

# MOTOR LIABILITY INSURANCE. THE JURIDICAL CONSEQUENCES AND THE LEGAL NATURE OF THE INSURANCE

*Tudor ONIGA\**

## **Abstract**

*This Communication makes a short radiography of Law no. 132 of 31 May 2017 on compulsory insurance against civil liability in respect of third-party damage caused by vehicle and tramway accidents, in conjunction with the relevant European directives. Attention is drawn to the obligations of courts in civil claims from victims of traffic accidents, knowing that national and European legislation on compulsory civil liability insurance, civil process principles and Romanian case law impose an obligation to insure a fair and non-discriminatory treatment for persons harmed by an insured risk.*

*The objectives and the aim pursued by the European and national regulation, namely the social protection of road accident victims, the extremely disadvantaged social category, the guarantee of comparable treatment of the victims of road accidents and the adequate compensation of the victims of road accidents, have been highlighted. In conclusion, the objectives and the aim pursued by European and national regulation were taken into account.*

**Keywords:** *accidents, insurance, victims, protection, treatment*

**JEL Classification:** [K 15, K 22]

## **1. The imperious necessity of social protection of motor accidents victims<sup>1</sup>**

The national and European legislation on the subject of mandatory civil liability insurance, the principles of the civil process and the Romanian jurisprudence mandate the obligation of insuring a fair and un-discriminatory treatment for the prejudiced persons following the occurrence of an insured risk.

As a representative of the State and a public institution with attributes conferred by the Law as to provide justice in a dispute regarding the application of the contract's provisions forced by insurance and of the particular law that governs it, Law nr. 132 from the 31<sup>th</sup> of May, 2017, published in The Romanian Official Journal nr. 431 from the 12<sup>th</sup> of June, 2017, regarding the civil motor liability insurance for prejudices to third

---

\* Assistant Professor, PhD., Faculty of Law Cluj-Napoca, „Dimitrie Cantemir” Christian University.

<sup>1</sup> The objective of social protection, essentially analyzed as an adequate compensation of the above mentioned victims, must be taken into consideration as an imperious reason of general interest - The decision of CJUE from the 28<sup>th</sup> of April, 2009, The Commission of European Communities against the Republic of Italy, C-518/06, points 73-74.

parties by accidents involving vehicles and streetcars, the courts have the obligation to insure the social protection proportionate and fair for the victim of an insured risk to guarantee a comparable treatment and an adequate compensation with the purpose of full remedy of the damages the victim underwent. (Jugastru, 2013).

The judiciary endeavors of the victims of traffic accidents exclusively intend to get their rights acknowledged with the sole purpose of full, equitable, proportionate reparation through equivalents and in a reasonable term of the prejudices suffered by the prejudiced persons.

In addressing cases of this type, judges all called upon to give effectiveness to the imperative objective of social protection of the traffic accidents victims to which are subsumed the right to life, the right to private life, the right to health, the right to physical and psychological health, the right to freedom of movement, the right to defend oneself, un-discrimination and the right to full reparations of the suffered prejudice.

In solving of the causes where the accident victims demand for damages, the courts must refer to: a) The general interest imperative of social protection of the traffic accident victims realized by the member states including through the courts, as well as the protection imperative of the liability insurance consumer's interests, b) The European and national special legislation incidence on the subject, c) The necessity of the national court to take great interest in the circumstances of the causes and the negative consequences caused in the lives of the victims.

## **2. The mixed judicial nature of the insurer – contract and legal liability**

The legal proceedings for the compensation of the damages of the victims of traffic accidents either in penal lawsuit or the civil trial, is an action in compensations, based on the contractual civil and legal liability of the insurance company. (Vladu, 2010)

In this respect, the mandatory insurance contract of civil motor liability must be taken into consideration for damages to third parties by traffic accidents and the special law that governs this insurance contract, that is Law nr. 132 from the 31st of May, 2017 regarding the civil motor liability insurance for prejudices to third parties by accidents involving vehicles and streetcars, Directive 2009/103/CE of the European Parliament and the Council from the 16th of September, 2009, published in The Official Journal of the European Union, series L, nr. 263 from the 7<sup>th</sup> of October, 2009, regarding the civil motor liability and the control over the mandatory character of the liability, as well as the provisions of art. 21 para. (2) and article 181 para. (3) from the Directive 2009/138/CE of the European Parliament and of the

Council from the 25th of November, 2009, published in The Official Journal of the European Union, series L, nr. 335 from the 17<sup>th</sup> of December, 2009, regarding the access to activity and conducting activities of insurance and reinsurance (The Solvability Directive II).

Consequently, the task of the insurance companies imbed the obligation to fully repair the prejudice through pecuniary equivalent in the established the conditions, terms and limits of the RCA insurance contract and the provisions of the special law regarding the mandatory civil motor liability insurance.

The civil motor liability insurance contract is mandatory through which the insurer undertakes, correlative to charging for the insurance coverage to grant damages for the prejudices the insured persons are liable for, towards third parties damaged in traffic accidents.

The purpose of the mandatory civil motor liability insurance contract is precisely the reparation of the damage through a full and prompt pecuniary equivalent, purpose corresponding to the objectives and the finality intended by both the European regulations and the national one.

According to the European norms, the member states of the European Union must provide the legal frame necessary to all the owners and holders of motor vehicles who are normally on their territory to sign mandatory civil liability insurance contracts with an insurance company, contracts that are to guarantee the civil liability for the damages produced by the mentioned vehicles.

In this respect, art 4 in Law nr. 132/ 2017 stipulates that the civil liability for the damages produced by traffic accidents is a mandatory insurance and mandates the vehicle owners subjected to registration in Romania to get insurance for the cases of civil liability following damages produced through traffic accidents.

Also, the civil motor liability insurance contract is a random and onerous contract where the risk of a damaging deeds passes from the insured to the insurer, is assumed by the latter, who is responsible for the occurrence of the insured risk because he received a sum of money as an insurance coverage established according to the specific of the risk. So, the obligation to repair de damage of the victims by the insurer has its cause in the consideration of the insured, respectively the payment of the insurance coverage. (L. Pop, I. F. Popa, S. I. Vidu, 2012)

So, the insurance operation is characterized by the fact that the insurer undertakes, in exchange for the prepayment of a insurance coverage, to give the insured, in case that the assumed risk occurs, the benefit agreed upon on the occasion of signing the contract, that is the compensation of the damaged third party. (The CPP Decision, C-349/96, EU:C:1999:93, pct. 17, and the Skandia decision, C-240/99, EU:C:2001:140, pct. 15)

Through the insurance contract, the insured undertakes the obligation to pay coverage to the insurer, and the later undertakes the obligation that he must pay compensation to the damaged third party.

The occurrence of the insured risk assumes the existence of an illicit deed that causes prejudices that triggers the in tort civil liability of the author of the deed

In the jurisprudence of the Justice Court of the European Union, whose decisions are mandatory for the national courts, with double jeopardy authority, and constitutes source of law, is to be under a title of principle that *“the analysis of the legal consequences of every fact that causes damages related to the circulation of motor vehicles must be done in two phases: In a first stage, the existence of civil liability must be verified. If civil liability exists it is necessary to go the second stage of the analysis that refers to in intervention of the insurance companies. This second stage, as a principle and without prejudice to the obligation to guarantee the useful effect of the directive is covered by the European Union Law”*. (The CJUE Decision from the 1<sup>st</sup> of December 2011, Wilkinson in case C-442/10, point 16)

In this respect the provisions of article 10 para. (2) in Law 132/2017, according to which the RCA insurer awards compensations based on the insurance contract for damages to third parties through traffic accidents and their expenses in the civil lawsuit, the damages are to be paid by the insurer to the damaged natural or legal persons.

The provisions of art. 11 para. (1) in Law nr. 132/2017 stipulates that *„the RCA insurer is mandated to compensate the damaged party for the damages suffered following the accident occurred through the insured vehicle”*

At the same time, para. (2) of art. 11 stipulates the circumstances for awarding compensations on the condition that the limits of compensation provided by the RCA contract are not exceeded.

So, the grounds of the insurer liability are conventional and the one of the insured is in tort.

Based on the abovementioned legal provisions, we can draw the conclusion that the liability of the insurer to the damaged party on the subject of civil motorway liability is a legal and contractual obligation, undertaken through the insurance contract and on the grounds of the special law and, at the same time, a direct liability the insurer taking responsibility for the insured's behavior and undertaking the payment of damages. (I. Albu, 1994).

The approval and the establishing of the insured risks, the evaluation of the damages, the decision upon the amount and payment of the damages is performed under Law nr. 132/2017 and of the Norm nr. 20/2017 regarding the

motor vehicle insurances in Romania adopted under the law by the Financial Supervisory Authority regarding the mandatory insurances.

Assessing and granting compensations are made on the basis of the insurance contract and of the No. 132/2017 Law, in amiable terms, by following the (conventional) administrative norms of the Financial Oversight Authority and in case of failure by court order.

Furthermore, the provisions of art. 1270 from the Civil Code establish the *pacta sunt servanda* principle and stipulate the binding nature of the valid contract drawn between the contracting parties, whereas the provisions of art. 1280 of the same normative act stipulate that a contract is effective only between the parts, unless the law provides otherwise. However, the provisions of art. 10 from the No. 132/2017 Law make the case for extending the effects of the insurance contract to the benefit of third parties who suffered losses via accidents.

As a consequence, the insurance companies are liable in court for not meeting their obligations stipulated in the mandatory insurance contract, pursuant to the special regulation and the mandatory rules for its application.

Similarly, the Civil Code institutes using art. 1516 para. (1) the premise of the creditor's right to compensations – the right to the enforcement of the contract accordingly: „The creditor has the right to the full, accurate and timely enforcement of the obligation”. The definition reunites the three dimensions of successful enforcement: quantitative, qualitative (both covered by the expression „full enforcement” and „accurate enforcement” of the obligation) and temporal (the expression „timely enforcement”). Failure to enforce any of these three dimensions, leads to, in principle, the right to compensations.

Thus, the obligation of the insurer needs to be executed as such, that is, following the contract and all the applicable norms to this enforcement (the Romanian Constitution, the Civil Code, no. 132/2017 Law, ASF Norm no. 20/2017, CEDO, CJUE and national courts jurisprudence).

Failure to comply with this imperative entails contractual liability and, hence, the coercion of the deviant contractor to comply with the contractual provision of the special regulation.

The binding force of the contract is the same for the courts which have the task of ensuring its execution and who are not entitled to intervene in the sense of changing the contract, being called upon to interpret it in the spirit of the parties' will, in the letter and spirit of the special regulation.

Courts cannot modify the terms of the insurance contract, being held to comply with it and cannot override the mandatory legal provisions.

Resolution 75 of the Committee of Ministers of the Council of Europe, adopted on 14 March 1975, stipulates in its first article that the person who has suffered damage has the right to compensation for this damage suffered so that

he is restored to a situation as near as possible to that in which he would have been if the act for which compensation is claimed had not occurred

From the Preamble of the Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability and of the Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles results that it is intended, on the one hand, to ensure the free movement both of vehicles based on the territory of the Union and of the persons aboard and, on the other hand, to ensure that the victims of traffic accidents caused by these vehicles receive the same treatment, irrespective of the place in the territory of the Union where the accident occurred. (CJUE Resolution from 23 October 2012 in case C300/10, Almeida, point 26; CJUE Resolution from 28 March 1996 in case C-129/94, Ruiz Bernáldez, Rec., p. I-1829, point 13; CJUE Resolution from 14 September 2000 in case C-348/98, Mendes Ferreira and Delgado Correia Ferreira, Rec., p. I-6711, point 24; CJUE Resolution from 17 March 2011 in case C-484/09, Carvalho Ferreira Santos, Rep., p. I-1821, point 24; CJUE Resolution from 9 June 2011 in case C-409/09, Ambrósio Lavrador and Olival Ferreira Bonifácio, Rep., p. I-4955, point 23)

The right of victims to full and equitable compensation is stipulated both in Council Directive 2009/103/CE of the European Parliament and of the Council of Europe (references to amended directives should be interpreted as references to Directive 2009/103/CE and are read according to the correlation table from Anexa II of this directive) and in the CJUE jurisprudence.

Thus, Council Directive 2009/103/CE stipulates in the Preamble: “(12) *Member States’ obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute an important element in ensuring the protection of victims. The minimum amount of cover for personal injury should be calculated so as to compensate fully and fairly all victims who have suffered very serious injuries, while taking into account the low frequency of accidents involving several victims and the small number of accidents in which several victims suffer very serious injuries in the course of one and the same event.*”

The Court of Justice of the European Union has stated that: “*The objective of compulsory motor third party liability insurance is precisely to guarantee the compensation of road accident victims*”. (CJEU judgment of 28 April 2009, Commission of the European Communities v Italian Republic, C-518/06, para. 75)

It was also noted that: “*The social protection objective of road accident victims can be considered as an overriding reason in the general interest and*

*is essentially analyzed as a guarantee of adequate compensation for the aforementioned victims*". (CJEU judgment of 28 April 2009, Commission of the European Communities v Italian Republic, C-518/06, para. 73 to 74).

### **Conclusions**

The objectives and the aim pursued by European and national regulation are the following: social protection of the victims of road accidents, extremely disadvantaged social category; guaranteeing comparable treatment of road accident victims; guaranteeing adequate compensation for road accident victims: "*The objective of compulsory motor third party liability insurance is precisely to guarantee the compensation of road accident victims*" (Judgment of the ECJ of 28 April 2009, Commission of the European Communities v Italian Republic, C-518/06, para. 75); "*The objective of social protection for road accident victims can be considered as an overriding reason of general interest and is essentially dealt with as a guarantee of adequate compensation for the aforementioned victims*". (Judgment of the ECJ of 28 April 2009, Commission of the European Communities v Italian Republic, C-518/06, para. 73-74)

The Court of Justice of the European Union has ruled that the European directives in the field are intended, on the one hand, to ensure the free movement both of vehicles normally based in the territory of the Union and of persons on board and, on the other hand, to ensure that victims of traffic accidents caused by these vehicles will receive comparable treatment irrespective of where in the Union that accident has occurred. (CJEU judgment of 23 October 2012 in Case C300 / 10, Almeida, para. 26; Judgment of the Court of Justice of 28 March 1996 in Case C-129/94 Ruiz Bernáldez [1991] ECR I-1829, para. 13; CJUE judgment of 14 September 2000 in Case C-348/98 Mendes Ferreira and Delgado Correia Ferreira [2000] ECR I-6711, para.; Judgment of the CJEU of 17 March 2011 in Case C-484/09 Carvalho Ferreira Santos, Rep., P. I-1821, para. 24; Judgment of the CJEU of 9 June 2011 in Case C-409/09 Ambrósio Lavrador and Olival Ferreira Bonifácio, Rep., P. I-4955, para. 23)

### **Bibliography**

1. Albu, I., (1994), *Civil law. Contract and civil liability*, Cluj-Napoca: Dacia.
2. Juguştru, C., (2013), *Injury - Romanian landmarks in european context*. Bucureşti: Hamangiu.
3. Pop, L., Popa, I.F., Vidu, S.I., (2012), *Basic Civil law treaty - Obligations under the new Civil Code*, Bucureşti: Universul juridic.
4. Vladu, M., (2010), *Damage caused by offenses against the individual*, Bucureşti: Hamangiu.