

RIGHTS AND OBLIGATIONS ARISING IN COMPENSATION OF CLAIMS CAUSED BY USE OF MOTOR VEHICLES¹

Boban Tomeski, boban.tomeski@aso.mk

Klime Poposki, klime.poposki@aso.mk
University St. Kliment Ohridski, Bitola
Faculty for tourism and hospitality, Ohrid

ABSTRACT

Insurance against civil liability in respect of the use of motor vehicles or accepted as Motor third party liability insurance is a quite significant for citizens, whether they are insured or victims of a car accident. Insurance of motor vehicles, and in particular Motor third party liability insurance, is the most important type of insurance in developing countries.

Motor third party liability insurance has a major impact on the free movement of persons and vehicles. The high traffic frequency and the increased number of motor vehicles are more likely to cause a lot of traffic accidents and reported claims.

On the Macedonian insurance market, during the 2017, 40,780 claims of motor vehicles were processed, out of which 31,106 were for Motor third party liability insurance and 9,674 insurance for motor vehicles - casco. Taking into account the importance of this type of insurance and the overall effect it has on the financial security and stability of the citizens, this paper will elaborate the rights and obligations of insured persons and victims in traffic accidents in terms of a legal framework, as well as future challenges on the insurance market.

KEY WORDS: motor third-party liability, regulations, claims and criteria

¹Original scientific article

INTRODUCTION

Insurance against civil liability regarding the use of motor vehicles or in our country better known as motor third party liability insurance is of particular importance to citizens, regardless of whether they are policyholders or victims of a traffic accident. Motor vehicle insurance and more specifically motor third party liability insurance - MTPL, is the most important type of insurance in developing countries.

Considered from the structure of gross written premium for non-life insurance in 2017 on the insurance market in the Republic of Macedonia, the composition of the total premium was mostly based on insurance of motor vehicles with 63.93%, then motor third party liability insurance MTPL accounting for 53.91%, and the voluntary motor vehicle insurance - Casco with 10.02%.

Similar indicators can also be observed from the aspect of claims processing, so that in 2017 of the total number of liquidated claims in the part of non-life insurance, the most significant share was taken by motor vehicle insurance with 68.01%, followed by motor third party liability insurance participating with 52.32%, and the voluntary motor vehicle insurance - Casco with 15.69%.

Motor third party liability insurance MTPL has a huge impact on the free movement of people and vehicles. The high traffic frequency and the increasing number of motor vehicles are another reason for the increased number of traffic accidents and reported claims. On the insurance market in the Republic of Macedonia, during the year of 2017, a total number of 40,780 claims of motor vehicles were processed, of which 31,106 on the basis of motor third party liability insurance MTPL and 9,674 on the basis of insurance for motor vehicles - Casco.

Taking into consideration the importance of this type of insurance and the overall effect it has on the financial security and stability of the citizens, this paper work will elaborate the rights and obligations of insured persons and victims in traffic accidents, in terms of the legal framework, as well as the future challenges in the insurance market.

Legal Framework

The right of the insured persons for compensation of damage caused by the use of motor vehicles is guaranteed by the Law on Compulsory Insurance in Traffic

(hereinafter: “LCIT”), while the manner and deadlines for exercising the right to claims is stipulated in the Law on Obligations (hereinafter referred to as “LO”). In order for the insured person to have grounds for claims, it is necessary to determine the fault (full or partial) on the side of the person who caused the damage, which is determined in line with the provisions of the Law on Road Traffic Safety. In addition to the aforementioned legislation and other legal acts that produce legal action in the Republic of Macedonia, international agreements have a significant impact on the settlement of international claims.

Concerning the rights of victims in car accidents, special attention shall be dedicated to the provisions and recommendations of the EU Directives², for which we can truly conclude that our LCIT is adapted to the provisions inclusive of the fourth Directive.

The Republic of Macedonia, as a country aspiring to become part of the European Union (hereinafter “the EU”), in accordance with the obligation to harmonize the domestic regulations and legislation to the European Regulation, has the obligation to fully implement the provisions of the Motor Insurance Directives in the domestic legal acts.

What is important and we would like to emphasize is that our LCIT has been in force since 27 October 2005, and in the period following after that, certain directives have been adopted by the European Parliament and the Council of Europe regarding motor insurance that have not been implemented in our law yet. The provisions of the Directives that have not yet been implemented in the LCIT regulate certain processes, clarify certain terms and simplify the manner of exercising the right to claims, and the part of defining the minimum amounts of insurance is also crucial.

Regarding the aforementioned we shall point out the Directive 2009/103/EC³ codifying all previous Directives for insurance of civil liability regarding the use of motor vehicles. The Directive 2009/103/EC entered into force on 06.10.2009, therefore canceling any previous existing directives and annexes thereof (72/166/EEC, 84/5/EEC, 90/232/EEC, 2000/26/EC and 2005/14/EC)⁴.

² www.eur-lex.europa.eu

³ DIRECTIVE 2009/103/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability - (codified version)

⁴ See Article 29 – Repeal, Directives 20019/103/EC

Among other things, it is necessary to emphasize that LCIT contains many transitional provisions which shall come into force, i.e. they shall be applied until the day of acquiring full membership of the Republic of Macedonia in the EU, and the most significant ones are as follows:

- Motor third party liability insurance without paying a supplementary premium shall cover claims caused on the territory of all EU Member States;
- Deregulation of the price for motor third party liability insurance;
- Obligation of insurance companies to appoint an authorized representative in the EU Member States;
- Obligation of the National Insurance Bureau to establish a Damage Compensation Service, etc.

Seen from the aspect of realization of the rights of the insured persons and acting upon the obligations of those who caused the damage by the use of motor vehicles, we shall pay more attention to the legislation and bylaws in the work that follows.

Rights and Obligations of Claims Persons Established by Law

Pursuant to the legislation, the motor third party liability insurance (hereinafter: “MTPL”) covers both the non-material and material damage suffered by the insured person as a consequence of a traffic accident, not by their fault or with partial fault to partial damage.

After the occurred insured event, i.e. the traffic accident, the insured person has the right to file a claim for compensation directly to the responsible insurance company, and may also file a lawsuit for compensation of the damage to a competent court, but only if they has previously applied for compensation to the responsible insurance company. The mandatory insurance contract also covers the liability of all persons who, with the consent of the owner, drive the vehicle⁵. LCIT also stipulates that, the Insurance Company cannot file a complaint against the insured person (third persons) which on the basis of the Law or the insurance contract could be filed against the insured person due to noncompliance with the Law, the insurance conditions or the insurance contract⁶.

⁵See Article 3 Paragraph (3) of LCIT

⁶See Article 5 Paragraph (3) of LCIT

In addition, the Law on Obligations contains provisions that regulate the right of the insured party, where in the case of liability insurance, they can request directly from the insurer compensation for the damage suffered with the event for which the insured is responsible, but up to the amount of the liability of the insurer⁷. The insured party also has a personal right to insurance compensation from the moment the insured event occurred, and any subsequent change in the rights of the insured against the insurer is without prejudice to the right of the insured party to compensation.

The right for compensation on the basis of MTPL is reserved to any person whose personal rights or property has been affected with the use of a motor vehicle, except if:

- The person is driver of the motor vehicle that caused the accident;
- The person is the owner of the motor vehicle that caused the accident, in which case the compensation is paid only for damage due to destruction or damage to objects;
- The person is somebody who illegally appropriated a motor vehicle that caused the accident;
- The persons who suffered the damage used the motor vehicle in sports events; and,
- The motor vehicle is used in a terrorist act or military operations.

In our country, the minimum insurance amounts for which MTPL contracts are concluded are determined depending on whether it is about damage/and caused to objects or damage/and body injuries, as well as the type and purpose of the vehicle which is the cause for the occurrence of the damage.

The regulation also considers cases where the insured person loses the right to compensation, of which crucial are insured cases caused with a deliberate action or insured cases as a result of fraud. However, it is also stipulated that the omissions for untimely reporting are not grounds for losing the right to compensation, and therefore, the provisions of the agreement that provide for loss of the right to compensation or the amount of insurance are null and void if the insured person does not execute some of the prescribed or contractual obligations after the occurrence of the insured event⁸.

In the event when the insured person is not satisfied with the decision of the insurance company after the claim payment, they shall have the right to

⁷See Article 997 of Law on Obligations

⁸See Article 974 of Law on Obligations

mediation, i.e. to file an objection to the liable insurance company, and then a complaint to the Insurance Supervision Agency, but in any case before using the right to initiate a lawsuit.

Apart from the rights, the participants in the traffic accident also have obligations, and the key obligation is that before releasing the vehicle in traffic, they have to conclude a compulsory insurance contract⁹. In case of a traffic accident, they have to exchange their personal ID information, registration data for the motor vehicle and proof that they possess an MTPL policy. Moreover, the owner of the motor vehicle is obliged to notify the insurance company with which he/she concluded a contract for MTPL in view of the occurrence of the traffic accident and submit a completed European report within 30 days of the day of occurrence of the accident. Failure to comply with the obligations of the participants in a traffic accident can lead to difficulties in exercising the right to compensation, as well as a part of the financial obligation to be borne by the liable person. However, due to the fact that the insured party cannot influence the behavior of the liable person and the fulfillment of the obligations on his/her part, the legislation foresees that failure to act in line with the aforementioned obligations by the liable person, shall not affect the right of the insured person to compensation¹⁰.

It is however expected that after the occurrence of the damage, the insured shall act with due care to a good owner and undertake any measures that would reduce the damage or prevent greater damage.

Minimum Insurance Amounts

In the Republic of Macedonia, the minimum agreed insurance amounts that limit the liability of the insurance company which arises from motor vehicle liability insurance are stipulated in the LCIT, and they are on a much lower level than the amounts established by the EU Member States.

In our country, the minimum amount of insurance for which MTPL can be agreed after 2010 have increased by 50% (cumulative) in relation to the minimum insurance amount of the previous year, and by the end of 2012¹¹.

Currently, the minimum amount of insurance for which MTPL can be contracted are as follows:

⁹See Article 3 Paragraph (1) of LCIT

¹⁰See article 22 Paragraph (2) of LCIT

¹¹See Article 20 and Article 72 of LCIT

- For damage due to death, bodily injury and health disorder, after occurred insured event irrespective of the number of insured persons: EUR 675,000 for buses and freight vehicles; EUR 337,500 for other motor vehicles; and EUR 1,012,500 for motor vehicles transporting dangerous goods; and,
- For damage caused due to destruction or damage to objects, per damaging event irrespective of the number of insured persons: EUR 337,500 for buses and freight vehicles; EUR 168,750 for other motor vehicles; and EUR 506,250 for motor vehicles transporting dangerous goods.

In accordance with the principles of insurance, and in the LCIT as well, it is stipulated that the liability of the insurance company arising from the MTPL cannot exceed the minimum insurance amounts, unless the insurance contract stipulates a higher amount. In case there are more insured persons, and the total compensation exceeds the amount at which the insurance is contracted, the rights of the insured persons against the insurance company shall be proportionally reduced.

The aforementioned insurance amounts do not apply to claims that occurred outside the territory of the Republic of Macedonia, i.e. other insurance amounts apply for international claims. In our country, the system is set up in such a way that the international claims are covered by the Green Card, which theoretically proves that the vehicle is in possession of MTPL, but in practice it is an extension of the MTPL for claims occurring on the territory of a foreign country which is part of the Green Card system. The fact that the Green Card covers international claims provides significantly higher coverage with very high insurance sums and in some cases an unlimited amount.

In the event of a traffic accident, the law of the country in which the accident occurred is applied in most of the cases¹², i.e. the minimum amounts of insurance valid in that country, and there are countries where contracts for motor liability are concluded with unlimited coverage. Such is the case with France, Belgium, Finland, etc. where car insurance contracts are concluded with unlimited liability for non-material damage or Luxembourg where contracts are concluded with unlimited coverage for both non-material and material claims.

In EU Member States, the minimum insurance amounts are determined at a minimum level as provided for in the Directives for civil liability insurance regarding the use of motor vehicles, which are set at a high level and are continuously subject to correction in the direction of increase.

¹² Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents

The Directive 2009/103/EC on the minimum amounts of insurance determines the following amounts:

- In case of physical injury, the minimum amount of the coverage shall be in the amount of EUR 1.000.000 per person or EUR 5.000.000 per case, regardless of the number of injured persons;
- In case of damage to the property, the amount compensated shall be EUR 1.000.000 per case, regardless of the number of insured items. If necessary, Member States are allowed to have a transitional period of five years from the publication of this Directive.

As a result of the audit carried out and due to the inflation of these amounts, in 2010 the previous Directive was supplemented with Annex 2010/C 332/01¹³ and the aforementioned amounts increased from EUR 1.000.000 to EUR 1.200.000, from EUR 5.000.000 to EUR 5.600.000 and from EUR 1.000.000 to EUR 1.200.000.

Annex COM(2016) 246 of 10.05.2016 also increased the previously given amounts¹⁴:

- In case of corporal injury at EUR 1,220,000 per person or EUR 6.070.000 per case;
- In case of damage to the property EUR 1,220,000 per case.

As mentioned, the minimum insurance amounts in the EU Member States are determined in accordance with the Directives, but in practice there is a trend of setting them to a much higher level than the one specified, and certain countries have set unlimited coverage for claims on the basis of motor liability.

¹³ EUROPEAN COMMISSION _ Notice regarding the adaptation in line with inflation of certain amounts laid down in the Motor Insurance Directive 2009/103/EC (2010/C 332/01).

¹⁴ EUROPEAN COMMISSION _ Brussels, 10.5.2016 COM(2016) 246 final _ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL -The adaptation in line with inflation of minimum amounts laid down in Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.

European Report or Record of Authorized Persons

In order to be able to act upon claims processing, in addition to the reported claims, the statement of the event and other documentation, it is necessary to provide a completed European report or a police record. In order to provide police record it is necessary for police officers of the Ministry of Internal Affairs to inspect the site of the traffic accident. The police officers in each case inspect the place of the accident when there are persons killed or injured, or if there was huge material damage¹⁵. Also, police officers shall inspect the place of the accident in case of small damage caused, if one of the participants in the traffic accident requests so, in cases where: one of the vehicles does not have registration license plates or is not insured; one of the vehicles has a foreign registration license plates; one of the drivers is obviously under the influence of alcohol, drugs or other psychotropic substances; one of the drivers does not hold a driver's license of the appropriate category; one of the drivers has been given a misdemeanor sanction - prohibition of driving a motor vehicle in the driver's license, that is, the driver's booklet; one of the drivers refuses to give their personal data, that is, the vehicle data; one of the drivers left the scene of the traffic accident; and, if the driver himself/herself participates in a traffic accident¹⁶.

For the European report, we would point out that it is a standardized form that every participant in the traffic should hold in the vehicle and if the conditions envisaged are fulfilled. The practical application of the European Report began as of 01.07.2005. In the event of a traffic accident, it is not important which of the drivers gives their sample to be filled, but it is important not to do corrections on the form itself afterwards. On the back of the European report, an instruction has been printed according to which the participants should be guided when completing it.

After filling the report, the form is divided into two parts that are reflected during the filling, and the content, data, markings and sketch should not be changed further and the same should be identical in both parts. Also, we would point out that of utmost benefit for the damage processing are the given statements by participants in the accident regarding the description of the accident, as far as possible a well-descriptive sketch, the name of the roads and

¹⁵See Article 218 of the Law on Road Traffic Safety.

¹⁶See Article 220 of the Law on Road Traffic Safety.

the indication of traffic signs, and of course the benefits from the images of the accident taken at the spot of the accident.

In practice, we often encounter challenges in exercising the right to compensation, precisely because of the decision to call the police or to fill in the European report. Therefore, a recommendation for the participants in any traffic accident is to be well aware of the conditions for completing the European report, and if they are not sure, after the accident, they should turn to for help, i.e. on the basis of the factual situation to receive instructions on whether the conditions are fulfilled to fill in the European report or not. It is also necessary to pay attention to the colleagues from the insurance industry and especially to the authorized persons from the Ministry of Interior Affairs, before giving directions to be well aware of the factual situation and the fulfillment of the conditions for completing the European report provided for in the domestic legislation.

Changing the Ownership of the Vehicle

Pursuant to the provisions of the LCIT, as well as the Conditions for MTPL, if during the term of the insurance the owner of the motor vehicle changes, the rights and obligations of the insurance contract are transferred to the new owner until the expiration of the current insurance period¹⁷. From the above stated, we can conclude that if there is a change in ownership of a motor vehicle, from the day of the change to the end date of the insurance coverage, the rights to damage and also the obligations under the policy shall be transferred on the side of the new owner of the vehicle, which is not the case with insurance of motor vehicles - Casco.

In the case of insurance of motor vehicles - Casco, in case of change of ownership of the vehicle, unless otherwise agreed, the rights and obligations under the insurance contract are not transferred to the new owner, i.e. the insurance contract terminates at 24:00 on the day of selling the vehicle. An exception to the foregoing is if the change occurs between heirs of first hereditary order, if the leasing user has purchased the vehicle or partial Casco - insurance of windows and windshield.

¹⁷See Article 18 of LCIT

Non-Material Damage Compensation

Our legislation through the Law on Obligations encompasses the institute of compensation for non-material damage, and with the amendments from 2008¹⁸, specifies in more detail the granting of fair financial monetary compensation for sustained non-material damage.

The non-material damage caused by the use of a motor vehicle can be defined with the provisions of the Law on Obligations, as follows: Non-material damage is damage caused by a violation of the personal rights of physical, for sustained physical pain, suffered mental pain and due to decreased life activity, disfigurement and suffered fear¹⁹. This type of damage can be inflicted on legal and natural persons, but viewed from the damage caused by the use of a motor vehicle we can rightly conclude that this type of damage is claimed from the insurance companies exclusively by natural persons.

Based on the application of the Law on Obligations, the fair monetary remuneration as a form of compensation for non-material damage is usually called satisfaction or appease for the damage caused. In fact, the term “fair compensation” was most often used term, the purpose of which was to provide satisfaction or appease to the insured party. The Law on Obligations defines the term personal rights in a way that, for every legal or natural person, in addition to the protection of property rights, the right to protection of personal rights considered to be violated is also envisaged²⁰. In addition, personal rights include: the right to life, physical and mental health, honor, reputation, dignity, personal name, privacy of individual and family life, freedom, intellectual creation and other personal rights.

Pursuant to the regulation, compensation for non-material damage is carried out in the form of non-material compensation, such as moral satisfaction or material compensation of non-material damage with an equitable monetary reward. In practice, for the non-material damage suffered by the insured person by using a motor vehicle, he/she is reimbursed with a monetary reward for: reduction of life activity, suffered physical pain, suffered mental pain, as well as for suffering fear. In the event of death, bodily injury or damage to health, the compensation is, as a rule, determined in the form of a monetary reimbursement, for a lifetime

¹⁸<http://www.pravo.org.mk/>

¹⁹See Article 9-a of the Law on Obligations and Article 189 to Article 192 of the Law on Obligations

²⁰See Article 187-a of the Law on Obligations

or for a specified period of time, but at the request of the creditor the determined reimbursement may be paid in one total amount.

Material Damage Compensation

Material damage is the reduction of one's property (ordinary damage) and the prevention of its increase (lost benefit)²¹.

According to the provisions of the Law on Obligations, after ordinary damage or damage to the property occurred, the liable person is obliged to establish the situation that existed before the damage occurred, and if the establishment of the previous condition does not completely eliminate the damage, the liable person is obliged for the rest of the damage to provide money compensation. When the establishment of the previous situation is not viable, or when the court considers that it is not necessary for the liable person to do so, the court will decide for the liable person to pay the insured party the appropriate amount of money for damage compensation.

Also, the insured party may be compensated in money when requested so, unless the circumstances of the given case justify the establishment of the former situation²².

The obligation to indemnify the damage is considered as having become due from the moment of occurrence of the damage, and the insured person shall have the right to compensation for the ordinary damage as well as compensation for the lost benefit, and the amount of the compensation for the damage shall be determined according to the prices at the time of the decision, unless something else is regulated by law²³.

Criteria for Damage Establishment

In practice, it may be noted that there are criteria for the assessment of claims on motor vehicles that do not differ very much between the insurance companies. These criteria are used to determine the extent of damage to the vehicle, the amount of damage to the vehicle, parameters used to calculate the total damage, and for which parts and what percentage of depreciation is calculated, and on which parts of the vehicle no depreciation is calculated.

²¹See Article 142 of the Law on Obligations

²²See Article 174 of the Law on Obligations

²³See Article 175 and Article 178 of the Law on Obligations

With the development of technology and the high level of digitization, a lot of tools (web applications) are used to calculate material damage, which gradually replace the written criteria, which will only be used as a framework during the calculation over time. Most insurance companies use high professional applications from outside suppliers to calculate material damage²⁴. These applications, which make use of modern software solutions and a wide range of data for all kinds of vehicles and parts for them, simply provide detailed data for all parts of the vehicle, the required time, the working hours to repair the damage etc. Also, these insurance companies use these applications to determine the correlation of damage between the two vehicles or the vehicle and the object, in order to detect insurance fraud.

Regarding the determination of compensation for non-material damage, there are criteria for compensation of non-material damage caused by the use of a motor vehicle. These criteria were adopted in October 2006 by the Motor Insurance Commission, but the same were abolished by a Decision of the Constitutional Court of the Republic of Macedonia on 06.02.2008. By abolishing the criteria, the process for compensation of non-material damage was restored to be as before, with unequal offers and different amounts for claims for identical losses.

In practice, insurance companies receive more initiated claims for compensation for non-material damage caused by motor vehicles, and the purpose of these criteria was precisely the relief in determining compensation for non-material damage due to death, bodily injuries and health disorders. The criteria should determine a fair amount of money in accordance with the severity of the suffered physical pain, suffered fear, suffered mental pain due to reduced life activity, due to disfigurement, due to loss or severe disability of a close person.

In determining financial compensation for suffered non-material damage, insurance companies face the challenge of fair treatment, because each case of suffered non-material damage is specific and there are no objective measures for determining the actual damage suffered, and in the absence of prescribed frameworks, compensation is determined by free assessment, guided by past experience and established case-law.

The lack of an appropriate framework and unbalanced court practice in measuring the amount of monetary compensation leads to problems and unequal access in deciding on the offer for monetary compensation by the insurance companies and the amount of monetary compensation determined by the courts.

²⁴<http://www.audatex.bg/cms/bg/web/ax-bg/home> ; <http://eurotax.ro/>

The unequal determination of damage compensation and the suspicion of unequal treatment of insured persons, acts in the direction of losing the satisfaction of the insured party, increasing the distrust in the insurance market and increasing number of initiated court procedures.

The former is the reason for the parties concerned to begin initiatives and activities to regulate and establish comprehensive criteria for compensation of non-material and material damage.

Compensation for Damage Caused by Uninsured or Unidentified Vehicles

This insurance encompasses the claims caused by uninsured vehicles, unidentified vehicles (non-material damage), as well as claims caused by the use of a motor vehicle by an unauthorized person.

In line with the domestic legislation, the National Insurance Bureau was entitled to establish a Guarantee Fund which shall serve for payment on the basis determined in LCIT²⁵. The manner of reporting, recording, processing and payment of claims that according to the LCIT shall be borne by the Guarantee Fund, is regulated in detail by internal acts of the National Insurance Bureau.

The insured person who has suffered damage on the basis of an uninsured or unidentified vehicle, in accordance with the regulation, has the right to file a claim for damage compensation to the National Insurance Bureau or directly to an insurance company, and may initiate a court procedure if, within a period of three months of the day when the request for compensation was submitted, no compensation has been paid yet²⁶.

If the damage is caused by a driver of an uninsured vehicle, the National Insurance Bureau is responsible for the payment of claims in the same way as the insurance company in case an insurance contract was concluded²⁷. Whereas, in cases when the damage is caused by a driver of an unknown vehicle, the National Insurance Bureau is responsible for the payment of compensation for claims due to death, bodily injury and health disorder²⁸. The non-payment of material damage caused by an unknown vehicle is aimed at avoiding the high level of exposure to fraud. Directive 2009/103/EC provides an opportunity for the authority for damage compensation of uninsured and unidentified vehicles to

²⁵See Article 58 of LCIT

²⁶See Article 61 of LCIT

²⁷See Article 62 of LCIT

²⁸See Article 63 of LCIT

limit or exempt from paying compensation in case of damage to property caused by an unidentified vehicle, but it is provided that, in case when the authority paid significant compensation for personal injury to a victim, in the same accident in which property damage from an unidentified vehicle was caused, it cannot exempt the payment of compensation for damage to property²⁹.

Subrogation and Right to Recourse

The MTPL covers the claims caused by the use of a motor vehicle by an unauthorized person³⁰, and this also necessitates the need for subrogation and the right to recourse. After the occurrence of an insured event in line with the MTPL, the rights and obligations that the insured person has towards the liable person are transferred to the insurance company, and this fulfills the conditions for the existence of subrogation. Subrogation means the transfer of the rights that the insured party has against the liable person to the insurer³¹. On the other hand, the recourse presupposes the right to a refund of the paid amount for compensation. With the payment of compensation for damage by the insurance company, all rights that the insured person has against the person who is responsible for the damage, are transferred to the insurer, but not exceeding the amount of the paid compensation. The insurance company that has compensated the damage caused by the use of a motor vehicle by an unauthorized person is entitled to recourse for the paid amount of compensation together with the interest and costs incurred thereby by the unauthorized person.

Deadline for Payment of Claims or an Agreed Amount of Insurance

Regarding the deadline for payment of claims or an agreed amount of insurance, we can rightly say that the domestic regulations require the development of the existing provisions. Regarding the deadline for payment of claims, there are provisions in the by-laws and in the Law on Obligations. The Rulebook on the minimum content of the records and the manner of application, reservation and liquidation of claims by the insurance companies³² regulates that, after the settlement of the claims, the company is obliged to notify in writing the claimant

²⁹See Article 10 _ Body responsible for compensation (3).

³⁰See Article 16 of the Law on Obligations

³¹See Article 995 of the Law on Obligations

³²Official Gazette of the Republic of Macedonia.4/2012

of the claims for the claims suffered, stating: the amount of compensation for the damage, the possibility and the deadline for submitting a complaint to the company in the event of dissatisfaction of the client and the deadline for payment of claims which must not be longer than 14 days from the day of the liquidation of the damage. If a complaint is filed during the processing period, this cannot be a reason for delaying the payment of the indisputable part of the damage.

Moreover, the basic framework of this final phase after the damage processing shall be determined by the Law on Obligations³³ which also regulates that in case of an insured event, the insurer is obliged to pay the compensation or the amount determined by the contract within the agreed deadline, which cannot be longer than 14 days, counting from when the insurer was informed that the insured event occurred. However, in practice, most concessions occur due to the next paragraph, which stipulates that if in order to determine the existence of the insurer's obligation and its amount takes some time, this period starts to run from the day when the existence of its obligation and its amount was established. What we would add in this section is that the deadline for payment of claims in many countries is regulated in a way that does not allow concessions, or if there are any, fees are paid for them. One of the countries with which we have similar, if not identical, legislation in the area of obligatory relations is the Republic of Croatia, where this section is elaborated in more detail. The Law on Obligations of the Republic of Croatia stipulates that the insurer is obliged to pay compensation in the agreed deadline, which must not be longer than 14 days after the report of the damage, and if the determining the existence of the obligation of the insurer and its amount takes some time, the deadline for payment shall be extended to 30 days from the day of the application or in the same deadline to inform the insured that there are no grounds for payment of the damage. It is also envisaged that if the insurer fails to fulfill the obligations within the foreseen term, the insured has a right to default interest, as well as additional damage suffered due to this delay³⁴. As in our legislation, the Croatian law also envisages that upon the request of the insured, and after the default of the insurer to fulfill its obligations in the foreseen deadline, the insurer should pay the undisputed part of the damage under the advance payment name.

³³See Article 975 of the Law on Obligations

³⁴See, Zajedničke odredbe za osiguranje imovine i osiguranje osoba, 4. Obveze osiguratelja, Isplata osigurnine Članak 943 - Zakon o obveznim odnosima, Republike Hrvatske

Basis for Direct Damage Processing from Motor Liability

In our country, the processing of claims reported on the basis of MTPL is performed exclusively by the responsible insurance company, that is, the insurance company that has concluded a contract for insurance of claims against third parties with the liable person. On the other hand, direct processing of claims from motor liability is the case when the application, assessment and/or payment is made by the insurance company with which the insured person has concluded an insurance contract, and then that company requires the responsible insurance company to repay them the amount paid. In accordance with the domestic legislation, the legislator with the LCIT gave the opportunity to the insured person to file a claim for compensation directly to the responsible insurance company, but did not limit the possibility for direct processing of claims claims by the insurance companies³⁵. With the above said, it is not forbidden for the insurance companies to conclude an agreement by which the claims claim based on MTPL can be processed by the insurance company with which the insured person has concluded a contract for insurance against motor liability.

Unfortunately, as in the case of many insurance markets in the developing countries, as well as in our country, insurance companies do not recognize this opportunity as an advantage or a way of “fighting” on the market through fast processing of claims and appropriate damage valuation. The reason for this is perhaps the mutual mistrust of the subjects of the insurance market. However, as the system for processing claims for MTPL is now in place, there is a doubt that this is a method of subjective processing of claims processing, by acting towards the insured person as a foreign consumer, and finally completing the process by giving preference to a low valuation of damage, at the expense of the satisfaction of the insured party. An exception to the rule that the damage caused by MTPL is dealt with exclusively by the responsible insurance company is in case when the insured person has a motor insurance policy for a motor vehicle - Casco. In this case, the insured person has the opportunity to entrust the application, evaluation and payment to the insurance company with which he/she has concluded a contract for insurance of a motor vehicle - Casco. Once the insurance company pays the damage on the basis of the insurance policy for a motor vehicle - Casco, it has the right to have the paid amount refunded by the insurance company that

³⁵See Article 5 Paragraph (1) of LCIT

has concluded a third party liability insurance. However, we must emphasize that only highly developed and mature insurance markets, where the trust among all market stakeholders is at a high level, can afford a system of direct claims from motor liability.

Conclusion

In the Republic of Macedonia, there shall be a further period of adjustment of the domestic legislation with the legislation of the European Union, i.e. full implementation of the provisions of the Motor Insurance Directives in the domestic legal acts. Harmonization of the domestic regulation with the EU regulation will mean a change in the rights and obligations of all participants in the insurance market, and yet, in addition to the role of the legislator and the regulator, the role of the insurance companies for a stable market during the transition period will be crucial. Insurance companies should target an objective system for processing motor liability claims, and the consideration of a system for direct processing of claims is for the insurance companies to recognize this opportunity as an advantage or a way of “fighting” in the market through fast processing and appropriate damage assessment. What is expected of the insurance industry is to act on the development of the domestic motor insurance market, but in the direction of a fair attitude towards the insured party, in order to improve the confidence in the insurance sector and the development of other types of insurance.

REFERENCE:

1. Law on Compulsory Insurance in Traffic, Republic of Macedonia
2. Law on Obligations, Republic of Macedonia
3. Law on Obligations, Republic of Croatia
4. Law on road traffic safety, Republic of Macedonia
5. Rulebook on the minimum contents of records and the manner of reporting, reserving and liquidating the claims by the insurance companies, ISARepublic of Macedonia
6. Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009
7. Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents
8. www.aso.mk

9. www.nibm.com.mk
10. <http://www.pravo.org.mk/>
11. www.eur-lex.europa.eu
12. www.osiguranje.hr
13. <http://www.audatex.bg/cms/bg/web/ax-bg/home>
14. <http://eurotax.ro/>