penalty for not mentioning this statement in the decision. Accordingly, the failure to refer in the decision under appeal to depositing the written report with the police department before the pleading session does not constitute a reason for cassation, especially since the appellant did not prove the harm he suffered as a result of this omission.

Therefore, this aspect had to be rejected, along with the appeal"

II.1.2 Insurance against risks associated with fire

To determine the risks associated with fire, we refer to the text of Articles 45 and 46 of the Insurance Law, which include:

-Damage resulting from criticism operations and measures and loss of objects during a fire:

The insured shall be compensated for what is the inevitable result of a fire, and consequently material and direct damages to the insured items, such as damage to property caused by water and chemicals used in fire extinguishing operations, and damage caused by firefighters, as Article 46 of the Insurance Law stipulates the following: "It shall be covered." Through the fire insurance contract, the damages resulting from the fire include material and direct damages subsequent to the insured objects as a result of first aid and rescue measures."

Article 47 of the same law also adds, "The insurer must guarantee the insured items against any loss or loss during a fire."

Accordingly, if the insured proves that these things were present at the scene of the fire at the time of its outbreak, he will benefit from compensation for them, but he will not be compensated for the things that were lost or lost if the insurer proves the insured's intentional error in accordance with what is stipulated in the second paragraph of Article 47, which says, "However, This guarantee does not include items that are lost due to the fault of the insured."

Consequently, the Algerian legislator has limited compensation in fire insurance to direct material damages, and excluded from its scope indirect damages and non-material damages. These damages are not covered by compensation, but they can be agreed upon to guarantee them in exchange for an increase in premiums. Indirect damages are considered future damages whether It was a possible or probable occurrence, such as loss of profits due to non-exploitation of burned areas. As for physical damages in the sense of a violation, they are excluded from the basic guarantee of fire insurance, but it can be agreed upon to guarantee them in exchange for an increase in premiums.⁸.

The tenant may be responsible for the fire in accordance with Article 496 of the Civil Code if he is unable to pay the liability by proving the foreign cause. Then the warranty does not include damage to others due to the fire unless the two parties agree to that. This agreement is concluded by including a special condition for insurance against the tenant's responsibility for Damage resulting from a fire. One insurance policy combines two types of insurance: insurance on things, which is fire insurance, and liability insurance, which is insurance against the tenant's responsibility for fire. It should be noted that insurance companies usually suggest to the insurance applicant a type of comprehensive insurance, including multiple insurance. Residential risks, which is a complex insurance that combines several types of insurance and insures several risks within one insurance policy⁹.

It is clear here that the guarantee includes things that are lost due to an error not approved by the insured, and therefore the insured is obligated to do everything necessary to save the property threatened by fire, and among these means is transporting the insured things from the scene of the fire to a safe place or even throwing them in the street when It is necessary to save it from the fire. If it is damaged, this is attributed to the fire as a direct cause of it, and then the insurer is responsible for it. If the insured items are lost, natural logic considers their loss due to the fire, meaning it is assumed that the fire has consumed them, and then the insurer is asked about compensation for their value. According to the insurance policy.

An exception to this is the case of the disappearance or loss of insured items due to theft. If the luggage was stolen during a fire, this error was attributable to the insured who did not take the necessary precaution and foresight to

preserve his money, as the insurer is absolved from compensation and the burden falls on proving that the disappearance was the cause of the theft. It is the responsibility of the believer, and as long as this proof relates to material matters, he has the freedom to prove it by all means¹⁰.

Referring to the text of Article 48 of the Insurance Law, which stipulates that “the insurer does not guarantee the losses and defects of the insured item because of an intrinsic defect in it, but it guarantees the fire damages caused by it.”

Accordingly, losses and defects of the insured item are excluded from the scope of insurance if they result from an intrinsic defect. Insurance companies also usually exclude from insurance fires resulting from foreign wars, civil wars, and the like, due to the difficulty of establishing fixed statistics regarding them. The state usually takes care of them by establishing special funds to confront these matters. Dangers¹¹ Although Articles 39 and 40 of the Insurance Law allow this based on the agreement of the two parties or based on an additional premium.

-Explosion, lightning, or electricity

According to the text of Article 45, its first paragraph, of the Insurance Law: “The insurer shall bear the material damages resulting from fire, explosion, lightning, or electricity.”

By explosion, we mean the sudden and violent movement resulting from the pressure or drop of gas or steam, and it is usually associated with a fire that it causes or results from. All damages resulting from the explosion are covered by the basic guarantee of fire insurance and are compensated for on the condition that they are material and direct damages. However, if the explosion was the result of For one of the excluded reasons, such as foreign war, acts of terrorism, and the like, it is not covered by the guarantee because it is excluded by a legal text¹².

Lightning usually causes a fire and precedes it, and the damages it causes are guaranteed by fire insurance and are covered by the basic warranty if the damages are material and direct. As for electricity, it is a cause of damage to the insured objects if these objects do not perform their function except by being connected to electricity, such as household electrical appliances. Of various types, as Article 45 of the Insurance Law stipulates in its last paragraph that: “It is also possible to insure damages of an electrical nature to which electrical machines, transformers, electrical or electronic devices of whatever type, and electrical conduits are exposed.”

Accordingly, the warranty includes losses caused by electricity and caused by machines, devices, and channels carrying wires, if the damages caused by them are material and direct.

It is also possible to insure against air navigation risks, which is an insurance that supplements and complements fire insurance if there is a condition in the insurance document requiring this. According to Article 45, second paragraph of the Insurance Law, it is possible to insure against damages caused by a collision or fall of navigation devices, parts thereof, or falling objects. Among them, this fall may cause explosions, fires and other damage, especially in urban and industrial areas. It is also possible to insure against damage resulting from vibration caused by an aircraft passing the sound barrier.¹³

II.2. Other types of insurance for items

In addition to fire insurance, there are different types covered by insurance on things, including insurance against the destruction of animals and climatic hazards, which the Algerian legislator regulated in Articles 49 to 54 of Order No. 95/07 relating to insurances. As well as insurance of transported goods and insurance against theft.

II.2.1 Insurance against the destruction of the animal

It is insurance that the insured resorts to in order to guarantee or cover the damages resulting from the death of livestock due to disease or exposure to an accident resulting from a fire or as a result of their poisoning. The death may be the result of natural death or a specific epidemic that affects the herd as a result of infection or killing of these animals, for the purpose of preventing Damages if committed by order of public authorities or by order of the insurer.

A practical example of this is the possibility of compensation for damages resulting from mad cow disease, as happened in Britain.

Article 49 of the Insurance Law stipulates: “The insurer guarantees the loss of animals resulting from natural death, accidents, or diseases.”

The guarantee applies in the event that animals are killed for the purpose of prevention or to limit damage if this is done by order of public authorities or the insurer.

However, in the case of animal epidemics or infectious diseases, if the insured does not adhere to the laws and regulations related to the health of the insured animals, he loses his right to compensation except in cases of force majeure, and the insurer cannot cling to the extinction of the right and refrain from compensating the insured unless he issues a ruling to that effect, and this is what it ruled. Article 50 of the Order Concerning Insurances.

Article 15, in its fifth paragraph of the same law, specifies the deadline for notifications of twenty-four (24) hours as the maximum period starting from the occurrence of the risk, unless there is an emergency or force majeure, and the insurer, according to Article 50 of the Insurance Law in its last paragraph, must refrain from insuring any animal. It exists in the region as long as the epidemic remains there.

II.2.2 Insurance against climate risks

Climate risks insurance means guaranteeing damages resulting from climate risks, represented by hail, storms, ice, heavy snow, and floods, in accordance with the conditions stipulated in the insurance contract, in accordance with what is included in Article 52 of the Insurance Law, and is called Executive Decree No. 95/416.¹⁴ This decree came in order to determine the conditions for guaranteeing these risks in accordance with Article 52 of the Insurance Law.

Storm insurance is insurance to cover damage caused by strong winds to facilities, crops, and agricultural crops, while hail insurance is intended to cover damage resulting from the mechanical action of hailstones on movable property and agricultural real estate.

While insurance against ice is a guarantee of the damage caused by the latter to plants and fruits, while insurance from floods is covering what was left behind by heavy rain on movables and agricultural properties, and insurance from the weight of snow is a guarantee of damages caused by the accumulation of snow in facilities and plants.¹⁵

Article 53 of the same law stipulates that in the field of hail insurance, the insurer is obligated to insure the damages resulting from the mechanical action of hailstones on property, whether movable or immovable, as well as agricultural crops that are not stored in terms of quantitative losses. However, the insurer can guarantee the qualitative losses of these. Crops with an explicit agreement in exchange for an additional premium. Therefore, the insurer originally only guarantees quantitative losses, while damages related to the quality of the insured crops are not covered by the guarantee unless there is an agreement stipulating otherwise.

In the event that the risk materializes, the insured is obligated to take the initiative to notify the insurer and make a declaration after the occurrence of the accident within four days from the day of its occurrence, except in cases of emergency or force majeure. We find that the legislator specifically specifies insurance against hail, to the exclusion of other climatic risks (storm, ice, heavy snow, floods). Thus, it remains subject to the general period stipulated in Article 15, Paragraph 05 of the Insurance Law, which generally specifies the period for risks to be seven days unless there is an emergency or force majeure that prevents risks from being carried out within this period.

With reference to the text of Article 54 of the Insurance Law, the insurance continues to be in effect in the event of the transfer of ownership of real estate or revenues under the same conditions specified in Article 24 above. However, the insurer can renounce the contract and notify the buyer of that. In this case, the renunciation begins to take effect upon the expiry of the current insurance period.

Article 4 of Executive Decree No. 95/416 stipulates that the warranty can be extended for damage to buildings, structures, equipment, equipment, glass, and roofs, as well as losses to planted plants. Article 5 of the same decree also stipulates that if the insurance includes crops, as previously mentioned, its value is determined. The average return declared by the insured upon subscription, in addition to the cost of facilities and equipment if necessary.

Pursuant to the text of Article 7 of the above-mentioned decree, the insurer must appoint an expert to assess the damages, and this must be done as soon as possible, especially if the matter concerns agricultural crops. The same article sets a deadline for the expert to be seven days from the day the insurer receives notification of the accident, and in the event that he does not do so in Required deadlines: The insured has the right to resort to an expert, chosen by him from a list of accredited experts, in order to estimate the loss.

The occurrence of the risk is also proven by several means, as the Supreme Court stated in its decision No. 1259319 dated 09/19/2019 that compensation will be given for damage to agricultural crops resulting from fire or hail, based on the insurance contract that includes compensation for these risks, after proving the occurrence Risks in many ways, especially the correspondence issued by the Meteorological Department, where the most important thing is¹⁶:" ...As it is concluded from the papers of the appeal file that the appellant filed a lawsuit claiming compensation for the damage caused to his agricultural crops as a result of the hail, and based his claim on the insurance contract, while the appellant argued that the expert appointed by him concluded that the agricultural crops were exposed to heat blight during their formation and not to Hail falls according to a dispatch issued by the Meteorological Department.

Whereas the court resorted to appointing an expert and then awarded the appellant an amount of 1,837,500 DZD. After the appeal, the council decided to uphold the ruling, and the Supreme Court overturned this decision with referral, and upon hearing, the contested decision was issued, rejecting the appellant's claim for lack of incorporation.

Whereas, contrary to what the appellant stated, the Council's judges adhered to the legal point that was decided by the Supreme Court, which is discussing the elements of the dispute to reach a convincing decision, by analyzing the agricultural crop insurance contract for hail and fire, as well as the statements of witnesses, the experience report, and the Meteorological Department's dispatch, and they concluded by adopting this testimony. They ruled out other means because the expert does not have the authority to conduct an investigation or analyze the meteorological certificate, and as long as the issue of assessing the facts is up to the judges of the matter and not the oversight of the Supreme Court, and these judiciaries highlighted the means that made them convinced of the necessity of rejecting the case, then their decision is considered established and the face is subject to rejection... and whoever was Appeal rejected."

The Supreme Court approved it in Decision No. 604744, dated 11/10/2010, in the case (M.N.) against the Algerian Insurance and Reinsurance Company.CAAR states that falling snow is not considered a natural disaster, as the following natural accidents are covered by mandatory insurance for the effects of natural disasters: earthquakes, floods, mud fluids, storms and strong winds, movements of plots of land, and the weight of the snow can also be guaranteed, as stated in it¹⁷:"... Whereas, in support of his appeal, the appellant filed, through his lawyer, a petition containing two aspects of cassation.

-The first aspect: taken from the lack of reasonsOn the grounds that the Council's judges indicated that the two insurance contracts do not include compensation for the equipment, the mill and its equipment from the danger of snow, without addressing the content of the two contracts, since the first includes all damages, and the second includes damages that

They are caused by natural disasters, and their decision was marred by a lack of reasons.

-The second aspect: taken from violating the law and misapplying it, stating that the appellant is obligated to compensate him in accordance with the insurance contract in effect from 09/13/2004 to 09/12/2005, which includes all

risks, based on the provisions of Article 12 of Order 07/95, and Article 106 of the Civil Code. However, the Council's judges They violated the two aforementioned articles, and made a mistake in applying Article 3 of Order 03/12 related to natural disasters when they stated that the damage resulting from snow is not the result of a natural disaster..

-Accordingly, the Supreme Court considered both aspects due to their connection:

It can be concluded from the facts of the file and the contested decision that the case of the case aims to request the appellant to oblige the appellant to compensate him in the amount of 6,987,565 DZD for the value of the mill's equipment, and the amount of 720 thousand dinars for duties and customs rights, and the amount of 253,435 DZD for the expenses of expertise, and 150,000 DZD for the delay in payment resulting from the losses incurred at the press. As a result of falling snow, based on the two insurance contracts that connect them.

Whereas the appellant responded that snowfall is not considered a natural disaster within the meaning of Law 03/12 relating to insurance for natural disasters, and that the appellant was safe from this danger on 02/06/2005 and declared that the accident occurred on 02/10/2005, which indicates his bad faith, and it sought Dismissal of the case for lack of incorporation.

Whereas it is decided, in accordance with the provisions of Article Three of Implementing Decree No. 04/268 of Law 03/12 relating to insurance for natural disasters, that a state of natural disaster shall be declared pursuant to a joint decision between the Minister in charge of local communities and the Minister in charge of Finance, specifying the nature of the accident, the date of its occurrence, and the municipalities concerned with it. It is decided, in accordance with Article 619 of the Civil Code and Article 12 of Order 07/95 relating to insurances, that the insurer is obligated to pay the insured a sum of money in the event that the risk stated in the contract occurs..

Whereas what is established in the current case and contrary to what the appellant claims is that his press and its equipment are not insured against the weight of the snow, but rather from other risks specified exclusively in the insurance contract invoked by him, and the snowfall accident is not considered a natural disaster within the meaning of Law No. 03/ 12 and its implementing decree mentioned above, and therefore the judges of the matter, in ruling to reject the appellant's claim, did not fail to explain their ruling, nor did they violate the law, but rather applied the provisions of the above-mentioned articles in a proper manner. Therefore, the two aspects raised are not founded and require rejection and hence the rejection of the appeal. "

II.2.3 Insurance of transported goods:

The Algerian legislator has regulated this type of insurance in Article 55 of Ordinance 95/07 relating to amended and supplemented insurances, which stipulates that this type of insurance covers damages and material losses resulting from goods transported by land and railways or even during their loading or unloading based on the conditions specified in Contract.

All goods, regardless of their type or value, can be insured for one trip or several trips, for a short or indefinite period of time. Goods are often lost during transportation or damaged due to heat or any other reason.

In all cases, the insurance document must include specifying the special conditions for insurance, so that the transported goods may be items of antique value, jewelry, or dangerous goods, so this must be specified in the insurance document.¹⁸.

Referring to the text of Article 35 of the Order relating to insurances, the destruction, damage or loss of the goods due to insufficient or poor packing by the insured or due to an intrinsic defect in the insured item is excluded from the scope of insurance, unless there is an agreement to the contrary.

The deadline for declaring the accident is also subject to the general principle in accordance with the text of Article 15, Paragraph 5 of the Order Concerning Insurances, whereby the insurer is notified of every accident resulting from the insurance as soon as he becomes aware of it, within a period not exceeding seven (7) days, except in the event of an emergency or force majeure.

As for marine insurance, Article 194 stipulates that: "Every importer who wishes to insure goods or processing materials transported by sea must take out insurance with an approved insurance company in Algeria.

However, imported goods and equipment that benefit from special financing are not subject to mandatory insurance.

In this regard, the Supreme Court, in its decision No. 0929005, dated 04/16/2014, in the case of Alpina Insurance and those with it against the company W.L.L., Al Amanah, stated that it refuses to hand over the executive version of the foreign ruling, if it is in violation of public order, and non-violation requires surrender and reading. Article 194 of Order 95-07 of 01/25/1995 relating to insurance, we find that its second paragraph stipulates that imported goods and processing resources that benefit from special financing are excluded from the obligation to insure with an approved insurance company in Algeria, as stated in its last paragraph that The conditions and methods for implementing this article are determined by regulation, and as long as the parties do not violate a binding legal rule that does not result in the invalidation of the insurance contract, it is necessary to grant the executive formula as stated therein.¹⁹"...where the appellants requested: Alpina Insurance, a stock company, Ashi Insurance, a stock company, Al-Qara Insurance Company, a stock company, Mitsui Sumito Insurance Europe, the limited liability company Seat, the Italian Insurance and Reinsurance Company, Venturus Europe Insurance, and Aqribina Insurance, a stock company, through their lawyers. Accredited to the Supreme Court, the chosen ones have their domicile at the location of his office. He overturned the decision issued by the Algerian Judicial Council, the Civil Chamber, on 03/01/2012, Index No. 12/1288. The judge, in his presence, finally accepted the appeal in form, and in the matter, annulment of the appealed ruling issued by the Sidi M'hamed Court, its civil division, dated 2011/ 02/01 under No. 11/6293, ruling not to accept the case

because it had already been decided, and ruling again to reject the case for lack of incorporation and charging the appellants with the legal expenses...

...The appellants base their request on three aspects of cassation:

-First side: Taken from excess of authority in accordance with Article 358, paragraph 04 of the Code of Civil and Administrative Procedure

On the pretext that the Council's judges exceeded their authority when they refused to grant the foreign ruling an executive formula on the pretext that it conflicts with Algerian laws. This ruling was issued by a state court with which Algeria has an agreement related to mutual judicial cooperation in civil and commercial affairs, and the request to grant it an executive formula came in fulfillment of the conditions stipulated in Article 605 of the Code of Civil and Administrative Procedures, and contrary to what the Appelled Council considered, she was the one who violated the obligation to insure imported goods with an approved insurance company in Algeria, and this violation was not caused by the appellants and does not affect the validity of the insurance contract or make the foreign judgment possess the force of the *res judicata*. Contrary to public order.

-Second side: Taken from the lack of legal basis in accordance with Article 358, Paragraph 08 of the Code of Civil and Administrative Procedure

Claiming that the Council's judges lost their decision the correct legal basis when they declared that the request to grant the foreign judgment an executive status was not established even though it met the conditions specified in Article 605 of the Civil and Administrative Procedures Law and that the foreign judgment did not include anything that violates public order.

-The third aspect: Deducted from the lack of justification in accordance with Article 358, Paragraph 09 of the Civil and Administrative Procedures Code.

That the Council's judges justified their decision on the grounds that the insurance contract for imported goods by the insured against whom the appeal was made, the subject of the foreign ruling required to be granted an executive form, was concluded with insurance companies accredited in Belgium in violation of the provisions of Article 194, paragraph 01 of Order 95-07 relating to insurances according to which the respondent stated that She was obligated to conclude an insurance contract with an approved insurance company in Algeria. With this reasoning, the Council's judges tainted their decision with the defect of lack of justification and misapplied the agreement concluded between Algeria and Belgium within the framework of judicial cooperation, because the foreign judgment met the conditions for granting it the executive formula stipulated in Article 605 of the Code of Civil and Administrative Procedures. It does not include any violation of the law, as the insurance contract relates to insuring and guaranteeing the imported goods purchased by the respondent in Belgium, and the appellants are not aware of the obligation of the insured to conclude an insurance contract with an approved insurance company in Algeria. Therefore, the respondent and the insured remain obligated to fulfill her contractual obligation to pay the value of the insurance contract. Insurance.

-The second and third aspects take precedence due to their importance:

It can be concluded from the facts of the case and the contested decision that the case of the case aims to request the appellants to grant the executive version of the foreign judgment issued by the Court of Anthurin, Belgium, on September 12, 2006, which has the force of *res judicata*, and which obligated the appellants to pay them the amount of 22,171.05 euros, which is what The value in the national currency is equivalent to the amount of 2,217,105 Algerian dinars, under the pretext of fulfilling the conditions for granting it the executive formula stipulated in Article 605 of the Code of Procedure and Administrative Procedures..

Where the appellant requested the dismissal of the case because the foreign ruling violated the Algerian public order, since the insurance contract, the subject of the case in which this ruling was issued, was concluded with the appellants in violation of Article 194, paragraph 01 of Order 95 07 issued on 01/25/1995 relating to insurances..

Whereas it appears from the contested decision that the Council's judges justified their decision to reject the case for lack of incorporation by the fact that the insurance contract subject to the foreign judgment concluded outside the national territory with foreign insurance companies accredited in Belgium is in violation of Article 194 of Order 95-2017 relating to insurances, which stipulates that every importer must Those wishing to insure goods or equipment transported by sea must subscribe to an insurance contract with an approved insurance company in Algeria... and thus the foreign ruling conflicts with Algerian laws..

Whereas this justification is not sufficient to support the contested decision, as Article 605, Paragraph 04 of the Civil and Administrative Procedures Code required that a foreign ruling be granted executive status if it does not include anything that violates public order and public morals in Algeria. What is meant by violating public order is that the foreign ruling includes a party agreement. The lawsuit issued is based on a violation of a binding legal rule that the contracting parties cannot amend by agreement, and its violation results in the invalidity of the transaction.

By reading Article 194 of Order 95-07 of 01/25/1995 relating to insurances, we find that its second paragraph stipulates that imported goods and processing resources that benefit from special financing are excluded from the obligation of insurance with an approved insurance company in Algeria. Finally, the conditions and methods for implementing this article are determined by regulation.

Whereas, with reference to Article 02 of Executive Decree No. 95-412 of 12/09/1995 specifying goods and equipment materials that are imported by sea and air, and are exempt from the obligation of insurance with an approved insurance company in Algeria, that is, the executive decree specifying the conditions for applying Article 194 of Order No. 95-2017 related to insurances: It is clear that the rule of compulsory insurance of imported goods with an approved insurance company in Algeria is not an absolute rule, and violating it does not result in the invalidation of the insurance

contract. Moreover, the Council did not indicate the means by which the appellants deliberately violated Article 194 of Order No. 07-95 relating to By insurances or by the means from which it can be concluded that the imported goods that are the subject of the insurance contract based on the foreign ruling are not exempt from the obligation of insurance with an approved insurance company in Algeria and therefore, without the need to discuss the first aspect, it is necessary to overturn and invalidate the contested decision.”.

The Supreme Court also stated in its decision No. 456618, dated 11/25/2010, that compensation for wrongful death resulting from a marine accident caused by a marine vehicle is not subject to Order No. 74-15, amended and supplemented, as stated in it:²⁰⁶ “...It is worth noting that, following the prosecution of the accused (K.M.) for the crime of manslaughter for harming the late victim (L.N.), and in accordance with Article 288 of the Penal Code, the Sharqa Court, Criminal Division, issued a ruling on 02/06/2005 in which it decided In person, not in person, by convicting the accused of the crime charged against him and punishing him with one year of suspended imprisonment and a 10,000 DZD fine, and charging him with judicial expenses. In the civil case: obligating the convict, under the guarantee of his civil official, the insurance and reinsurance company at the Prince Hotel, Dali Ibrahim Road, to pay death compensation to the victim’s father in the amount of (132,200 DZD (one hundred and thirty-seven thousand and two hundred Algerian dinars), and death compensation for the mother amounting to (97,200 DZD) ninety-seven thousand and two hundred Algerian dinars. Following the resumption of consideration of this ruling by the accused, the guarantor, the National Car Insurance Company, and the two civil parties, a decision was issued by a judicial council. Blida Criminal Chamber, which is the decision that is currently being appealed.

Whereas, on 03/11/2010, Mr. Nefti Gamal submitted a memorandum against the National Insurance Company Car, Eshraqa Agency, code 713, the appellant guarantor, in support of its appeal in cassation, which included three aspects of the appeal, which are as follows: The first aspect: taken from excess of authority in accordance with Article 500/02 of the Code of Procedure. Criminal Court, stating that it is very strange that after appealing the ruling, the contested decision decided to pay the amounts adjudicated to compensate the civil parties and each of the parents, and that the Council’s judges failed in their decision when they decided to raise these amounts, in violation of the provisions of Law No. 31/88, given that the compensation owed to the parents is As follows, based on the guaranteed national minimum income for the monthly wage at the time of the accident, which is 8,000 DZD. $8,000 \times 12 \text{ months} = 96,000 \text{ DZD}$, corresponding to the evidentiary point of 3660 = $3660 \times 10 = 36,600 \text{ DZD}$ for each of the parents, meaning the total is 73,200 DZD, adding funeral expenses, which are calculated on the basis of 5 times income. Monthly, i.e. $8,000 \text{ DZD} \times 48000 \text{ DZD}$ for the parents between them and the total to be paid to the two parties is 161.200 DZD and that the council’s judges had to amend the amount sentenced to suit the law 31/88, but they spent 300,000 DZD and therefore the contested decision came with a defect that exceeded the authority, which exposes it to the veto And invalidation.

-The second aspect: taken from the violation of the law, Article 500/07 of the Code of Criminal Procedure, That the contested decision amended part of the ruling by raising the delegation amounts awarded to the victim’s parents, and that the partially upheld ruling and the contested decision violated Law 31/88, which the calculations for compensation must be in accordance with.

-The third aspect: taken from the lack of legal basis and in accordance with Articles 500/08 of the Code of Criminal Procedure It is noted that the partially upheld ruling and the contested decision were not made clear in their merits, the legal basis by which the calculations were made for the compensation awarded to the appellant, and therefore these compensations are neither legal nor fair, which exposes the contested decision to veto and invalidation.

Whereas, the Attorney General at the Supreme Court submitted petitions aimed at rejecting the appeal on the merits.

... Accordingly, the Supreme Court... on the three raised aspects of their connection: which are taken from exceeding authority, violating the law, and lack of legal basis.

However, as it becomes clear from reviewing the contested decision that the judges of the matter did not exceed authority in their decision and did not violate the law, they also based their decision on a legal basis, because the Council judges ruled out the application of Order 15/74 amended and supplemented by Law No. 31/88 regarding compulsory car insurance. And the compensation system for traffic accidents, because the crime prosecuted and convicted of by the accused (K.M.), manslaughter, does not relate to a traffic accident, but rather to a marine accident that occurred during a marine boat collision with the victim who was diving in the sea. Also, Article 1 of the above-mentioned order states (However, every vehicle owner is obligated to subscribe to an insurance contract that covers the damage caused by that vehicle to others before it is released to travel. The word “vehicle” in this text means every land vehicle with an engine, as well as its trailers or semi-trailers and its load...) and that the Council’s judges amended the appealed ruling by raising The amount of compensation for the two civil parties and the parents of the deceased victim is 300,000 DZD for each of them. They have ruled out the application of the above-mentioned order because the accident of manslaughter does not relate to a land traffic accident. In their ruling, they did not exceed the authority delegated to them and did not violate the law. They also based their decision on a legal basis because it was discretionary. Compensation is a matter of fact that falls within the discretionary authority of the judges of the matter and escapes the oversight of the Supreme Court. Accordingly, the aspects raised are out of place and necessitate the rejection of the appeal.”

II.2.4 Insurance against theft

Insurance against theft risks is one of the most widespread forms of insurance contracts today because it constantly threatens movable property. Accordingly, this type of insurance aims to compensate for the material losses that occur to the property of the insured, whether an individual or an establishment, due to burglary or theft. The documents for this type of insurance take forms. Different according to the subject of insurance, including:

- Commercial insurance documents.
- Personal property insurance policies for individuals.
- Travelers' luggage insurance documents.
- Valuables insurance policies.
- Movable money insurance policies²¹.

Accordingly, for theft insurance that applies to stolen items, the insurance contract must include the conditions for this insurance and the obligations that the insured must adhere to, and they differ depending on the items insured against theft. The conditions for insurance against theft of the contents of an apartment differ from the conditions for insurance against theft of the contents of an institution. Or a store or a bank²².

We note that the Algerian legislator did not regulate this type of insurance in the Insurance Law in separating insurance from damages, despite the importance of the risks of theft, and merely stipulated in Article 15, fifth paragraph of the Insurance Law, the time limit within which notification of the occurrence of theft must be notified and limited it to three (03) days. Work, except in the event of an emergency or force majeure. This period is calculated from the day of the accident. Weekends, religious or official holidays are not counted in this period. If the insured is excused from notifying the person due to an emergency or force majeure, the period stops running until the end of the period. this case.

The Supreme Court, in its Decision No. 0870327, dated 04/16/2014, approved the case of Outy Rent Car Company LLC against the International Insurance and Reinsurance Company "Siyar"., that the insurance company is obligated to pay compensation for the car stolen through fraud, as the insurance company guarantees compensation for the damages resulting from the theft of a car insured by a comprehensive insurance contract, since fraud that leads to the loss of a car is considered theft, as stated in it²³: "...Where the appellant requested the limited liability company "Auto Rant Car", represented by its manager, through its lawyer, Ms. Hired Fattouma, who is accredited to the Supreme Court, to set aside the decision issued by the Boumerdes Judicial Council, the Civil Chamber, on 10/16/2012, index No. 12/1832, by the judge, permanently in his presence, accepting the appeal in form. In the matter, the appealed ruling issued by the Rouiba Court on 12/19/2012 No. 5850/2011 was upheld, which ruled to reject the case for lack of incorporation and to charge the appellant with the legal expenses.

...The appellant bases her request on three aspects of cassation.

-First side: Taken from violating the internal law in accordance with Article 358, Paragraph 05 of the Civil and Administrative Procedures Code:

It states that the Council's judges violated the provisions of Article 106 of the Civil Code and Articles 12 and 38 of Order 07.95 relating to insurances when they justified their statement not to establish the appellant's claim on the grounds that fraud and deception are not among the risks that are insured against, as the two cars for which compensation is claimed are insured by an insurance contract that includes a guarantee for all risks. The appellant's loss of these two cars is nothing but theft, and according to Articles 106 of the Civil Code and 12 of Order 07.95, the appellant is obligated to compensate the appellant, and according to Article 38 of the same order, i.e. 07/95, she has the right to replace the insured in rights and claims against those responsible within the limits of compensation. Paid to her.

-Second side: Taken from lack of causation in accordance with Article 358, Paragraph 10 of the Code of Civil and Administrative Procedure, Claiming that the Council's judges were negligent in giving justification for their decision when they simply said, "The insurance contract does not cover or include fraud and fraud, but rather only covers theft..."

-The third aspect: Taken from the lack of legal basis in accordance with Article 358, Paragraph 08 of the Code of Civil and Administrative Procedures On the grounds that the Council's judges did not base their decision on legal material, they simply said that fraud is not safe from fraud. Without discussing the laws referred to by the appellant in the appeal petition.

-Regarding the three aspects combined due to their connection:

As it can be concluded from the facts of the case and the contested decision supporting the appealed ruling, that the present suit aims to request the appellant to oblige the insurance company against which the appeal is made, to compensate it for the value of the insurance of the two cars that were stolen using fraud and deception, and that they were insured by an insurance contract that includes all risks.

The appellant argued that the case should not be instituted because the appellant's loss of the two cars in question resulted from a fraudulent incident committed by the plaintiff (A.A.) for which he was criminally convicted. The all-risk insurance contract does not cover this risk, and the conditions for compensation for the risk of theft are not available. .

As it became clear from the contested decision that the Council's judges justified their decision to reject the case for lack of incorporation by saying that "the insurance contract does not cover or include fraud and fraud." In fact, with this reasoning, they did not provide sufficient reasons to support their decision, as they did not explain the legal basis adopted in their exemption of the insurance company appealed against from the obligation. By guaranteeing the damage resulting from the loss of the two cars due to the use of fraud and fraud, and they did not apply the law well, because

according to Article 05, Paragraph 04 of the general conditions of the car insurance contract, in the event of the theft of the car insured by a comprehensive insurance contract, the insurance company guarantees the damages resulting from its loss, and theft in its legal meaning. It is the theft of a thing from its owner or possessor surreptitiously and the appellant losing the two cars insured for all risks resulting from the use of fraud and deception amounting to theft, because fraud and deception are the means used to steal the two cars from the insured appellant and therefore the appellant is obligated to compensate the appellant for the damage resulting from the risk of theft insured against. Accordingly, the contested decision must be annulled and annulled.”

III-The second requirement : Liability insurance

Liability insurance is considered one of the most important types of damage insurance contracts due to the breadth of its fields, as industrial progress, the intertwining of service and commercial relations, and the multiplicity of liberal professions were the reason for the emergence of this type of insurance, where there was a need to cover the risks resulting from all these activities.

From here the idea of insurance against the risk of civil liability emerged, inspired by civil laws on the basis that every person who causes harm to others is obligated to compensate.

And We will talk about it on The concept of liability insurance, then We eat Compensation in liability insurance.

III.1 First branch The: concept of liability insurance

The Algerian legislator stipulated this type of insurance in the text of Article 56 of the Amended and Supplemented Insurance Law, which stipulates: “The insurer guarantees the financial consequences resulting from the insured’s civil liability due to the damages sustained by him.”, Accordingly, liability insurance falls within the category of damage insurance, which is a contract under which the insurer undertakes to insure the insured for damages resulting from third parties claiming responsibility against him in exchange for a premium paid by the insured.²⁴.

III.1.1 definition :

Civil liability insurance is damage insurance that aims to insure the insured against recourse to him for compensation as a result of his responsibility for the harmful act. Damage in this type does not directly affect money, as is the case with insurance on things, but rather arises from the emergence of a debt owed by the insured. Because of the realization of a liability, whether contractual or negligent, this debt is the compensation that the judge rules for the injured person, and since the insured money is a guarantee for this debt, the damage falls directly on the money. For this reason, it is considered debt insurance, and this is to distinguish it from insurance on things, which is considered a guarantee for the assets of the financial liability. For the insured²⁵.

As for the subject of civil liability insurance, it is a debt related to the liabilities of the insured, and the creditor is the person who suffered damage due to the mistake of the insured, or due to the mistake of one of his subordinates, or the mistake of someone under his supervision. It varies according to the diversity of the act that leads to this responsibility, and it is equal to whether this liability is contractual or tort, whether By the unintentional act of the insured or by a dependent act, regardless of the type and seriousness of the error committed²⁶.

The guarantee does not cover criminal liability and fines as penalties. The Algerian legislator has made civil liability mandatory in some fields, such as the health and medical field, manufacturing, the manufacture of some consumable materials, and some liberal professions such as documentation, law, accounting, real estate promotion, and others.²⁷.

Accordingly, the subject of insurance on things is the money of the insured, while the subject of liability insurance is the money of the insured, and since liability insurance is insurance for a debt, unlike insurance on things, it is not limited to two people, the insurer and the insured, but rather extends to A third person is the injured person. There are distinct relationships between the insurer and the insured on the one hand, and between the insurer and the injured person on the other hand. Whether insurance against liability is compulsory or non-compulsory, it is either insurance against a specific risk, which is insurance for an estimated or estimable value, such as the carrier’s insurance against liability for transported goods. The insurer is obligated to compensate within the limits of the value of these things, or insurance against an unspecified risk, that is, insurance against a risk with an unspecified value, such as insuring the tenant from his liability for damages that befall others due to a fire that breaks out in the rented property, or insurance for traffic accidents, in which case the insurer is obligated to compensate. Whatever the amount of responsibility.

In any case, it is original or supplementary insurance, as is the case with fire insurance, it is original insurance, and it is supplementary insurance if it complements insurance on things, where insurance against liability for damage to others due to fire is supplementary insurance.

III.1.2 Mandatory liability insurance

Compulsory insurance is considered real social protection, as it guarantees the injured person compensation for the damages he suffers due to the responsibility of the insured²⁸ Accordingly, the compulsory civil liability insurance contract is based on the basic idea of cooperation between the insured who are threatened by one risk and want to prevent its harmful consequences. Therefore, they intend to help each of them bear this damage, and the insurer, on their behalf, manages this amount and organizes the cooperative relationship between them. So that it contributes to the

distribution of risks among the total number of insureds, and the legislator determines the amount of insurance imposed on the insured²⁹.

The compulsory insurance contract is no longer merely a means aimed at achieving the private interests of individuals in accordance with the principle of the power of will. Accordingly, compulsory insurance is distinguished from other non-compulsory insurance in that it must comply with its obligation and subject non-compliance to it to a special penalty stipulated by law. The insurer cannot refuse to cover Any risk subject to compulsory insurance in relation to the insurance operation for which it was approved, as Article 201 stipulates in its first paragraph of the Amended and Supplemented Insurance Law 95/07 as follows: "Insurance companies must cover any risk that is subject, in accordance with this order, to compulsory insurance in relation to insurance operations." for which it was adopted.

Compulsory insurance is considered a means of achieving social goals and objectives that concern society as a whole, as the legislator imposed this type of insurance contracts in some areas, as is the case in liberal professions, traffic accidents, natural disasters, etc., and this is due to the importance of this system in avoiding the insolvency of the debtor by Insurance companies intervene to cover the damages resulting from the civil liability of the insured, on the one hand, and because it enables the insured to rebuild his capital without bearing compensation for the damages it causes, on the other hand.³⁰

In the field of compulsory liability insurance, the Algerian legislator has restricted the principle of powers of will, as the will is no longer free to form this contract or even determine its terms and the obligations of its two parties or even its effects. Rather, more than that, this will is no longer free even to amend and terminate it to the point of saying that this The contractual relationship is no longer bilateral, as is the case with the rest of insurance. Rather, the existence of the contract depends on a common will between the insurer, the insured, and the legislator as well.

As is the case in compulsory insurance against liability arising from the use of vehicles, as Article 1 of Order 74-15 stipulates³¹ However, "Every vehicle owner is obligated to subscribe to an insurance contract that covers the damage caused by that vehicle to others, before launching it to drive," since in addition to the obligation to insure for damage caused by the vehicle, the estimation of compensation is subject to the will of the legislator in accordance with amended Law 74/15. In addition, in this regard, the Supreme Court decided in Decision No. 1093187 dated 01/19/2017 that in calculating compensation for temporary total disability and permanent partial disability resulting from a physical traffic accident, the salary statement proving the victim's monthly income on the date of the accident is based on the average pain damage. It is calculated on the basis of two times the minimum guaranteed national wage on the date of the accident, not the victim's monthly income, as stated therein³² "Whereas it is clear from the contested decision that the physical damages that are the subject of the compensation request were inflicted on the plaintiff appealed against as a result of the traffic accident to which he was exposed on 05/11/2010.

Whereas it is useful from the section entitled First, Paragraph 01 of the Appendix to Law No. 88/31 amending and supplementing Order No. 74/15 relating to the compulsory automobile insurance and the system of compensation for damages, which specifies the schedule of compensation granted to victims of traffic accidents or to their rights holders, that the wage or professional income of the victim depends on The date of the accident is a basis for calculating the compensation due for temporary inability to work, partial or total inability to work, and according to Section Five, Paragraph 02 of the same table, compensation for moderate pain damage is estimated at two times the value of the minimum guaranteed national monthly wage at the date of the accident.

Whereas it became clear from the contested decision that the Council's judges adopted as a basis for calculating compensation for temporary and partial permanent incapacity for work, as well as pain damage, the salary statement submitted by the appealed plaintiff dated 01/29/2013, in which his monthly salary was specified in the amount of 37,451.99 DZD and the annual salary in the amount of 449,423.88 DZD. This is without clarifying whether this statement pertains to his monthly wage on the date of the accident, corresponding to May 11, 2010, especially since what appears from the appealed ruling, which is initially supported by the decision under appeal, is that the court refused to adopt it in calculating compensation on the basis that its content does not indicate that it pertains to the appellant's wage. The time of the accident.

Whereas, the Council's judges overestimated when they relied in calculating the compensation for these two disabilities on the salary statement dated 01/29/2013 instead of the statement regarding the net monthly wage of the appellant on the date of the accident, and in their estimation of the compensation for moderate pain damage on the basis of twice the value of the wage for the month of January 2013 instead of double. The minimum guaranteed national monthly wage at the date of the accident. They have violated the provisions of the first and fifth sections of the annex to Law No. 88/31 of 07/19/1988 supplementing and amending Order No. 74/15 of 01/30/1974 specifying the schedule of compensation granted to victims of traffic accidents. Or to those with the aforementioned rights, which necessitates the reversal and invalidation of the contested decision."

In order to extend greater protection to the injured party, the Supreme Court decided in its decision No. 478174, dated 04/15/2009, that the fetus born alive after the death of its father in a traffic accident is entitled to compensation, as it stated:³³ "... Whereas, as can be concluded from the case file, on 01/18/2002, the deceased (S.A.), the appellant's husband, died as a result of the traffic accident, and the person who caused the accident was referred to the misdemeanor court, where he was convicted according to the ruling dated 2002 /04/28 for the crime of manslaughter, and the victim's rights were compensated.

Whereas when the deceased (S.A.) died, he left the appellant pregnant, and she gave birth, so she filed the lawsuit requesting compensation for her newborn for the material damage he suffered as a result of the death. That lawsuit ended with a ruling dated 05/25/2004 in which compensation was decided for the new baby.

On appeal, the Council issued the decision under appeal

Whereas the cassation appeal is based on one aspect: “It is taken from a mistake in applying the law”

The appellant criticizes the contested decision on the basis that the appeal judges did not reject the compensation claim based on the fact that on the day the accident occurred, the child born in his mother’s womb did not suffer any harm as a result of this death, while Article 25 of the Civil Code stipulates However, the fetus enjoys civil rights if it is born alive, and rejecting the claim for compensation in this case is considered a violation of the provisions of the above-mentioned article, which exposes the contested decision to cassation..

Whereas the appellant’s fault for the contested decision is misplaced, that the fetus will be harmed as a result of the death of its father if it is born alive, and because of the death it will lose a breadwinner, which will cause harm to it.

Whereas, when the appeals judges decided to reject the appellant’s case based on the fact that at the time of death, the fetus was in its mother’s womb and was not harmed, this is considered an error in applying the provisions of Articles 124 and 25 of the Civil Code, which exposes the appealed decision to cassation.”.

The Algerian legislator has given great importance to compulsory insurances through the number of legal texts that regulate them, as he organized them in the second book of Order No. 95/07 amended and supplemented by Law No. 06-04 relating to insurances under the title Compulsory insurances, so the first chapter was devoted to compulsory insurances in the field of land activities. In Articles 163 to 190 and the second chapter for the marine and biological fields in Articles 192 to 198. As for the land areas, the Algerian legislator has regulated the compulsory insurance in various fields, such as the compulsory insurance against fire, the compulsory insurance in the field of construction, the compulsory insurance against hunting and other fields.³⁴.

The Algerian legislator also worked to expand the list of persons responsible for construction operations, as it approved the joint liability of the real estate developer with all those involved in the construction operations regarding the ten-year guarantee in accordance with the text of Article 554, as Article 30 of Decree 12/85 stipulates that: “The real estate developer must Underwriting all required legal insurances or guarantees, and the real estate promoter shall, within (10) ten years, bear his joint responsibility with the study offices, contractors, partners, subcontractors, and any other intervener in the event that the building collapses completely or partially due to defects in the construction, including the poor quality of the land.³⁵.

Articles 554 and 556 of the Civil Code also recognized the joint liability of the architect and the contractor for what occurs within ten years of total or partial demolition of the buildings they have built or other fixed facilities, even if the demolition results from a defect in the land. In this regard, the Supreme Court approved, The insurance company is not exempted from the guarantee contained in the insurance contract concluded between it and the contractor, as a decision was issued by the Supreme Court under No. 1368801 dated 01/16/2020, the most important of which it stated:³⁶“The appellant complains of the contested decision violating the law in Article 180 of the Insurance Law, which stipulates that the insurance document referred to in Articles 175 and 178 must be obligatorily attached to the Technical Supervision Agreement on the operations related to the preparation or completion of the facility’s works concluded between a natural or legal person. However, By referring to the interim and final receipt reports invoked, it becomes clear that they were drawn up without the presence of the Building Technical Supervision Authority, in addition to the absence of an agreement regarding technical supervision on the one hand, and on the other hand, according to Articles 554 and 556 of the Civil Code, the appellant is exempt from the warranty.

However, since, contrary to the allegations of the appellant, Articles 554 and 556 of the Civil Code enshrine the responsibility of the architect and the contractor and consider them jointly liable for what occurs within ten years of total or partial demolition of the buildings they have constructed or erected of other fixed facilities, even if the demolition results from a defect in the land, However, it did not exempt the insurance company from the guarantee, as was wrongly stated on the face of it, considering that the latter’s relationship results from the insurance contract concluded between it and the contractor and does not extend to the owner of the project, and from there, its discussion of the minutes of the temporary and final handover was inappropriate because that was put in place to its disadvantage, and whoever did so, the judges “The issue is that they have committed to the correct application of the law, and the suggestion raised is incorrect and rejected.”

III.2 Compensation in liability insurance

Civil liability insurance contracts apply to the principle of compensation and its requirements, i.e. the principle of participation and subrogation, as the insured does not receive the compensation amount when the risk insured against is realized, but rather these amounts are paid by the insurer on behalf of the insured to another person who is injured, and compensation will not be the subject of Controversy or dispute between the insurer and the insured is estimated by the courts or in accordance with the provisions of the laws applied at the time of the accident, but the insurer may set an upper limit for the amounts that it bears, that is, determine its responsibility for compensation for the single injured person or for the single accident, or for the claims that occur during the insurance period. In such cases, we find that the insured may bear part of the required compensation if the compensation awarded exceeds the limits agreed upon in the insurance policy.

In cases where there is more than one contract that insures the civil liability of the same injured person, as is the case in insurance for those involved in construction operations, and if the injured person does not request compensation, the insurer is not obligated to compensate, just as the insurer is not obligated to compensate the insured because the risk is insured. This is an injury to his money that was not achieved except by demanding compensation³⁷.

Also, the Algerian legislator did not specify the period within which the insured must notify the insurer of the occurrence of the risk, in liability insurance in particular. Therefore, this notification is subject to the general period stipulated in Article 15 of the Amended and Supplemented Insurance Law 95/07, which it specified as 7 days. This period stops whenever there is an emergency or force majeure. As for the beginning of its validity, it starts from the day the injured party demands compensation from the insured as long as the risk is realized by this claim. However, this claim may be on the day the harmful act occurred or after a period that may extend until after the expiration of the validity period. The contract and the guarantee. In this case, what matters is the date on which the insured becomes aware of the necessity of fulfilling the responsibility that creates the right to compensation³⁸.

The insurer often resorts to including conditions to specify the deadlines within which notification of the occurrence of the risk must be made, as a condition for bearing damages prior to the expiration of the warranty.

III.2.1 The injured party must recover compensation from liability insurance

If the liability of the insured is proven, whether contractual or tort, with its three elements (fault, damage, causal relationship), the injured party may file a liability suit against the insured to demand compensation, and this is the risk from which the insured is, and not the realization of responsibility. Responsibility may be realized but not fulfilled. Risk occurs when the insured admits his responsibility or when the injured party waives his claim for compensation³⁹.

Therefore, the injured person must take one of two paths.

-Friendly claim:

The injured person may not file a liability claim, but the insured may demand compensation amicably, in a registered letter, or a non-judicial contract, such as notifying him through a report. There is nothing preventing the insured and the injured party from agreeing to an amicable settlement of the liability resulting from the accident, but the insured cannot. Any admission of responsibility or any reconciliation outside of it is objectionable to the insurer. Acknowledgment of a fact is not considered an admission of responsibility in accordance with the text of Article 58 of the Amended and Supplemented Insurance Law.

-Judicial claim:

It may happen that the liability is not settled with the injured party except through the judiciary, especially if the act requires criminal prosecution of the insured, in which case the civil lawsuit will be subordinate to the criminal lawsuit.

Also, in many cases the insured does not seek to settle amicably for various reasons, such as if there is a condition in the contract that prevents this, or because he does not violate a legal text, as in the text of Article 58 of the Insurance Law, which leads to non-recognition of any responsibility or settlement outside of the insurer. This can also avoid exaggerating the damage by inflating the value of compensation. All of these reasons can constitute a real motivation for the injured party to file a liability lawsuit against the insured.⁴⁰

The injured person can file a lawsuit against the insured and force him to repair the damage he caused by filing a liability lawsuit in accordance with the general rules. If a liability lawsuit is filed against the insured, he can confront the lawsuit himself, then claim compensation or litigation against the insurer. The insurer may also stipulate that the insurance policy directs the liability suit alone and in its name, defending the insured, because the results of the ruling are ultimately borne by the insurer in the event that the insured's responsibility for the harmful act is acknowledged, and compensation is awarded to him to redress this damage, as the insured returns to the insurer compensation for the damage he suffered due to the fact Liability, which is the risk from which one is insured⁴¹.

The Supreme Court stated in its Decision No. 673874 dated 07/21/2011 that the insurance company, as a guarantor, has the right to appeal alone, when there is an interest, as accepting the insurance company's appeal does not depend on the inclusion of the insured in the case, as stated in it⁴² "... Whereas the appellant bases her request on two aspects of the appeal: The first aspect: taken from violating a fundamental rule in the procedures, since the decision mentioned in the decision the old Articles 141 of the ICC, which have no scope for application in the current case, as was noted. To Articles 146 of the old IJM without mentioning the facts applied to it, which makes the decision in violation of fundamental rules of procedure that require it to be overturned.

-The second aspect: taken from the lack of legal basis : When the judges rejected the appeal because one of the parties to the case was not included in the appeal, they relied on saying that it is established jurisprudence and jurisprudence without specifying this jurisprudence or the jurisprudence based on it, and therefore the decision has no legal basis and requires a reversal.

Accordingly, the Supreme Court considered the second aspect: which is taken from the lack of a legal basis and which alone leads to cassation without the need to discuss the first aspect.:

It is legally established that a unilateral appeal does not harm the appellant as long as he has an interest in it.

Whereas what is established in the current case is that the appellant, the "CAT" transportation insurance company, appealed the ruling of 10/22/2008 that ruled against it in its capacity as a guarantor of its insurer named (H.A.). Thus, it has an interest in addition to being a guarantor, and therefore it is permissible for it to appeal alone without the involvement of its insurer. Accordingly, when the judges of the matter violated this rule, they did not base their decision in accordance with the law, and their decision must be overturned.

III.2.2 The right of the injured party to compensation

The principle in the insurance contract is that a single relationship is established, which brings together the insurer and the insured without it being a direct relationship between the insurer and the injured person, because the latter is foreign to the contract, but there is an indirect relationship between them that arose through the responsibility of the insured, and by referring to the general rules, the injured person can file an indirect lawsuit against the insurer, considering that the insurer is the debtor of his debtor, who is the insured, in accordance with the text of Article 189 of the Civil Code, which stipulates that: “Every creditor, even if his debt has not matured, may use in the name of his debtor all of the rights of this debtor, except those that are specific to his person.” Or not bookable...”

However, the injured party in this lawsuit will be outcompeted by the other creditors of the insured, and the insurance amount may not be sufficient to pay all these debts, so the creditors will divide it among themselves in debt, and the injured party may only receive a small amount from the compensation awarded.⁴³

Therefore, the injured person must have a direct claim against the insurer for the compensation owed by the insured within the limits of the insured value. Through this direct claim, the injured party can avoid competition from the insured's creditors and obtain full compensation.⁴⁴ In an effort to protect the injured person, the Algerian legislator established for the latter a direct right over the insurer. We find its basis in the text of Article 59 of the Amended and Supplemented Insurance Law, which stipulates that: “No one shall benefit from the amount due from the insurer or part of it, except the injured third party or those with rights to him, as long as this third party does not benefit from the amount owed by the insurer, or part of it.” He shall be entitled to compensation within the limits of the aforementioned amount from the financial consequences resulting from the harmful act that caused the insured's liability.”

Finally, the injured person cannot combine the two compensations, the compensation paid by the insured under the liability claim, and the insurance amount paid by the insurer under the direct claim to repair the same damage, unless one of them complements the other.

IV- Conclusion:

We have shown that the issue of insurance is of great importance in human life, as people have tried to avoid the dangers that have haunted them for a long time. Therefore, it is difficult to attribute the idea of insurance to a specific civilization or to a specific history., where Every country adopted the idea of insurance and made a special law to regulate it. Algeria, like other countries, adopted this system and made its own provisions. This type of insurance developed with the development of life activities, which led to the emergence of new forms of insurance. We also explained that insurance is not a relationship between... Not only the insured and the insured, but it is also a technical process, as insurance is based on technical foundations, by creating a process of cooperation through, collecting the risks to which he is exposed, and conducting clearing, in accordance with the law of multiplicity and calculating probabilities carried out by insurance companies.

The Algerian legislator also tried to impose continuous oversight on the insurance sector, especially after its liberalization and opened the way for private individuals to practice this activity, by establishing oversight and advisory bodies and bodies charged with this, in order to create a kind of balance between insurance companies and the insured, but the authority of these bodies is limited. Especially in the field of granting and withdrawing accreditation, where its role remains advisory only, full powers in this matter remain in the hands of the Minister of Finance. Therefore, legal and material means must be provided to the oversight bodies charged with monitoring the insurance sector and granting them independence in exercising their duties, to protect the weak party in the contractual relationship, as well as to monitor Money that benefits the national economy.

The legislator departed from the general rules of contract theory when forming an insurance contract. The will of both parties is not sufficient for its conclusion, but rather special conditions must be met by the insurer. The insurance contract goes through multiple stages before it is concluded to always protect the weak party to the contractual relationship, which is the insured, as the Algerian legislator linked The insurance contract is based on the principle of good faith. Therefore, the insurer can terminate the contract unilaterally without resorting to the judiciary, if the insurer conceals it in bad faith or makes a contrary statement with the intention of misleading the insurer.

We also distinguished between personal insurance and damage insurance. Personal insurance is often compulsory insurance, as compulsory insurance is very large in social insurance funds, compared to commercial personal insurance. It also lacks a compensatory nature because it is related to people and not money.

As for damage insurance, its fields are multiple. It is based on insurance for damage to property and is therefore based on the compensatory principle. One of its most important types is liability insurance, which plays an important role in protecting rights. Thanks to this insurance, those affected can obtain their full rights, as The insurer bears the financial dependencies resulting from the responsibility of the insured due to the damages he causes to others, and thus the injured party obtains his rights despite the insolvency of the insured responsible for the damage.

Referrals and References:

- 1Abdul Razzaq bin Kharouf,(1998),Private insurance in Algerian legislation, Part One, Land Insurance, p. 188.
- 2Abdul Qader Al-Atir,(2015),Land insurance in legislation, eleventh edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, p. 323.
- 3Abdul Razzaq bin Kharouf,(1998),Private insurance in Algerian legislation, Part One: Land insurance,s189.
- 4Maryam Amara, previous reference, p. 134.
- 5Abdul Qadir Al-Atir, previous reference, p. 223.
- 6Abdul Qadir Al-Atir, previous reference, p. 331.
- 7Resolution No. 777983, dated 04/19/2012, Civil Chamber, Supreme Court Journal, Issue 02, 2012, pp. 148 to 151.
- 8Maryam Amara, previous reference, p. 135.
- 9Abd al-Razzaq bin Kharouf, previous reference, p. 194.
- 10Abdul Qadir Al-Atir, previous reference, p. 330.
- 11Abd al-Razzaq bin Kharouf, previous reference, p. 198.
- 12Maryam Amara, previous reference, p. 136.
- 13Abd al-Razzaq bin Kharouf, previous reference, p. 200.
- 14Executive Decree No. 95/416 of December 9, 1995,Which specifies the terms and conditions for ensuring agricultural risks,Implementing Order 95/07, c. R., No. 75 in 1995.
- 15Maryam Amara, previous reference, p. 138.
- 16Resolution No. 1259319, dated September 19, 2019, Civil Chamber, Supreme Court Journal, Issue 02, 2019, pp. 18 to p. 22.
- 17Resolution No. 604744, dated 11/10/2010, Civil Chamber, Supreme Court Journal, Issue 02, 2012, pp. 133 to 136.
- 18At night, Linda ,(2016),Damage insurance, a memorandum for obtaining a master's degree in private law, Mouloud Mammeri University, Tizi Ouzou, p. 71.
- 19Resolution No. 0929005, dated 04/16/2014, Civil Chamber, Supreme Court Journal, Issue 01, 2015, pp. 131 to 135.
- 20Resolution No. 456618, dated November 25, 2010, Misdemeanors and Violations Chamber, Supreme Court Journal, Issue 01, 2013, pp. 364 to p. 367.
- 21Belil Linda, op. cit., p. 78.
- 22Maryam Amara, previous reference, p. 139.
- 23Resolution No. 0870327, dated 04/16/2014, Civil Chamber, Supreme Court Journal, Issue 01, 2014, pp. 184 to 187.
- 24Maryam Amara, previous reference, p. 140.
- 25Maysum Fadila,(2017),The legal nature of civil liability insurance, a comparative study, Journal of Studies and Research, Mostaganem University, No. 27, p. 08.
- 26Maysum Fadila, ibid., p. 9.
- 27Abd al-Razzaq bin Kharouf, previous reference, p. 207.
- 28Abd al-Razzaq bin Kharouf, same reference, p. 219.
- 29Maysum Fadila, op. cit., p. 9.
- 30Maryam bin Amara, previous reference, p. 141.
- 31Ordinance 74/15 of January 30, 1974 relating to compulsory motor vehicle insurance and the damage compensation system, amended and supplemented.
- 32Resolution No. 1093187, dated 01/19/2017, Civil Chamber, Supreme Court Journal, Issue 01, 2017, pp. 66 to p. 70.
- 33Resolution No. 478174, dated 04/15/2009, Civil Chamber, Supreme Court Journal, Issue 02, 2009, pp. 159 to 161.
- 34Maryam bin Amara, same reference, p. 12.
- 35Executive Decree No. 112/85 of February 20, specifying the obligations of the real estate developer, G.R., No. 11, of 2012.
- 36Resolution No. 1368801, dated 01/16/2020, Civil Chamber, Supreme Court Journal, Issue 01, of 2020, pp. 98 to p. 101.
- 37Maysum Fadila, op. cit., p. 9.
- 38Maysum Fadila, ibid., p. 10.
- 39Maryam bin Amara, previous reference, p. 145.
- 40Omar Al-Tayeb was born(2019),Obligations resulting from the liability insurance contract in Algerian legislation, Journal of Research in Law and Political Science, Ben Khaldoun University of Tiaret, Issue 02, p. 205.
- 41Ould Omar Al-Tayeb, ibid., p. 205.
- 42Resolution No. 673874, dated 07/21/2011, Civil Chamber, Supreme Court Journal No. 02, 2012, pp. 137 to p. 139.
- 43Maryam Amara, previous reference, p. 146.
- 44Ould Omar Al-Tayeb, previous reference, p. 206.