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The Mandatory Nature of Contracting and Its Role in Restricting the Principle of Freedom of Will in the Insurance Contract

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Abstract:

The investigation focused on basic civil law elements which include free will and contract freedom before examining how public interest protection by legislators creates restrictions through mandatory contracts like compulsory insurance policies. The research demonstrates that these restrictions function to uphold personal freedom by defending social justice and third-party rights. The research indicates that legal system effectiveness depends on both new laws and improved public knowledge regarding insurance. In modern times, the insurance contract has become more important because of changes in the economy and society. This system is their main line of defense against threats, and it protects people and businesses. Over time, the contract has changed to become a necessary agreement that affects all situations that protect important areas like social insurance and motor insurance. This system was made because people need full protection systems that balance their rights with the needs of the community for safety. Changing from voluntary to mandatory status creates a lot of legal and operational issues because it goes against established rules about contract freedom and makes it hard to see how authorities can enforce mandatory agreements for public safety.

Keywords: Freedom of Will; Contractual Freedom; Insurance Contract; Mandatory Insurance; Contractual Obligations.

JEL Classification Codes: K12, G22, K23, D86.

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INTRODUCTION

The issue of mandatory contracting in insurance necessitates immediate resolution, as it illustrates the conflict between individual contract rights and public interest requirements. The investigation shows the legal reasons that made lawmakers create this contract to keep the community safe and stable economically. Multiple factors led to the choice of this subject because state involvement in insurance protection and development has grown while insurance protection serves as a vital element for people to protect their interests and there exists a noticeable gap in research about compulsory insurance contracts when compared to other contract types. The research focuses on the legal classification of mandatory insurance contracts while determining how this requirement corresponds with established contract law rules about individual choice. The research aims to identify the legislative body's position about this matter while assessing the effects of mandatory contracts on both parties involved in insurance contracts.

Multiple methods were used to reach the set goals during this process. The research employed three methods to study the subject matter. The first approach involved analyzing legal texts through descriptive-analytical methods. The second approach used comparative analysis to show how different legal systems handle mandatory insurance contract requirements. The third method followed an inductive approach to establish universal rules through the examination of court decisions and actual case studies.

The mandatory conclusion of insurance contracts creates a situation which raises doubts about its compliance with the principle of free choice. The legislature must find a way to maintain contract freedom while enforcing public order regulations in this domain. The growing state control over service contracts to protect public welfare creates major disputes about contract regulation.

The research divides into two main sections to study the issue of mandatory contracting in insurance agreements. The first section studies how free will connects to contract freedom but the second section studies mandatory contract requirements that laws enforce.

1. Harmonization between the Principle of Freedom of Will and Contractual Freedom

The principle of freedom of will functions as the essential foundation which civil law depends on for its operation in contractual agreements. The framework serves as a system that enables individuals to establish binding commitments and determine their terms through mutual consent, provided that such agreements adhere to the constraints of public order and public morality. This idea is based on traditional contract theory, which says that contracts are agreements between two people whose wills are compatible and create legal obligations that must be followed. The principle serves as a fundamental foundation that preserves trust in business transactions and upholds contractual freedom, as it establishes the essential basis for legal transaction stability and the advancement of economic and social relationships. Free will integration with contract freedom analysis requires a precise definition of this principle and its essential characteristics and its impact on contract and obligation law.

1.1 Definition of the Principle of Freedom of Will

Theoretical frameworks for contract law across multiple legal systems base their essential foundation on the principle of freedom of will. The organization has taken on the responsibility to establish limits for contract freedom and decide how far personal choices can create legal responsibilities and manage their outcomes. Different approaches exist between positive law which supports will as the main source of obligation and Islamic jurisprudence which analyzes will purposes through Sharīʿa rules that protect personal freedom and public welfare. The analysis of free will requires studying its legal meaning through positive law and Islamic jurisprudence which reveals their agreements and differences.

1.1.1 Definition of the Principle of Freedom of Will in Positive Law

Roman law constituted the historical foundation of modern Western legislation. However, at no stage of its development did it recognize the principle of freedom of will in its complete form. The Romans attached paramount importance to formality, influenced by their religious beliefs, resulting in contracts and transactions that were based on material conditions and complex procedures involving specific gestures, symbols, and expressions.[1] Mutual consent alone was insufficient for the formation of a contract. Instead, the external forms and prescribed formalities were what created the obligation.

Consequently, the formal contract in Roman law was an abstract contract deriving its validity from its form rather than from its substance, even if the cause of the obligation was nonexistent, unlawful, or contrary to morals. Compliance with the required form was sufficient for the obligation to arise, regardless of its purpose or legality. This notion became known in legal doctrine as the principle of "the supremacy of formality."[2]

The modern business environment demands businesses to create flexible systems because commercial transactions have developed into more sophisticated operations. The process of creating contracts has become more dependent on the specific intentions of the involved parties while their expressed wishes now play a central role in contract creation. Al-Sanhūrī stated that an agreement reaches its existence when two wills unite and the formal requirements function as legal foundations for the obligation which allows multiple bases to exist simultaneously. Roman law developed through time to accept contracts which stemmed from everyday life needs by removing formal requirements and accepting basic agreements and delivery actions. The legal system evolved to establish two new contract types which included real contracts and consensual contracts in addition to formal contracts. The legal system reached its highest point when it recognized four consensual contracts which included sale, lease, partnership and agency. Al-Sanhūrī points out that Roman law never supported complete freedom of will because it maintained formal rules except for a few minor exceptions.

Christianity spread its influence which led to the establishment of honor as a core value in canon law because breaking promises became seen as religious disobedience. The obligation developed from being a moral obligation into a civil duty which ecclesiastical courts could enforce through legal procedures. The belief developed during this time that promises made with binding intent create both religious and legal obligations which led to the slow acceptance of free will in business dealings.[3]

This orientation was further reinforced by eighteenth-century philosophers who embraced the individualist doctrine, asserting that the free will of the parties must be respected and that the law may not interfere with individuals' freedom to create obligations or determine their effects, so long as this does not infringe upon public order or morality. Accordingly, the principle of freedom of will was established in modern European legal systems and became a fundamental pillar of the general theory of contract.[4]

French law is regarded as one of the first legal systems to explicitly adopt this principle. Article 1134 of the French Civil Code provided that agreements lawfully concluded have the force of law for the parties to them.

In Arab legal systems, and due to historical influence from Western laws generally and French law in particular, resulting from colonial factors and cultural interaction, the principle of freedom of will emerged relatively late. Nevertheless, it was clearly adopted in many of these legal systems. This is evident in the Egyptian Civil Code, which expressed this principle in Article 147, paragraph one, stating that "the contract constitutes the law of the contracting parties, and it may not be revoked or amended except by mutual agreement or for reasons prescribed by law." The Algerian Civil Code followed the same approach. Article 106[5] stipulates that "the contract constitutes the law of the contracting parties, and it may not be revoked or amended except by mutual agreement or for reasons prescribed by law." It is understood from this provision that the Algerian legislator intends a sound will issued by a legally competent person, since such will governs the formation of legal acts and the determination of their effects without the need for a specific formal requirement to express it, unless the law provides otherwise.

It is therefore clear that the principle of freedom of will did not emerge suddenly. Instead, it went through a series of gradual changes. First, rigid formalism was the most important part of Roman law. Then, certain important contracts began to recognize will. The Church then strengthened religious obligations, and finally, it became an established legal principle in individualist philosophy and modern civil law. As a result, this principle became a general basis for contracts in modern civil law systems, especially in French, Egyptian, and Algerian law, which see free will as the main source of contractual obligations.

The Algerian legislator affirmed the principle of freedom of will in the provisions of the Civil Code. Article 59 states that a contract is concluded by the mere exchange of two concordant expressions of intent, while Article 60 provides that the expression of intent may be made orally, in writing, by gesture, or implicitly.[6]

From a theoretical perspective, the principle of freedom of will has been defined as the ability of contracting parties to establish any agreements upon which they mutually consent and to determine their effects as they wish, through stipulations that modify the legal consequences ordinarily assigned to the contract.[7]

It has also been defined as the capacity of the will alone to create any contracts and dispositions it desires within the limits of public order and morality, together with the authority to determine the scope of the contract, its effects, and its termination in the same manner in which it was created.[8]

These definitions indicate that the principle is grounded in three fundamental results: the sufficiency of will for the conclusion of the contract, recognition of consent as the essential element in its formation, and the freedom of the will to determine its effects, modify them, or terminate the contract.

1.1.2 Definition of the Principle of Freedom of Will in Islamic Jurisprudence

Within the Islamic conception of contractual relations, the principle of freedom of will holds a central position as the foundation upon which contracts are built, since the contract is regarded as the legitimate means for regulating dealings between individuals and ensuring stability in both financial and non-financial transactions. Islamic jurisprudence has embraced this principle since the early stages of legislation, linking human freedom of belief with freedom of choice in acts and transactions, and establishing consent as a shared basis between the two.

The Qur'an affirms freedom of choice in the religious sphere in several verses, including: "There is no compulsion in religion; true guidance has become distinct from error. Whoever disbelieves in the false deity and believes in God has grasped the firmest handhold that will never break. God is All-Hearing, All-Knowing.",[9] "Say: The truth is from your Lord. Whoever wills, let him believe, and whoever wills, let him disbelieve...",[10] and "Would you then compel people until they become believers?".[11] These texts demonstrate that freedom of will is the foundation of the validity of faith, which makes it an indispensable condition for the validity of transactions, since matters below the level of creed are, a fortiori, required to be based on consent and free choice.[12]

In the field of transactions, the Qur'anic text clearly established the principle of mutual consent. God Almighty states: *"O you who believe, do not consume one another's wealth unjustly, except through trade conducted by mutual consent among you. And do not kill yourselves. Indeed, God is ever Merciful to you."*[13] This noble verse sets forth two fundamental rules. The first is the prohibition of consuming the property of others unjustly, which constitutes a comprehensive ruling covering all forms of unlawful appropriation such as usury, gambling, theft, bribery, usurpation, fraud, and other practices prohibited by Islamic law. The second is that the validity of transactions is contingent upon the existence of mutual consent between the contracting parties, such that the consent is sound and free from any defect of the will, including ignorance, inequitable exploitation, or coercion.

Shaykh Muḥammad al-Ṭāhir ibn ʿĀshūr interpreted the term "consumption" in the verse as a metaphor for any form of benefiting from another's wealth through unlawful appropriation. He asserted that legitimate entitlement to another's property is contingent upon the owner's consent, applicable in commutative

contracts like sales and leases, as well as in gratuitous contracts such as bequests and gifts. Ibn Taymiyya also said that Islamic law makes a difference between commutative transactions, where the legal effect depends on both parties agreeing, and gratuitous dispositions, where the legal effect depends on the donor acting with real willingness. This difference shows how important free will is in both groups.[14]

The Prophetic Sunnah came to reinforce this principle. In the noble hadith the Prophet, peace and blessings be upon him, said: "Sale is valid only when there is mutual consent between both parties." Its outward implication indicates the impermissibility of selling to someone under coercion due to the absence of consent, since the validity and completion of a sale depend on the mutual agreement of the contracting parties. What is meant is that they must not separate except with mutual satisfaction regarding the payment of the price and the receipt of the sold item. Otherwise, harm may occur, and harm is prohibited in Islamic law.[15] (Narrated by Ibn Majah)

This affirms that a contract does not come into effect unless there is genuine consent between both parties.

In another hadith: "Reconciliation is permissible among Muslims except for a reconciliation that renders unlawful what is lawful or renders lawful what is unlawful. Muslims are bound by their conditions except a condition that renders lawful what is unlawful or renders unlawful what is lawful. Ibn Umar reported that the Messenger of Allah, peace and blessings be upon him, said: People are bound by their conditions so long as they conform to the truth."[16]

From this we find that Islamic law acknowledges the freedom of contracting parties to agree upon their conditions, although such freedom is not absolute. It is restricted by the requirement that the agreed terms must not violate the rulings of Sharia, nor cause harm to public order or morality.

Building on this foundation, jurists held that contracts are, by their nature, consensual, meaning they are based on the free will of the contracting parties without the need for special formalities, except in certain contracts that require particular documentation or regulation due to their nature, such as marriage or mortgage contracts. Islamic jurisprudence considers consent a fundamental pillar of the five essential elements of sale, and it renders a contract void if consent is lacking or defective due to a flaw in the will. Islamic law also provides additional safeguards to protect this freedom, including various types of options (khiyār al-sharṭ, khiyār al-majlis, and khiyār al-ʿayb) intended to ensure the soundness of consent and maintain balance between the parties to the contract.

The autonomy of will in Islamic jurisprudence, however, was never recognized in an absolute manner, unlike in certain phases of the development of positive law. The system operated under a collection of legal and moral standards which protected the rights of people while maintaining social order. The rules include the principle "no harm and no harassment" which stops parties from creating duties that would cause damage to themselves or others; the need to follow Sharia's main goals which include justice and protection of property and harm prevention; the ban on contracts that contain extreme unfairness or major uncertainties; and the prohibition of any terms which violate the Qur'an and the Sunnah of the Prophet.[17]

Accordingly, it may be stated that the principle of autonomy of will in Islamic Sharia embodies a precise balance between individual freedom in contracting and the legal constraints that preserve public order and collective welfare. The law recognizes individual rights to property but it establishes specific limits on these rights which prevent total control of property. The system establishes its connection to both Sharia objectives and social justice principles which predicts the legal changes that emerged during the transition from absolute to regulatory law because of social and economic shifts.

1.2 The Consequences of the Principle of Freedom of Will and the Constraints Imposed Upon It

The principle of freedom of will constitutes one of the fundamental pillars of civil law, since it grants the parties full autonomy to establish legal acts and define their content in a manner consistent with their interests. The law provides people with independence yet this independence contains specific limits. The

legal system operates through established rules which safeguard public order and protect moral values and defend the rights of vulnerable parties who engage in contracts. The freedom of will principle produces various legal effects which demonstrate how willpower operates to establish, change and end contractual duties. The legal framework restricts these consequences to protect personal liberty while serving public welfare needs.

1.2.1 Consequences Resulting from the Principle of Freedom of Will

The principle of freedom of will gives rise to several essential consequences that demonstrate the crucial role of individual intent in forming legal acts. These consequences include the following:

A. Voluntary Obligations

The general rule regarding obligations is that they stem from free will. A person may not be bound by any obligation unless it originates from his voluntary intent. The state should limit its power to enforce mandatory duties because these requirements should exist only as special cases. An individual stands as the most qualified person to identify which elements will benefit their self-interest. People who accept obligations through free choice have obligations which become inherently fair because they give their conscious agreement to these duties.[18]

Proponents of the principle of freedom of will have strongly advocated for it, to the point that they regarded will as the foundation upon which all legal rules are built. Some have even argued that will is not only the core of contractual relations but the essence of all legal acts. This means that the will of the contracting parties enjoys paramount authority in shaping the contract, and that all duties and legal arrangements originate from free consent. The idea even extended further to consider individual will as a source of law itself, in harmony with the philosophical maxim: "The contract is the foundation of legal life, and individual will is the foundation of the contract."

On this basis, the contract is presumed just by necessity, because it is rooted in the individuals' freedom to determine their obligations. Obligations imposed upon a person without choice are deemed unjust, as they infringe upon his freedom and constitute an encroachment upon his rights. One of the main consequences of the principle of freedom of will is therefore the impossibility of compelling anyone to enter into a contract. Each person retains full discretion either to contract or to refrain from contracting, as well as to choose the party with whom he wishes to engage in legal relations, without having a contracting counterpart imposed upon him.[19]

Advocates of this principle maintain that human beings are free by nature, and that freedom is the rule that cannot be restricted except by one's own will. For this reason, justice can only be achieved through the exercise of free will, because an obligation voluntarily assumed cannot be considered unjust, while obligations coercively imposed inevitably infringe upon one's natural right to liberty.[20]

B. Freedom of Contract

Freedom of contract emerges as the fundamental result when someone exercises their freedom of will. The principle bases itself on the idea that all contracts produce fair outcomes because they derive their power from the free choice of the parties involved. The traditional legal system requires legislatures to permit people to freely create contracts and establish their terms through mutual agreement which respects their shared understanding. The parties need to agree on contract termination or modifications because the law sets strict boundaries for legislative and judicial authorities to handle such matters.[21]

The same contract creation process needs only individual will to generate contractual duties without requiring any formal procedures or outside assistance. The principle of consensual contracts exists as a fundamental concept. The freedom to choose exists in its entirety because it includes both contract creation and the option to decline any agreement. The law forbids forcing people to sign contracts which they

choose to avoid. The complete freedom of contract faces two essential restrictions which stem from public order requirements and moral standards that protect society from illegal contract use.[22]

C. Freedom in Determining the Effects of the Contract

The valid conclusion of a contract from a legal standpoint renders it a source of obligations exclusively between its parties, such that its effects remain confined to them and do not extend to third parties, except in exceptional cases specified by the legislature.[23]

Although legislative will has intervened in the regulation of certain categories of contracts, such intervention generally takes the form of establishing rules that interpret or supplement the intent of the contracting parties. Individuals therefore enjoy complete freedom to adopt this default regulatory framework or to depart from it by creating their own arrangements, since supplementary rules apply only in the absence of contrary agreement between the parties. Mandatory rules in this regard remain limited and relatively rare.

Freedom of contract is manifested in multiple fields, including family matters, where marriage is concluded through the consent of both parties. In essence, inheritance also rests on the concept of an implied bequest. The influence of will appears as well in criminal law, where some jurists have considered punishment an implicit consequence of the offender's acceptance of bearing the repercussions of the act committed.[24] Will remains an essential element in the formation of a contract, which is based on the concurrence of two wills expressed either explicitly or implicitly.[25]

Reference to the Algerian Constitution of 2020 clarifies that the economic reforms adopted by the state within the framework of its economic liberalization policy aimed to enshrine the principle of freedom of contract through the guarantee of freedom of commerce, investment, and entrepreneurship as fundamental pillars of economic freedom. The legislature has sought to establish an appropriate legal environment for this purpose by affirming the principle of free competition and removing the various obstacles that hinder private institutions from fully performing their role in advancing development. This policy orientation is clearly embodied in Article 60 of the Constitution, which affirms that the freedom of commerce, investment, and entrepreneurship is guaranteed and exercised within the limits of the law.

The legal system operates with freedom of contract as its fundamental principle which establishes most of the economic and social responsibilities while supporting various other rights. Commercial companies serve as a practical example to demonstrate how freedom of contract first emerges when parties create their company agreement and then shareholders add specific contractual terms within the company's articles of association.[26]

The principle of autonomy of will has been interpreted from an economic perspective as an embodiment of market laws governed by the mechanisms of supply and demand, regarded as the optimal means of achieving benefit for both the individual and society. The government needed to remove all contract limitations which stopped business activities and economic exchanges and investment growth. The economic principle of "laissez-faire, laissez-passer" supports this idea by promoting unrestricted contracting activities. The Algerian legislature has established competition and investment laws to protect contractual freedom which serves as the foundation for business freedom and economic growth.[27] Consequently, contractual freedom constitutes a central element of both the legal and economic systems, since genuine competition and economic progress cannot be achieved without recognizing the freedom of individuals and institutions to contract within a framework of legality that ensures balance and protects the public interest.

D. The Contract as the Law of the Parties

The principle that "the contract is the law of the contracting parties" represents one of the most significant consequences of the autonomy of will. It means that the contract binds the parties with the same force as the law, and neither party has the right to unilaterally amend or terminate it.[28] The Algerian legislature explicitly affirmed this principle in Article 106 of the Civil Code, confirming that a contract may not be

revoked or modified except by mutual agreement of the parties or for reasons established by law.[29] In this sense, the contract functions as a miniature legal system governing the relationship between its parties, akin to public law, which constitutes a larger social contract binding the members of society.

As a result, the contracting parties remain obligated to perform their contractual obligations and may not refrain from performance except in cases of force majeure or unforeseen events. In all other circumstances, the public authorities compel performance of the obligations undertaken. A contract may be amended only through a new mutual agreement, which in essence reinforces rather than diminishes the principle of autonomy of will, since any modification requires a renewed concurrence of the parties' wills just as the contract was initially formed by their meeting of minds.

The binding force of the contract also limits judicial intervention in contractual relations. The judge may not deviate from the clear intent of the parties, nor alter the effects of the contract on the basis that its provisions conflict with equity or due to changes in economic conditions, such as rising prices. Once validly concluded, the contract governs the contractual relationship and prevails over any external interference, serving as the primary reference for determining the rights and obligations of the contracting parties.

So, the logical result of the principle of autonomy of will is that the contract becomes law for the parties. They must do what they agreed to do willingly and cannot avoid their duties or change or end them unless both parties agree, just as the contract came about because of their wills coming together.[30]

1.2.2 The Decline of the Principle of Freedom of Will and the Constraints Imposed Upon It

So, the logical result of the principle of autonomy of will is that the contract becomes law for the parties. They must do what they agreed to do willingly and cannot avoid their duties or change or end them unless both parties agree, just as the contract came about because of their wills coming together.

A. Substantive Limitation

This limitation concerns the subject matter of the contract or the object of the obligation. A contracting party cannot direct his will toward an object that violates public order or contravenes public morals, otherwise the contract is deemed void and the will legally disregarded. Article 97 of the Algerian Civil Code explicitly provides for the nullity of a contract if its cause is unlawful or contrary to public order or morals. Moreover, Article 110 of the same Code[31] grants the judge authority to modify or exempt the adhering party from oppressive terms in adhesion contracts, based on the principle that justice requires the protection of the weaker contracting party. From this perspective, legislative or judicial intervention in certain contracts, such as employment or insurance contracts, represents a restriction on absolute freedom of will in order to protect public order and achieve a fair balance between the parties.

B. Formal Limitation

In particular situations the law demands that will expression must follow certain prescribed methods which makes these methods essential for contract validity. The rule operates specifically in written contracts which must undergo notarization by a public official before they become legally binding. The necessity of this requirement shows up in contracts which need to be signed by a public official before they become valid. The necessity of this requirement shows up in contracts which need to be signed by a public official before they become valid. The Algerian legislator established this rule through Article 793 of the Civil Code which requires following all legal procedures including real estate registration to make ownership transfers and other real rights in immovable property valid between parties and against third parties.[32] The formal requirement serves dual purposes because it protects individual rights and social interests and upholds the reliability of legal agreements.

C. The Constraint of Necessity

Unforeseen circumstances form the basic framework for this particular limitation. The Algerian legislature follows comparative legal systems by allowing courts to restore contract balance through judicial authority when unexpected events make contract performance extremely difficult for one party to the point of causing major financial harm. The Algerian legislature follows comparative legal systems by allowing courts to restore contract balance through judicial authority when unexpected events make contract performance extremely difficult for one party to the point of causing major financial harm. The party who entered into the agreement retains protection against any disadvantages which would otherwise arise from the common law principle of freedom to contract. According to the law, judges can change the terms of a contract when they need to do so to protect ongoing business operations and uphold justice. In Algeria, the freedom of will is a key legal principle that governs contract law. However, there are many rules in place to protect the public's interests while still allowing people to be free.

2. Compulsory Contracting by Force of Law

People are free to make agreements in most cases, but the government can set rules for contracts that must be followed when it is in the public's best interest or to protect third parties. Mandatory insurance contracts impose the most established form of such limitations. The legislature has mandated that individuals in specific areas procure insurance contracts for motor vehicle coverage, which fulfills two objectives: safeguarding third parties from harm and ensuring adequate compensation for the injured.

Accordingly, compulsory contracting in this context cannot be regarded as a violation of the principle of freedom of will. It instead serves as a mechanism for achieving social justice and securing stability in legal transactions. This issue raises an important question concerning the manner in which compulsory contracting is implemented in the field of mandatory insurance, and the legal effects resulting from this obligatory nature for both the contracting parties and third parties.

2.1 Compulsory Contracting within the Framework of Mandatory Insurance

The principle of freedom of will long constituted the cornerstone of the general theory of obligations. The contract was understood as the product of the parties' will, and this free will was considered sufficient to create obligations and determine their content in accordance with the rule that "the contract is the law of the parties," as set out in Article 106 of the Algerian Civil Code. Accordingly, the general rule was that an individual could not be bound except by what he personally consented to, and fairness in contractual relations was achieved once the parties expressed their free and concordant intention.

However, this absolute principle gradually receded in the face of social and economic necessities. It became evident that unrestricted contractual freedom could, in some instances, harm the public interest or infringe upon the rights of others. These concerns prompted legislative intervention to impose statutory limitations on such freedom.[33]

The insurance contract, particularly compulsory motor vehicle insurance, represents one of the most significant domains in which the limits of freedom of will have become evident. The Algerian legislature, through Article 2 of Ordinance 95-07,[34] as amended and supplemented, and Article 619 of the Civil Code, defined insurance as a contract whereby the insurer undertakes to indemnify the insured or beneficiary upon the occurrence of the risk stipulated in the contract, in return for a premium paid by the insured. The distinctive feature of this contract lies in the fact that individuals are not granted full discretion regarding its conclusion. The legislature intervened and required vehicle owners to contract before permitting the vehicle to be operated. Article 1 of Ordinance 74-15, as amended and supplemented by Law 88-31, explicitly states that "every vehicle owner is obliged to take out an insurance contract covering damage caused by that vehicle to third parties." Consequently, the vehicle owner no longer possesses the freedom to contract or to abstain from contracting. The conclusion of the contract has become a statutory requirement, and its violation entails civil and criminal sanctions.[35]

In addition to imposing the obligation to contract, the legislature has also restricted the parties' freedom in determining the content of the contract. It intervened to specify the scope of indemnification and the beneficiaries thereof.[36] Article 13 of Ordinance 74-15[37] grants the injured party the right to compensation even when the driver contributed to the fault. Moreover, Article 16 mandates that compensation be paid either as a lump sum or in the form of a periodic income according to a schedule annexed to the law, which limits the parties' ability to agree otherwise.

As a result, the contract has shifted from being a bilateral relationship solely between the insurer and the insured to a broader legal relationship in which the third-party beneficiary (the injured person) becomes a principal party. This shift has transformed the legal nature of the contract, making it a mechanism for the protection of public interest rather than merely a tool for regulating private interests.

The Algerian legislature has required written form as an essential element for the conclusion of the insurance contract, in deviation from the principle of consensualism, which constitutes the general rule in contracts. Article 7 of Ordinance 95-07 requires that all contracts must be written clearly with defined terms and must include essential details such as party names and covered risks and coverage limits and premium costs and policy duration. The omission of this requirement results in nullity. The legislature made this rule to establish clear contract terms which protect parties from deceptive actions that would harm their rights especially when one party holds less power in the agreement.

The intervention of the Algerian legislature is not limited to the field of insurance. It extends to other contracts that require special protection. Article 418 of the Civil Code mandates that companies must create written contracts to avoid nullification and Article 615 establishes that life annuity agreements require written documentation for legal validity. The Algerian legislature maintains a systematic approach to limit individual freedom of choice when public order protection and transactional stability and third-party rights defense demands it.[38]

The Algerian legislature maintains the principle of autonomy of will through its established system which protects individual liberty by upholding public welfare. The basic rule of contractual freedom stays intact but contracts with major social or economic effects like compulsory insurance face two types of restrictions that affect their validity and terms. The law has evolved from its traditional approach to autonomy of will toward a contemporary framework which upholds personal freedom while safeguarding others and working toward social equality.

2.2 The Legal Effects Resulting from the Mandatory Nature of Contracting in Compulsory Insurance

Once the insurance contract is properly signed, it has certain legal effects that both parties must follow. The insured and the insurer each have their own responsibilities. During the term of the contract, the insured must give the insurer all information about the insured risk and tell them of any changes that affect that risk. The insured must also pay their premiums on time and let the insurer know right away if the insured risk or accident happens. In return, the insurer agrees to protect the insured against the risks listed in the contract by paying the insured or the insurance beneficiary when the insured risk happens, as long as the parties agree on the terms and effects of the payment.

2.2.1 The Effects of Compulsory Insurance with Respect to the Insured

Once validly concluded, the insurance contract imposes a set of essential legal obligations on the insured, as provided under Article 15 of the Algerian Insurance Act. These obligations can be summarized as follows:

A. The Duty of Disclosure upon Contract Formation

The core element of an insurance contract exists in the insured risk which determines both the insurer's decision to provide coverage and the premium amount that the policyholder must pay. The Algerian legislator through Article 15 of the Insurance Act establishes that the insured must reveal every important

detail about the risk when they first apply for coverage. The insured must provide all material information through the insurer's questionnaire under Article 15 of the Insurance Act.[39]

This obligation entails different sanctions depending on the insured's intent:

– - In Cases of Good Faith: The insurer maintains the right to modify premium rates according to actual risk levels when incomplete or incorrect information appears without deceptive intent under Article 19 of the Insurance Act. The insured person who does not accept the new terms will face contract termination by the insurer but only for future periods while payments for previous periods remain due.[40]

– In Cases of Bad Faith: Article 21 of the Insurance Act stipulates that any deliberate concealment or false declaration results in the annulment of the contract. The insurer must prove the insured's bad intention to mislead him.[41]

B. The Obligation to Pay Insurance Premiums

Payment of the premium constitutes one of the insured's most essential obligations, as it represents the financial consideration borne in exchange for the insurer's assumption of risk. The Algerian legislature has determined the permissible methods and timeframes for payment, allowing premiums to be paid either in a single installment[42] or through periodic payments.[43]

Regarding the consequences of breaching this obligation, Article 16 of the Insurance Code stipulates that the insurer must notify the insured to pay the premium within thirty days.[44] In the event of continued non-payment, the following consequences arise:

– Temporary suspension of coverage without the need for further notice, except in certain types of personal insurance.[45]

– Termination of the contract ten days after the suspension of coverage, with the insurer retaining the premiums corresponding to the period during which the risks were covered.[46]

C. The Obligation to Declare Changes or Aggravation of Risk

Circumstances may arise after the conclusion of the contract that increase the likelihood of the risk occurring or intensify its severity, which requires the insured to declare such changes to the insurer. Article 15, paragraph 3 of the Insurance Code establishes this obligation, distinguishing between two situations:

– If the aggravation of risk occurs beyond the insured's control: the insured must make the declaration within seven days from the date of becoming aware of the change.

– If the aggravation of risk results from an act of the insured: a prior declaration must be made before engaging in the activity that leads to an increased risk.

Failure to comply with this obligation may result in the adjustment of the premium or termination of the contract, and even nullification if bad faith on the part of the insured is established.

D. The obligation to comply with safety and hygiene regulations:

The legislature has required the insured to take preventive measures aimed at reducing the occurrence of risk or mitigating its consequences. Such measures may include stipulations relating to storage conditions in fire insurance, or the separation of infected livestock in livestock insurance. Article 22 of the Insurance Law provides that, in the event of a breach of these obligations, the insurer may reduce the amount of compensation in proportion to the damage resulting from the violation.

E. The obligation to notify the insurer upon the occurrence of the insured risk:

The insured is under an immediate obligation to notify the insurer when the risk materializes, in order to enable the insurer to take necessary measures for assessing the incident. Article 15, paragraph 5 of the Insurance Law requires the notification of the insurer within a maximum of seven days from the date of knowledge of the occurrence, with shorter deadlines established in specific cases (three days in the case of theft, twenty-four hours in the case of livestock destruction).

Non-compliance with this obligation may result in a reduction of the compensation due, or in the forfeiture of the insured's right to compensation if such a consequence is stipulated in the contract.

Algerian law makes it clear that the obligations placed on the insured in an insurance contract are part of a system that aims to balance the interests of both parties and keep the relationship stable. Accurate disclosure of information, premium payment, adherence to safety regulations, and timely notification of risk events are fundamental obligations designed to safeguard the public interest and mitigate fraud in the sensitive domain of insurance.[47]

2.2.2 The Effects of Compulsory Insurance on the Insurer

If the insured pays the insurance premiums in accordance with the contractual terms, the insurer becomes correspondingly obliged to perform its principal duty, namely the payment of the insurance amount or indemnity upon the occurrence of the insured risk, whether for the benefit of the insured directly or a beneficiary designated in the contract.

The insurance amount generally consists of a specified sum of money. However, the insurer may sometimes be required to remedy the damage in kind or provide a specific service, depending on the nature of the contract. Accordingly, it is necessary to distinguish between the insurer's obligations in personal insurance contracts and those in property and liability insurance contracts.

A. The Insurer's Obligations in Personal Insurance

The personal insurance contract is characterized by its non-indemnity nature, in contrast to insurance against damage. Its subject matter is not tied to financial loss, but rather concerns the person of the insured, his life, or his physical integrity.[48]

For example, in life insurance, the insurer undertakes to pay a specified sum of money on a certain date if the insured remains alive, or upon the occurrence of death if the contract so provides. The amount is predetermined by the parties and is unrelated to the extent of the harm, since the loss involved cannot be measured financially.[49]

Article 64(1) of the Insurance Law affirms this principle by providing that: "Life insurance is a contract under which the insurer undertakes, in return for a premium, to pay a specified sum to the insured on a fixed date, if the insured remains alive until that date."

Accordingly, in personal insurance, the insurer is obliged to pay the agreed amount (capital or annuity), whether upon the occurrence of the insured event (such as death or disability) or upon the arrival of the specified maturity date, irrespective of the extent of loss or damage.

B. The Insurer's Obligations in Damage Insurance

Unlike personal insurance, damage insurance is indemnity-based. The insurer undertakes to compensate the insured for material losses affecting his property, rights, or civil liability as a result of the insured risk.[50]

Article 12 of the Insurance Law specifies the main types of losses and damages that the insurer is obliged to cover, including:

– Compensation for losses and damage resulting from accidental events.
– Compensation for losses and damage caused by the insured's unintentional fault.
– Compensation for damage resulting from acts committed by persons for whom the insured bears civil liability, pursuant to Articles 134 to 136 of the Civil Code.
– Compensation for damage caused by objects or animals for which the insured is responsible under Articles 138 to 140 of the Civil Code.

In this case, the insurer's obligation is governed by the principle of indemnification. Compensation may not exceed the actual loss incurred nor the maximum insured amount agreed upon in the contract.

Compensation may be provided in the form of a monetary payment or in the form of a service rendered by the insurer, such as repairing the damage or restoring the property to its original condition, depending on what has been agreed in the contract.[51]

The insurer must fulfill different requirements because the insurance contract dictates the type of insurance coverage. The insurer needs to deliver the specified payment amount when the insured event occurs or at the predetermined maturity date without requiring loss documentation because personal insurance operates as a reserve benefit system for beneficiaries instead of providing indemnity. The insurer in damage insurance operates under a compensatory system which requires them to reimburse the insured for genuine losses that stem from covered risks up to the agreed policy limit which represents the maximum amount the insurer will pay.[52]

The insurance contract depends on an exact balance between insured responsibilities and insurer duties because both parties need to fulfill their roles for the contract to function properly.

The insured person must follow several duties which the Insurance Act establishes as follows: they need to disclose essential information during their subscription process and pay their premiums according to schedule and report any increased risk and follow safety and hygiene standards and tell their insurer when the insured event happens. The main purpose of these requirements exists to help the insurer evaluate risks correctly while keeping insurance policies active.

The insurer must fulfill its core duty to activate insurance coverage when the covered risk materializes by delivering the agreed-upon insurance payout for personal policies and covering actual damages for property policies up to the contractual limits following indemnity principles.

The contractual relationship between insurance parties operates through mutual obligations which serve as the foundation for their partnership. The insurer will not fulfill its duty until the insured person meets their obligations because the insurance contract fulfills its purpose when both parties execute their contractual responsibilities.

CONCLUSION

This study demonstrates that although the principle of freedom of will remains one of the fundamental principles of civil law, it no longer retains its absolute character in light of the evolution of legal relations and the increasing social and economic dimensions of contracts. The development of contract law has led to legislative actions which establish legal boundaries to restrict contract freedom because of the mandatory insurance requirements that include motor vehicle insurance which transformed contract party freedom into legal obligations for public safety and third-party injury protection.

The study has reached several conclusions, the most significant of which are:

– Contractual freedom in mandatory insurance contracts is subject to the constraints of public order and morality, such that the will may not be directed toward producing effects that conflict with public policy considerations.

– The legal compulsion imposed in mandatory insurance contracts affects the consent of the contracting party, particularly with regard to whether the legal act can still be considered a contract. From the perspective of the principle of freedom of will, it becomes highly difficult to regard such acts as consensual contracts in the traditional sense, given the absence of genuine consent, since the contracting party may be considered compelled to enter into the agreement.

According to modern conceptions of the contract and the contemporary understanding of the principle of freedom of will, individual will has become subject to limits and restrictions imposed by the legislature in consideration of justice and the public interest. In light of economic and social developments, the rigidity of the principle of freedom of will must be mitigated. Accordingly, recognition of the existence of the contract remains necessary, since the relationship between the parties retains its contractual nature. Stating that the contract has declined is different from asserting that contractual freedom has been restricted.

– Mandatory insurance constitutes an effective legal mechanism for safeguarding rights and providing compensation for damages without the need for complex litigation procedures.

– The study also demonstrated deficiencies in the performance of certain insurance companies, which necessitates strengthening oversight mechanisms over them.

Based on these findings, it is suggested to work on making the rules about mandatory insurance more in line with real life, making sure that insurance companies follow the rules by giving more power to the courts and the government, and making sure that people know their rights and the importance of insurance. It is also necessary to establish a balanced legislative framework that provides a margin of contractual freedom without undermining the protection of the public interest and vulnerable parties in the contractual relationship.

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