

Alimzhanova M.G.  
**General principles  
of the insurance law  
of the Republic of Kazakhstan**

In this paper, the author discussed the principles of insurance law, which are the basis to conduct insurance business in the Republic of Kazakhstan. Disclosed the principles of protection of property, the accumulation of public finances, reducing the risk of unexpected losses. There was also a system of principles of insurance activity. We used the works of foreign authors: Baysalov SB, DL Baideldinov As scientific works of scientists of the Russian Federation: Krokhina Y.A., Alekseev S.S., Smirnov M.B., Denisova I.P., Shikhov A.K .

**Key words:** principles of insurance business, insurance law, insurance law.

Алимжанова М.Г.  
**Қазақстан Республикасының  
сақтандыру құқығының  
негізгі қағидалары**

Берілген мақалада автор Қазақстан Республикасының сақтандыру қызметінің негізі болып табылатын сақтандыру құқығының қағидаларын қарастырды. Мүлікті қорғау, қоғамдық қаржыларды аккумуляциялау және көзделмеген шығындар тәуекелі қағидалары қарастырылған. Сонымен қатар, сақтандыру қызметінің қағидалар жүйесі көрсетілген.

Мақалада отандық авторлардың ғылыми жұмыстары қарастырылған: Байсалов С.Б., Байдельдинов Д.Л. Сонымен қатар мақалада РФ ғалымдарының еңбектері қолданылды: Крохина Ю.А., Алексеев С.С., Смирнова М.Б., Денисова И.П., Шихов А.К.

**Түйін сөздер:** Сақтандыру қызметінің қағидалары, сақтандыру құқығы, сақтандыру заңнамасы.

Алимжанова М.Г.  
**Основные принципы  
страхового права  
Республики Казахстан**

В данной статье автором рассмотрены принципы страхового права, которые являются основой осуществления страховой деятельности в Республике Казахстан. Раскрыты принципы защиты имущества, аккумуляции общественных финансов, уменьшение риска непредвиденных потерь. Также была представлена система принципов страховой деятельности.

В работе были использованы труды отечественных авторов, как: Байсалов С.Б., Байдельдинов Д.Л. Также научные труды ученых РФ: Крохина Ю.А., Алексеев С.С., Смирнова М.Б., Денисова И.П., Шихов А.К.

**Ключевые слова:** принципы страховой деятельности, страховое право, страховое законодательство.

## **GENERAL PRINCIPLES OF THE INSURANCE LAW OF THE REPUBLIC OF KAZAKHSTAN**

Insurance as a link of the financial system of the state carries out three interconnected functions:

1) Protection of property interests of public and private subjects. By means of implementation of insurance activity, the state has an opportunity to compensate the losses or the losses of other legal entities, which have resulted in unforeseen or adverse circumstances. Insurance represents the effective instrument of social policy implementation by the state;

2) Accumulation of public financial means at the expense of attraction of insurance premiums from other subjects. By realizing this function, the state accumulates and isolates additional financial funds;

3) Decrease in risk of unforeseen budgetary expenses [1, p.613].

The legislation of the Republic of Kazakhstan, including the Law of RK on insurance activity, doesn't contain the special norms stating the principles of legal regulation of insurance activity.

We completely agree with a position of Professor Alekseev S. S. who notes that the principles of the law are the leading ideas, characterizing the content of the law, its essence. On the one hand, they express general norms of the law, and from another hand – represent most general norms which work in all spheres of legal regulation and extend on all subjects. These norms are directly formulated in the law, or brought out of the general sense of laws [2, p. 204].

In our opinion, any branch or institute of law, that is being expressed in the current legislation, has to have the principles of legal regulation consolidated at legislative level as from fixing of these principles legal regulation of the relations entering into a subject of this or that branch or institute of the law has to begin as a whole.

Scientists of each branch of the law paid separate attention to the essence and paramount value of the principles of the law of a particular branch. So, Smirnov O. V. when defining the principles of the labor law, specified that in essence the principles represent the main leading ideas, which concentrated on expressing the essence, the main properties, internal unity and development of rules of law within the law system, or its separate branches and other sets of norms [3, p. 45].

Professor Baysalov S. B. when investigating the principles in relation to the water law noted that the principles of the law are the main leading beginnings penetrating all institutes of the law. Concretized in various legal establishments, they predetermine the main content of the law and reflect to some extent in all their norms [4, p. 144].

Throughout this position professor Baydeldinov D. L. specified that the modern law of the Republic of Kazakhstan has the system of legal principles which enter into legal fabric of the existing public relations and the current legislation. These general principles find the specification and refraction in certain branches of the right and the legislation in which there are intra-branch principles. The principles carry out a binding role for certain sets of norms of law, reflecting their essence and uniting them into an institute or branch of the law which corresponds to the isolated circle of the public relations, regulated according to the designated principle of the law [5, p. 25].

The principles of the law define ways of improvement of norms of law, acting as leading ideas for the legislator. They are a link between the main regularities of development and functioning of the society and the legal system. Thanks to the principles, the legal system adapts the major interests and needs of the person and society that is compatible to them [48, page 204].

Thus, in our opinion, the analysis of any legal system has to include research of the principles of this legal system. The modern jurisprudence rather fundamentally developed the general theory of legal principles. However this theory because of not to the clear reason for us didn't find the reflection in the existing insurance legislation.

Due to specified, on the basis of the analysis of the legislation of the Republic of Kazakhstan, and also scientific development we will try to define the principles of the insurance law which, in our opinion, have to find reflection in separate special standards of the current law of RK about insurance. In the law theory, legal principles are subdivided on peculiar to the law as a whole (all-legal), to its separate branches (branch) or group of allied branches (sub-branch) [2, p. 204].

Scientists in the field of the insurance law agreed to divide the principles of insurance into two groups depending on types of insurance – on the obligatory principles and the principles of voluntary insurance [6]. However, we won't stop on consideration of all-legal principles and on the group principles depending on types of insurance, and we will stop on consideration of the general principles peculiar to directly insurance law.

Proceeding from the analysis of the Law RK on insurance activity, it is possible to define the following general principles of the insurance law:

1) insurance in the Republic of Kazakhstan is carried out on the basis of legislative regulation of legal bases of insurance, and also obligatory rules of insurance which are obligatory for subjects of insurance;

2) insurance in the Republic of Kazakhstan is carried out on the basis of state regulation of the insurance market and supervision of insurance activity;

3) insurance in the Republic of Kazakhstan is carried out to ensure protection of the rights and legitimate interests of the insurers insured and beneficiaries;

4) principle of recoverability of insurance;

5) principle of onerousness of the contract of insurance;

6) principle of integrity;

7) principle of limitation of terms of insurance.

The principle of implementation of insurance on the basis of legislative regulation means that the relations on insurance are regulated first of all by acts, for example, the Civil code of RK, the Law on insurance, laws on separate types of insurance. The provisions specified in these acts then find the expansion in accepted by authorized body subordinate normative acts. In the field of insurance we spoke about legislation structure earlier therefore we won't repeat it here.

The principle of ensuring supervision of the insurance activity is defined in article 2 of the Law, in our opinion it means that the state, allowing existence of the relations on insurance, reserves the right of establishment of a rigid framework and regulation of these relations. Supervision for insurance activity is exercised by authorized body which is the National bank of the Republic of Kazakhstan is. According to subparagraph 2) article 49 of the Law RK about insurance definition of the principles of regulation of the insurance market, an order of the organization of supervision of insurance activity is assigned to National bank of the Republic of Kazakhstan [7].

The third general principle of the system of insurance in the Republic of Kazakhstan is the principle of ensuring protection of rights and legitimate interests of the insurers insured and beneficiaries. This principle means that the previous two general principles of insurance considered by us – legislative regulation of insurance activity and supervision and control of insurance, first of all, are aimed at protection of interests of subjects of the insurance market.

The general principle of insurance which isn't specified in the current legislation of the Republic of Kazakhstan, but follows from its contents, is the principle of recoverability. Speaking about the credit beginning of insurance, economists consider this principle as the principle of insurance or its specific sign according to which all mobilized by the insurer means in insurance fund of, being distributed in space and in time, come back to insurers (except for the sums withheld by the insurer for conducting business and receiving some profit).

So, I.P. Denisov, when opening a credit component of insurance, notes the following: «The closed relations between participants of the insurance connected with a solidary apportion of an amount of damage, are cause of recoverability of the means mobilized in insurance fund... In case of an extraordinary event all sum of insurance payments will return in the form of compensation of damage during the temporary period taken into consideration in the same territorial section. The sign of recoverability of money pulls together economic category of insurance with category of the credit [8, p. 8]. Therefore, the credit in insurance is expressed in not that the insurer returns money to the specific insurer, but that it returns to «community of insurers», grouped round this insurer. (This community of insurers still calls «association of insurers», «participants of insurance» or «participants of insurance fund») [9, p. 44].

The principle of onerousness of the insurance contract means that insurance is based on payments from the insurance fund of the insurer. If to speak about this principle, any insurance – either obligatory or voluntary – is paid. Free insurance can't exist. The principle of onerousness is an economic basis of the insurance relations, at the expense of existence of the certain money providing realization of those functions which insurance is urged to carry out. I.I. Stepanov noted that insurance assumes means, in advance and specially intended for a deviation of consequences of misfortune, unlike simple savings in the case of monetary need. Insurance is an independent economic activity which is expressed in savings, specially intended for a deviation of possible destruction of values from casual misfortune [10, p. 14]. From the subjective side the principle of onerousness means the will of the interested person in a deviation from itself in the future of negative property consequences which can comprehend it. Therefore at emergence of desire to avert from itself negative property consequences the interested person addresses to other person – to

insurance company. As the desire of the person is connected with receiving of money, in the future, or other property, it's possible to realize this desire only by certain expenses, i.e. investments for the future.

Transferring certain money in the form of contributions to the insurance company, the interested person creates a certain property stock for himself in the future. First, this person saves money in advance in case of approach of any misfortunes, and, secondly, it in this regard has a right to demand from insurance company the compensation of the losses which emerged as a result of accidents. Therefore without an initial investment of money the interested person won't have an opportunity to satisfy the eventual requirements. The principle of onerousness is based on it [11].

Other general principle of insurance is the principle of integrity. In this matter we agree with Khudyakov A.I. position, which objects to recognition of the insurance relations as the fiducial (personal and confidential) relations. Thus, Khudyakov A.I. suggests distinguishing the principle of the highest trust from the principle of the highest integrity which is really consolidated by the insurance legislation [9, page 205].

Explaining the principle of the highest integrity, David Bland writes: «All business operations have to be made with observance of the principle of integrity, otherwise, there should be neither deception, nor intention to deceive... Insurance operations differ from other operation because in that kind of operations only one person knows everything concerning that «thing» which is insured. This person asks to insure something and to report his duty about all facts to the insurer. The principle which has to be observed during the insurance procedure is the principle of the highest integrity and therefore the insurer must be reported about any defects of an insured subject» [10, p. 43-44].

In the most general view, the principle of the highest integrity means that the insurer has to treat object of insurance as if he wasn't insured. As for information, which the insured has to tell to the insurer in the course of the conclusion of the contract, this principle obliges it to report everything that he knows or has to be known [9, p. 265].

The principle of limitation of terms of insurance is connected with period of validity of the insurance contract. Despite the type of insurance, obligatory or voluntary, contract terms of insurance are always limited to a certain temporary framework. Therefore, any insurance is limited to the insurance terms.

### References

- 1 Krokhina YA Financial Law of Russia: a textbook for high schools. – M., 2004. – 704
- 2 Theory of State and Law / ed. Alekseyev SS, SI Arhivova et al. – M., 2005. – 496 pp
- 3 Mikhail Smirnov Insurance Law: a tutorial. – M., 2007. – 108
- 4 Baysalov SB Water law Kazakh SSR.- Alma-Ata, 1966. – 150
- 5 Baideldinov DL Environmental legislation of the Republic of Kazakhstan. – Almaty, 1995. -188
- 6 Shalagina MA Shala IA Insurance Law. Lecture notes. – M., 2007. – 160
- 7 The Republic of Kazakhstan. Law of the Republic of Kazakhstan. Insurance activity: adopted December 18, 2000, № 126
- 8 IP Denisova Insurance. – M., 2003. – 329
- 9 Shikhov AK Insurance Law. – M., 2004. – 304
- 10 Marx, Capital. – M., 1938 – Vol.3. – 736 p Абрамов В.Ю. Страхование: теория и практика. – М., 2007. – 216 p.