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Insurance against natural disasters in algerian legislation: between legal obligation and the doctrine of insurance perfection

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BOUDAOUD khelifa*
Mohamed Boudiaf University of M'Sila
khelifa.boudaoud@univ-msila.dz

Abstract:

In the absence of insurance against natural disasters in Algeria and the inability of individuals to cope with this type of risk on their own, the state has resorted to allocating funds from the public treasury to compensate for the loss of life and property whenever a natural disaster occurs, at a considerable cost to the state.

Following the disasters in Bab El Oued and Boumerdès, the Algerian authorities reconsidered their approach to dealing with the effects of such disasters by amending the laws on insurance, resulting in ordinence 03-12 on compulsory insurance against natural disasters.

Keywords: *natural disasters; state; compensation; amendment of laws; compulsory insurance.*

Introduction:

Savings are considered the first tool that humans have devised to deal with the dangers they may encounter. They may resort to seeking help and assistance from others, whether in kind or in cash. Until recently, the idea of insuring property against natural disasters a concern for Algerian lawmakers, given the prevailing practice of people cooperating to pay compensation to those who suffered damage from a common fund made up of everyone's contributions, which embodies effective cooperation between them.

However, the worsening and increasing scale of natural disasters, as a result of climate change and its unprecedented effects, has proven the ineffectiveness and inefficiency of the aforementioned measures in addressing this type of risk, which poses a real threat to people's property and lives, especially in light of the succession of natural disasters and the human and material damage resulting from those disasters, such as floods and earthquakes, and the absence of laws that recognise insurance for this type of risk.

Natural disasters were not covered by insurance prior to the issuance of Ordinence 95-07 on insurance, which classified this type of

* **- Corresponding author**.

insurance as insurance against damage to commercial and/or industrial establishments, without being known to the general public, given its optional and non-mandatory nature.

The Bab El Oued and Boumerdès disasters were a turning point for Algerian policy on natural disaster insurance, given the losses incurred by the treasury as a result of compensation for the damage caused by these incidents, which exceeded 577 billion dinars, of which 544 billion dinars were paid in compensation for the Bab El Oued floods and 33 billion dinars for the 2003 earthquake, which affected five provinces (Boumerdes, Algiers, Tizi Ouzou, Tipaza, and Blida). The Algerian legislature sought to regulate and manage the risks of natural disasters and assess the compensation resulting from the damage they cause by making it mandatory to insure physical property against the risk of natural disasters, by involving owners, whether natural or legal persons, in bearing part of the consequences of the damage caused by these disasters, in order to reduce the burden on the state in compensating for the damage recorded ordinence 03-12[(1)] thus made insurance against natural disasters and compensation for victims compulsory, which leads us to ask the following question:

How did Algerian lawmakers address the issue of insurance against natural disasters given the lack of popularity of this type of contract?

To address this issue, we have decided to approach the subject according to the following main themes:

Chapter I: *The concept of natural disaster insurance.*

Chapter II: *Compulsory insurance against natural disasters.*

Chapter III: *Difficulties encountered and currently faced by insurance against natural disasters in algerian legislation.*

Chapter I*: *The concept of natural disaster insurance

We will address this as follows:

First*: *The concept of insurance in general

There are many jurisprudential definitions of the term insurance in general. Planol defined it as: *a contract whereby a person called the insurer undertakes to compensate another person called the insured for a potential loss incurred by the latter, in exchange for a sum of money called the premium, which the insured pays to the insurer. The jurist Himar defined it as*: *A process whereby one of the parties obtains a commitment in its favour, or in favour of a third party, in the event of a specific risk materialising, from the insurer, who assumes a set of risks*

and settles them in accordance with the laws of statistics."Others defined it as: *a contract that embodies the relationship between the two parties to this process, whereby the insurance premium, or the fees paid by the insured, are considered by the insurance company (the insurer) to be payments made in his favour, or in favour of a third party, in the event that the event covered by the contract occurs"*[(2)].

However, what is criticised about these definitions is that they are limited to the legal aspect, represented by the legal relationship between the insurer and the insured, which originates from the contract, while neglecting the technical aspect of insurance, with the exception of the definition of the French jurist 'Himard', who combined both aspects and gained the support of jurisprudence as a whole[(3)].

From a legislative perspective, Algerian lawmakers have defined insurance contracts in Article 619 of the Civil Code as follows: *Insurance is a contract whereby the insurer undertakes to pay the insured or the beneficiary named in the contract a sum of money, income or any other financial compensation in the event of the occurrence of the accident or the realisation of the risk specified in the contract, in return for a premium or any other financial payment made by the insured to the insurer"*[(4)].

As defined in Article 02 of ordinence 95-07[(5)], *With regard to insurance, as follows*: *Insurance, as defined in Article 619 of the Civil Code, is a contract whereby the insurer undertakes to pay the insured or the beneficiary named in the insurance policy a sum of money, income, or any other financial benefit in the event of the occurrence of the risk specified in the contract, in return for premiums or other financial payments." It should be noted from this definition that the Algerian legislator did not introduce anything new with regard to the definition of an insurance contract in ordinence 95-07, but rather repeated the same definition contained in the Civil Code. However, this article was supplemented by Article 02 of Law 06-04*[(6)], *which amended and supplemented ordinence 95-07, to read as follows*: *In addition to the provisions of the first paragraph of this article, performance may be provided in kind in the case of assistance insurance and motor vehicle insurance."*

Second*: *The concept of natural disaster insurance

In this section, we will define what is meant by a natural disaster as an insured risk, and then discuss what is meant by natural disaster

insurance.

1- Defining what is meant by a natural disaster covered by the contract:

The word 'disaster' comes from the Greek word, which means a devastating accident, destruction, setback, or upheaval. It is a powerful, sudden, and widespread natural event that affects all people, is unusual, and causes heavy losses. Therefore, a person or property may be exposed to a sudden natural hazard that causes damage beyond the community's ability to cope with it, and the competent authority issues an official statement that this natural event is a natural disaster(7).

Article 02 of ordinence No. 03-12 indirectly defines natural disasters as follows: *'A natural event of unusual severity, such as an earthquake, flood, storm, or any other disaster.' Therefore, a disaster may take the form of an earthquake, hurricane, volcanic eruption, or landslide.*

As stipulated in Executive Decree No. 04-268(8) In its second article(9) Natural events covered by compulsory insurance against the effects of natural disasters, it is clear from this text that compulsory insurance against the effects of natural disasters does not cover the effects of any accident or disaster other than those specified in this article, which are mentioned exclusively, unlike Article 02 of ordinence 03-12, which lists the disasters that can be insured against, for example, through the phrase 'or any other disaster' at the end of the article, which implies that any damage that is not the result of the accidents and disasters specified in Article 02 of Executive Decree 04-268 is not covered by the insurance.

2- What is meant by natural disaster insurance:

Individuals take out insurance on their possessions to protect their money from loss and damage and to obtain compensation in the event of financial losses that may be incurred.

Natural disaster insurance is a form of property insurance, as natural disasters are considered one of the elements that threaten people's property and financial assets, given their magnitude and power and the magnitude of their effects, as they are beyond human capacity to deal with when they occur, which prompts them to take out insurance policies in order to obtain compensation when the risk materialises(10).

3-The development of natural disaster insurance in algerian legislation:

Until 1980, insurance contracts excluded natural disasters from coverage. With the enactment of Law No. 80-07, insurance companies began to cover natural disaster risks for an additional premium under fire insurance contracts, up to 50% with exemptions, However, this was limited to general industrial risks, excluding specific risks, so the state took care of the victims, which cost the treasury significant losses. This led legislators to consider ways to address this situation. This led to the idea of creating a fund for natural disasters and technological hazards, whereby the latter would compensate victims under Executive Decree No. 90-402, which regulates the fund for natural disasters and major technological hazards and its operation. However, the fund's inability to cover losses led to the issuance of ordinence 95-07 on insurance, which made it possible to cover losses resulting from natural disasters by including this type of coverage in insurance contracts in exchange for an additional premium, adopting the same principle as that set out in the repealed Law 80-07.

The state decided to make natural disaster insurance, which is based on the principle of national solidarity and insurance techniques, compulsory, pursuant to ordinence 03-12 on compulsory natural disaster insurance, following the Boumerdes earthquake and the material and human losses it caused, this decree was followed by five regulatory decrees, in addition to the decision issued on 19/03/2017, amending the decision issued on 31/10/2004, which sets out the criteria for tariffs, definitions and exemptions applicable in the field of natural disaster insurance, which came into force one year after its publication. Article 01 of ordinence 03-12 stipulates the following: *Every owner of a built property located in Algeria, whether a natural or legal person, except for the State, must take out an insurance policy covering damage to this property from the effects of natural disasters...".*

Chapter II*: *Compulsory insurance against natural disasters

The earthquake that struck the province of Boumerdes in 2003, and the material and human losses it caused, led the Algerian legislature to include insurance against natural disasters among compulsory contracts, under ordinence 03-12 on compulsory insurance against natural disasters, which aims to protect policyholders from the risks that can be caused by natural phenomena such as earthquakes and

floods. Therefore, in this section, we will discuss the persons concerned by compulsory insurance against natural disasters (first), the operations that require insurance against natural disasters (second), and the penalties for not taking out insurance against natural disasters (third).

First*: *Persons concerned by compulsory insurance against natural disasters

Through ordinence 03-12, the Algerian legislator has made it compulsory for every natural or legal person who owns a building located in Algeria to take out an insurance policy to cover damage to this property from natural disasters. Public legal entities, such as the state, are exempt from this obligation, as are industrial and commercial establishments belonging to the state(11), however, in the event of a natural disaster, it assumes all the duties of the insurer towards these properties by providing compensation(12).

This obligation also applies to industrialists and traders, through insurance contracts covering damage to industrial or commercial facilities caused by natural disasters(13).

Second*: *Transactions requiring natural disaster insurance

To compel individuals to take out natural disaster insurance, Algerian lawmakers have made it mandatory to provide natural disaster insurance for every real estate transfer or lease transaction by requiring a document proving compliance with the natural disaster insurance requirement.

The Algerian legislature did not stop there, but also made it mandatory to attach the insurance document to the tax returns filed by persons subject to this obligation(14).

Third*: *Penalties for failure to take out insurance against natural disasters

Through ordinence 03-12, the Algerian legislature established penalties for anyone who fails to comply with the obligation to take out insurance against natural disasters. These penalties include the suspension of all transfers, use and leasing of real estate as a place of insurance, and requiring the submission of a document proving compliance with the insurance requirement to the notary in order to draw up the transfer or rental contract for a built property, under penalty of the notary refusing to draw up the contract, as well as depriving those who violate this requirement of any compensation for

damage to their property(15).

The Algerian legislator did not stop at this penalty, but reinforced it with a financial penalty imposed on anyone who fails to comply with this insurance obligation, consisting of a fine equal to at least the amount of the premium or contribution payable, plus a 20% surcharge , payable to the public treasury. However, this penalty is insufficient to enforce this obligation, given that the majority of properties are either unrented or rented illegally, either due to the absence of proof of ownership or because they are illegally constructed, which makes it unlikely that their owners will comply with the insurance requirement(16).

Chapter III*: *Difficulties encountered and currently faced by natural disaster insurance in Algeria

The culture of natural disaster insurance among Algerians has grown slowly, despite the fact that this type of insurance has been mandatory under ordinence 03-12 for nearly eighteen years. This is due to various obstacles, some of which are related to the behavior of Algerian citizens (firstly), and others which are legal and related to the mandatory system itself (secondly).

First*: *Internal obstacles related to Algerian citizens' behavior towards natural disaster insurance

The absence of a culture of risk awareness and the failure to seek objective ways of dealing with it have had a negative impact on the behaviour of Algerian individuals in the face of these risks. Insurance awareness is an individual's understanding of the risks they may face in their life and their need for insurance protection provided by insurance companies through products that cover losses to their money, property or life(17), therefore, one of the most significant obstacles facing the insurance industry in Algeria is its weakness, due to Algerians' lack of knowledge about the laws and the importance of insurance in dealing with risks, the absence of a marketing policy, the low income of Algerians, not to mention the suspicion of usury that surrounds insurance(18).

This has prevented the success of the compulsory natural disaster insurance system in Algeria, as the issue is a matter of jurisprudential dispute among Islamic scholars, between those who consider insurance permissible and those who consider it impermissible. while moderates permit some types of insurance and prohibit others. This has influenced

the majority of individuals to believe that this type of insurance against risks is closely linked to the act of fate and destiny, which must be believed in. This is considered one of the main reasons for people's reluctance to take out this type of insurance. and the main obstacle preventing individuals from seeking an accurate and modern scientific explanation for these phenomena, and thus ignoring all modern means and techniques designed to address them and mitigate their effects, which has had a negative impact on the spread of a culture of insurance against natural disasters in Algeria(19).

Some attribute this reluctance to insure against natural disasters in Algeria, where only 10% of homes are insured against natural disasters, to low income levels and a lack of trust in insurance companies, which do not focus on marketing and awareness in a society that lacks a culture of risk awareness and does not adhere to the principle of civil responsibility, tending instead to accept fate and destiny, which constitutes a stumbling block to the development of the sector, in which motor insurance accounts for the lion's share, with high rates of insurance coverage, enabling it to accumulate considerable capital(20).

However, the current need for natural disaster insurance requires that these ideas be overcome and that individuals contribute effectively to the financing of natural disaster compensation. which can only be achieved by developing a means of monitoring individuals' compliance with compulsory natural disaster insurance, so that this sector can achieve the same high rates as the motor insurance sector(21), As well as conducting awareness campaigns for citizens to take the initiative to insure their property, economic analyst Professor Kamal Razik, and the current Minister of Trade, the state must leave the task of insuring against natural disasters to the private sector, as a step towards implementing an insurance culture, or encouraging citizens, especially traders and industrialists, to insure their property against all risks(22).

Second*: *Legal obstacles to establishing a compulsory natural disaster insurance system

Although insurance companies are required to provide this service to those who wish to purchase it, establishing an effective natural disaster insurance system faces a number of objective difficulties that prevent this from happening. The most important of these is the requirement that the person must own the built property in order to take

out a natural disaster insurance policy, in accordance with Article 1 of ordinence 03-12, which states: *"Every owner of a built property located in Algeria, whether a natural or legal person, except for the State, must take out an insurance policy covering damage to this property from the effects of natural disasters..."*[23], *This condition acts as a barrier or obstacle preventing people from insuring themselves against natural disasters due to the absence of title deeds. as the majority of Algerians do not have official documents proving ownership of their built properties, given the extreme slowness of the land survey process, forcing them to prove this ownership through a certificate of possession or physical possession alone*[24], *As a worthless means in the field of real estate, which requires the drafting of a contract and its formal certification, under penalty of nullity*[25].

Furthermore, the requirement for a notary to certify the insurance document in order to draw up a contract for the sale or lease of a built property makes it impossible to monitor whether or not people have insured their built properties. as this formal monitoring has proven ineffective in light of people's illegal dealings with these properties, without resorting to the public officer, especially in remote areas where individuals agree to rent their homes through customary agreements, and the matter is limited to 03-12, the means of enforcing this obligation in a financial penalty[26].

It can therefore be said that what the law imposes for violating this obligation, or the notary's refusal to draw up the contract in the absence of an insurance document, achieves the phrase 'the penalty is disproportionate to the obligation,' which prevents the desired objective from being achieved, since the legislator limits the enforcement of this obligation to these two elements, to the exclusion of others, even though there are other means of enforcing this obligation. such as linking compliance with the insurance obligation to the use of the services of the electricity and gas company or the Algerian water company, where the insurance premium is paid with the gas or electricity bill, or linking the obligation to insure against natural disasters to the obligation to insure vehicles, by requiring insurance against natural disasters in order to insure the vehicle, When the car owner owns a building covered by compulsory insurance[27], *or impose a prison sentence such as that applied in the field of motor insurance*[28].

Conclusion:

In conclusion, we can say that by making insurance against natural disasters compulsory, the Algerian legislature sought to alleviate the drain on the state treasury following any natural disaster by requiring individuals to take out compulsory insurance on their built real estate properties in order to contribute to bearing the consequences of such disasters.

However, it should be noted that the legislator did not take into account the circumstances in which the insurance process takes place, nor the interests of those concerned with this insurance, which resulted in citizens' reluctance to take out this type of insurance, despite its mandatory nature and low cost. Consequently, it is difficult to enforce this obligation, as the provision on compulsory insurance is not a force in itself, but rather the force lies in the willingness of individuals to do so. Furthermore, forcing individuals to comply with this obligation lacks the means to support it, particularly with regard to insurance companies' failure to promote and advertise this type of insurance service they offer to individuals, perhaps due to the cost of such advertising, as well as the huge sums they are obliged to pay to policyholders as compensation in the event of a claim. Therefore, the following recommendations are made in this regard:

- Settling real estate title deeds by speeding up the land survey process so that they can be insured and monitored more easily.

- Encouraging natural disaster insurance by offering competitive rates, promoting and advertising this type of insurance, and raising awareness of its mandatory nature.

- Going beyond traditional means of monitoring compulsory natural disaster insurance, from notaries refusing to draw up contracts in the absence of an insurance policy, or refusing to issue tax certificates without an insurance policy, to linking compliance with compulsory insurance to the use of electricity and gas services, or Algerian water services, where the insurance premium is paid with the gas or electricity bill, or where compulsory natural disaster insurance is linked to compulsory motor insurance, by requiring natural disaster insurance in order to insure a vehicle, and other means that would activate this control.

- Tightening penalties for violators of this type of compulsory insurance by imposing financial fines, which are added to insurance

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premiums and doubled in case of recurrence.

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(2)- Mansour Majaji, Insuring Buildings against Natural Disasters in Algerian Legislation, Dafatir al-Siyasa magazine, Issue 14, January 2016, p. 278.

(3)- Ibid., p. 278.

(4)- However, some criticise this definition for limiting itself to the legal aspect, focusing on the insurance aspects and describing it as a contract, as an individual external manifestation of the insurance process, while neglecting another aspect that is no less important, namely the technical aspect, which is the insurance process itself.

(5)- Ordinence 95-07, dated 25/01/1995, relating to insurance, J.R., No. 13, for the year 1995.

(6)- Ordinence No. 06-04, dated 20 February 2006, amending and supplementing Ordinence No. 95-07, J.R., No. 15, of 2006.

(7)- Shaib Pasha Karima and Masakar Siham, Limits of Guarantee for Natural Disaster Insurance Contracts in Algerian Legislation, Algerian Journal of Legal, Political and Economic Sciences, Vol. 57, No. 01, 2020, pp. 257-258.

(8)- Executive Decree No. 04-268 dated 29 August 2004, which defines natural disasters covered by compulsory natural disaster insurance and specifies the procedures for declaring a state of natural disaster, Official Gazette No. 55 issued on 1 September 2004.

(9-) Article 02 of Executive Decree No. 04-268 stipulates the following: *'Compulsory insurance against natural disasters covers the following natural events*: *earthquakes, floods and mudslides, storms and strong winds, and landslides.'*

(10)- Jadidi, Miraj, Introduction to the Study of Algerian Insurance Law, 5th edition, University Publications Office, Algiers, 2010, p. 118.

(11)- See Article 1/1 of Ordinence 03-12 on compulsory insurance against natural disasters.

(12)- See Article 1/3 of Ordinence 03-12 on compulsory insurance against natural disasters.

(13)- See Article 1/2 of Ordinence 03-12 on compulsory insurance against natural disasters.

(14)- See Article 04 of Ordinence 03-12 on compulsory insurance against natural disasters.

(15)- See Article 13 of Ordinence 03-12.

(16)- Zitouni Tarek, On the Effectiveness of Compulsory Insurance against Natural Disasters in Algerian Law, Journal of Legal and Political Studies, Issue 06, June 2017, p. 254.

(17-) Barkane Basma, Derbouch Mohamed El Taher, The Impact of Promotional Policy on Raising Awareness Among Algerian Individuals (A Survey of Customer Opinions), Innovation and Marketing Journal, Volume 9, Issue 1, Djillali Yebs University, Sidi Bel Abbès, Algeria, 2022, pp. 209-210.

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(19)- Zitouni, Tariq, op. cit, p. 255.
(20)- Al-Nasr newspaper, Algerian daily, 2019, 1 October 2019.
(21)- Zitouni, Tariq, op. cit., p. 256.
(22)- Article published on the website:
https://www.elbilad.net/Article/detail?id=115051, accessed on 23/04/2021.
(23)- See Article 01 of Order 03-12.
(24)- Zitouni, Tariq, op. cit, p. 256.
(25)-See Article 324 bis 1, Decree No. 75-58, containing the Algerian Civil Code, as amended and supplemented.
(26)- Zitouni, Tariq, op. cit, p. 257.
(27)- Ibid., p. 257.
(28)- Article 190 of Ordinence 95-07 on insurance stipulates that: *"Any person subject to compulsory insurance as provided for in Article 1 of Ordinence No. 74-15 of 30 January 1974 and mentioned above shall be punished by imprisonment for a term of eight (8) days to three (3) months and a fine of 500 to 4,000 dinars, or one of these penalties, if they fail to comply with this obligation."*