

Exclusions from Insurance Coverage of Motor Liability – Case of Kosovo

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Abstract

The aim of this paper is to elaborate on exceptions from the insurance coverage of motor liability in the Kosovo legislation, which is a rather delicate matter both in law and practice, in court law and legal doctrine, both national and international. Also, another aim is to recognize the differences between the loss and exceptions to insurance coverage in motor vehicle liability in terms of third parties. For more, insurance coverage and the components of exclusion are the focus of this paper.

Knowing that the matter addressed by this paper is rather complex and wide, within the bounds of possibility, this paper will only elaborate on the legal provisions in Kosovo, in a way of facilitating the practitioners' work, but also conveying this experience with the relevant authorities inside and outside the country, so as to initiate an adequate reflection on the legal matter.

Key Words: Insurance, Motor Vehicle, Third-Party; Insurance Coverage and Exceptions.

1. Introduction

The history of insurance in Kosovo is related to the end of the World War 2 and onwards, when in the former Yugoslavia (ex-SFRY), to which Kosovo was part, all private property was

transferred to the state, and by the end of the seventies in the last century, it was renamed socially-owned property. These circumstances brought the first Insurance Association under social ownership.¹

This was legally designated in 1977,² pursuant to constitutional powers of the former SAPK (Socialist Autonomous Province of Kosovo) in adopting independent acts, but the relevant law of that time had not provided on the exceptions to the motor vehicle liability insurance coverage, though not meaning that the loss of coverage was not regulated.

In the nineties, the former SFRY had enacted the Law on the Basic System of Asset and Personal Insurance³, only to follow on later with the former FRY (Federal Republic of Yugoslavia) enacting the new Law on Insurance of Assets and Persons,⁴ the provisions of which did not make a clear distinction between loss and exceptions to the insurance coverage. This situation continued to persist until the end of the nineties of the last century, or specifically until 10 June 1999, when the UN International Mission in Kosovo was established, known as UNMIK.⁵ This mission had competencies both in legislative matters, by issuing Regulations and designating applicable legislation at the time.⁶ In the area of insurance, one must mention the issuance of Regulation no. 2001/25⁷ and Rule 3⁸, none of which regulated the matter in hand.

This situation continued until the promulgation of the Law on Compulsory Motor Liability Insurance in 2011, when for the first time, a difference was made between the loss and the exclusion to the insurance coverage.

Every day human activities in terms of using the motor vehicles or participating in traffic, both actively and passively are associated with the

¹ Fatos Zajmi "Insurance in Kosovo (Sigurimet ne Kosove)", Bulletin of the Kosovo Insurance Association, no. 2, November 2012 p. 3

² Law on the Insurance System for Assets and Persons, OJ of SAPK, no. 25/1977

³ Law on Basic System of Insurance for Assets and Persons, OJ of SFRY, no. 17/90, 92/90 and 31/93

⁴ Law on Insurance for Assets and Persons, OJ of FRY, no. 30/96 of 28/06/1996, entered into force on 6 July 1996

⁵ See UN Security Council Resolution no. 1244

⁶ www.unmikonline.org; UNMIK Regulation 1999/24 on Applicable Law in Kosovo

⁷ www.bqk-ks.org; Regulation no. 2001/25 on Licensing, Oversight and Regulation of Insurance Companies and Insurance Intermediaries, 5 October 2001

⁸ www.bqk-ks.org Rule 3 of the CBK on Amending Rule on Compulsory Third Party Liability Motor Vehicle Insurance, 1 October 2008

undertaking of a number of risks, and above all, such activities carry the risk of considerable loss, in terms of damages, material and non-material.⁹ Historically, a considerable number of natural and legal persons are ready to pay a small amount for protection against various risks, by paying an insurance premium, since the proverb prevails: “*Protection provides the valuable peace of mind*”. The term insurance is used to describe any means of protection against potential risks that may jeopardize the human or its assets, or the motor vehicle liability insurance.¹⁰

Such a step is normally preceded by a formal legal relationship in the form of an insurance contract¹¹ between the insured and the insuring, a standard form contract, in which the insured may only accept or not the general and specific terms of the contract, which are already provided upon by law¹², and as such, they are considered to be integral part to the insurance policy.¹³

The signature and the will of contracting parties are not sufficient for the legal relationship of insurance to yield legal effect, since an insurance policy¹⁴ may only have full legal effect upon payment of a certain amount of money, which in insurance terminology is known as insurance premium.¹⁵

In the worst case, if within the period of insurance, a case under insurance occurs representing a future uncertainty, the insured, under the damage addressing¹⁶ will initially ensure whether the insured has paid the insurance premium, for the damage treatment and compensation to the damaged party, when there is legal basis for such an action to be taken by the insurer.

Usually the insurance contract, in the back page of the insurance policy, provides on the risks covered by the respective insurance policy, obviously

⁹ Law on Obligational Relationship (LOR), no. 04/L-077 (Article 159 etc.)

¹⁰ On the meaning of insurance, see: Jelena Kocovic, Predrag Sulejic & Tatjana Rakonjac – Antic “Osiguranje” (Insurance), Belgrade 2010, pp. 32-41 and the Law on Compulsory Motor Liability Insurance (LCMLI) No. 04/L-018 (Article 2 para. 1 item 1.2.)

¹¹ Nerxhivane Dauti ‘E drejta e detyrimeve’ (Insurance Law) Prishtina 2004, p. 413

¹² Article 923.3, of LOR

¹³ Related to the meaning of insurance policy, see LCMLI Article 2 para. 1 item 1.23.

¹⁴ Related to the insurance policy, see: Margerita Boskovic-Ibrahimasic “Polisa osiguranja” (Insurance Policy), Belgrade 2008 p. 7-108

¹⁵ Related to the insurance premium, see LCMLI Article 2, para. 1 item 1.13.

¹⁶ See: Rrustem Qehaja “Trajtimi i demit nga autopergjegjesia” (Treatment of damage in motor liability), Tirana 2008 pp. 101-115.

without excluding the possibility that the insured is provided a “leaflet” with the insurance policy, the former containing all general and specific terms of contract. This is probably more relevant in voluntary insurance, while in terms of compulsory motor insurance, for the damages caused to a third party, the back sheet of the insurance policy contains all general terms of insurance for the relevant product.

In cases of damages, the damaged party or the “third party”¹⁷ as termed with the insurance terminology, when such damage is material or non-material, and covered by the insurance policy, the party must address the responsible insurer with an application for damage compensation, both for material and non-material damages, in which case, the insurer responsible must observe the legal timelines in reviewing the application of the damaged party, thereby providing a written offer, with relevant explanations, within a 15 day deadline in the case of material damage, and 60 days for any non-material damage compensation.¹⁸ This deadline starts counting from the day in which the damaged party has rendered available the full file of the case in damage, but also the insurer may decline the application for damage compensation, if the circumstances of the case show that the respective insurer is not responsible for damage compensation, and it should be another insurer or the Compensation Fund of the KIB¹⁹, in cases in which the damage has been caused by the driver of a motor vehicle without insurance coverage, or a motor vehicle which has border insurance policy, namely has foreign register plates.

One cannot exclude the possibility of causing damage by an unknown or unidentified motor vehicle, for which our legislators have provided that the material damages would remain uncompensated, while the non-material damages would be covered by the KIB – Compensation Fund for treatment and compensation. These situations might require some legal changes, knowing the possibilities of eventual abuse and fraud against the insurers, since the practice in insurance industries has shown that our country and all others have faced different situations, and have even fostered the establishment of special teams working only in preventing, combating and investigating cases of insurance abuse. In our case, only the initial steps in this regard have been taken, knowing that an approximate amount of 10 %

¹⁷ In relation to the meaning of third party, see LCMLI Article 2 para. 1 item 1.8.

¹⁸ LCMLI Article 26

¹⁹ Kosovo Insurance Bureau

of damage compensations is a result of fraud against the insurance industry.²⁰

Based on the above, it results that the activities of insurance companies is related to purchasing risks and compensating damages, actions which may appear simplistic in a first view, but are complex, because an insured person pays an average insurance premium of 150.00 €, thereby undertaking the obligation for damage compensation to persons, independently of the number of damaged persons, and independently that the compensation may amount up to 1 Million €.²¹

These extreme figures create a perception of a negative balance of insurers in closing the financial year, and reflecting an incapacity of damage compensation or reviewing applications according to the applicable legislation, but in the insurance industry, a special place is taken by reinsurance, or the risk distribution or resale to more insurers, with a view of going over similar situations, which in no case can be excluded, because an insured person represents a future uncertainty, which the payment or non-payment of an insurance amount is depending on.²²

For this reason, in the insurance activities, one of the important items is risk assessment, and not only of the material risk, but also the moral risk, especially in terms of voluntary insurance, while in compulsory insurance, which includes third party liability insurance, insurers do not have much range of commodity to choose the insured, because legally, the insurers are not entitled to refuse a party requiring insurance, even if it obtains reliable information that the same person has in the past insurance periods caused one or more accidents, and therefore payment of premium. This situation is now in a good path of changing, by implementing already the “*bonus-malus*”²³ system, namely the installation of a software generating records for every motor vehicle owner in terms of causing damage or accidents during an insurance period, which shall result into bonus or malus for the future insurance period, which also is a sort of a preventive means, for the drivers of motor vehicles to be more careful in their traffic, but it is also

²⁰ Zoran Radovic, Zivojin Aleksic, Zdravko Petrovic & Tomislav Petrovic ‘Prevare o osiguranju’ (Fraud in Insurance), Belgrade 2003, pp. 243-286

²¹ LCMLI Article 13

²² N. Dauti, quote in p. 414, LOR Article 919.1 and LCMLI Article 2 para. 1 item 1.10.

²³ LCMLI Article 2 para. 1 item 1.24, and BCK Regulation on Implementing the Bonus-Malus System, of 01 August 2012

expected to have a positive impact on society in general, because one of the three most important factors of causing death is also traffic accidents.

The purchase of a motor liability insurance policy does not necessarily imply that the person is covered for any damage caused by his motor vehicle and in any situation, but only in a reciprocal manner. This is valid with the insurers, who in selling their insurance products, have also planned for exclusions to the insurance coverage, and also the loss of insurance coverage when talking about the TPL, while in voluntary insurance, e. g. Kasko insurance or insurance against personal accidents, there are detailed descriptions of exclusions of insurance coverage, which are normally contained within the terms of a respective policy. Now, the question is what is covered by TPL insurance, and what is the insurance coverage?

2. Insurance coverage

The motor vehicle is considered to be a dangerous item, and the activities undertaken with its use are considered to be dangerous²⁴ for the surroundings and the society in general. Based on the high-amount damages that may be caused by motor vehicles, and due to the financial incapacity of owners or possessors of motor vehicles to cover such damages, the bright minds of human society have invented the collection of funds – premiums from motor vehicle owners into a single entity, the insurance company, which by managing such funds, would also be able to compensate damages, as a consequence of the use of a motor vehicle. In such a situation, the insured would also feel comfortable in terms of finance, because they have sold their risk to the insurer for a certain amount of money, namely the insurance premium amount.

The reciprocal interest between insurers and the insured has caused the activity to set root, and to this day, achieve a high degree of development and perfection.

The third party motor liability insurance coverage in practice causes many questions and disagreements between the insurer and the damaged party, which frequently transform into court disputes taking years to resolve, thereby rendering difficult the position of the damaged party in

²⁴ N. Dauti, quoted, p.172

terms of enjoying a right guaranteed by law and court jurisdiction²⁵, although, disputes of such a nature may also be settled according to the law on mediation.²⁶

Based on the fact that the motor vehicle implies a vehicle moving on ground by use of mechanical force, and not those moving on rails, trailers and semi-trailers, coupled or not with the pulling motor vehicle, which need to be registered and obtain a registration document, a definition found in the Law on Compulsory Motor Liability Insurance, while in this regard, the Law on Road Traffic Safety (LRTS)²⁷ calls a “vehicle” only a motor vehicle, designated for human traffic, which apart from the driver’s seat, has not more than eight seats, which is a clear indicator of collisions between different laws for the same matter. Yet, it is important to understand what are the damages covered by insurance policy, namely the range of insurance coverage.

Pursuant to legal provisions of the Law on Compulsory Motor Liability Insurance, the owner of the motor vehicle must contract the insurer for obtaining third party liability insurance against cases of death, bodily injuries, damages to health or damages to assets. The same provisions are clear on the contracts of motor liability insurance contracts, which cover the damages caused also to the passengers, including damages to items found in the motor vehicle and used for personal purposes.

In road traffic, a special place is taken by towed vehicles, in the form of trailers, which carry goods both inside and outside the country, and therefore, the damage caused by such a category of motor vehicles cannot be ruled out, and therefore, the situations are more complicated when the towing and the towed vehicle have insurance coverage from two different companies, but travel in unity.

In cases of damages caused by the use of a towing or towed vehicle, when these vehicles are coupled and represent a unitary vehicle, and when the accident is caused by the detachment of the towed vehicle from the towing vehicle, owners of both vehicles are equally liable to third party

²⁵ Law on the Contested Procedure, no. 03/L-006, Article 47

²⁶ Law on Mediation no. 03/L-057, and the Decision of the Basic Court in Peja C.no. 631/12, according to which the court approved the extrajudicial agreement Nd. 79-12 of 08.02.2013 between the disputing parties on the compensation of motor liability insurance policy, thereby assigning the document executive title, and thereby acting in accordance with the Articles 3, 411 and 412 of the Law on Contested Procedure.

²⁷ Law on Road Traffic Safety (LRTS), Article 3 para. 1 item 42.

damages. In such cases, the injured party may file a compensation claim with the insurer of the towing or the insurer of the towed vehicle, independently of the vehicle causing such damage. In cases when any of the insurers compensate the injured or the third party, the insurer is entitled to reimbursement of the amount paid, expense and interests from the insurer of the towing or towed vehicle, for the relevant liability share, which may be 100% or a shared liability.

The paper has already mentioned the third party several times, and even the insurance coverage is about covering the third party damage compensation, and the question now is who may be third party.

A ready and simple response to the question does not exist, since in practice, there is often a confusion whether the claimant in a traffic accident is to be considered third party or not, whether the same has been a passenger in the case of insurance, whether the person was found in the motor vehicle randomly, or even despite being informed of the circumstances etc., he has rendered himself exposed to the risk of the driver being under the influence of alcohol, a person without a driving license, or without an authorization, etc.

Obviously all situations described above create a world of their own in terms of the position or status of the third party, and who enjoys such status.

Some of the laws providing on motor liability insurance provide a negative definition, namely who does not enjoy a third party status in a traffic accident. This is done by the Rule 3 amending the Rule on Compulsory Motor Liability Insurance, which contains a definition of third parties, which is:

The following has no right to claim and are not entitled to indemnity on the basis of a CTPL insurance, i.e., does not have the status of "Third Person":

- a) The responsible driver of a motor vehicle.*
- b) The person who takes part in the unlawful seizure of a vehicle that has been damaged while operating and using the unlawfully seized vehicle.*
- c) The owner, co-owner and other registered users of a vehicle in the event of damage to their property.²⁸*

²⁸ Rule 3 amending the Rule on Compulsory Motor Liability Insurance, dated 01.10.2008 (Article 1 para. 1.8)

Nevertheless, despite the regulation of such situations and categories, real life brings about dilemmas and various interpretations, especially on the item “b”, on what is considered to be an unlawful seizure, would that imply the cases in which a minor would take possession and control over the vehicle without a parental consent, or similarly when the vehicle is driven by a relative of the owner without having a license, or the vehicle is taken possession by a relative or a friend without a written authorization, etc., situations which require a more thorough review and observation.

Currently, the Law on Compulsory Motor Liability Insurance provides a definition of third parties, and for a difference from the previous legislation, this definition is now rendered in a positive manner, thereby changing the term, from third persons to third party.

According to the existing definition, a third party is *the person entitled to compensation pursuant to provisions of this Law, to whom incurred the damage or the injury from the motor vehicle*, while the law further provides on the loss and exclusions to the insurance coverage.

In this regard, we shall further review the loss of insurance coverage in motor liability insurance.

3. Exclusions from insurance coverage

The insurance coverage offered by the insuring company to the insured is not “en generales” coverage, meaning that there is a possibility of exclusion of insurance coverage in accordance with the legal provisions on regulated situations.

The legislator has provided on the cases in which no insurance coverage and no compensation is provided in cases of motor liability insurance:

a. Motor vehicle driver liable for the accident.

Such situations occur when with the exclusive responsibility of the motor vehicle driver, damage is caused to his/her vehicle or health, be it material or non-material, and therefore, by strictly personal responsibility, the driver has caused damage to himself, there is no damage compensation, because such driver would not enjoy the status of a third party. The situation would then be different in cases when the damage was caused by two parties in an accident, and that is only in principle, because a traffic accident may be contributed by two or more motor vehicles. One must

otherwise be clear that the motor liability insurance policy only covers civil law liability, thereby excluding any other liability, be it criminal or misdemeanour liability; therefore, when two parties involved in a traffic accident have contributed to the damage by their action or omission, thereby causing damage larger than in normal conditions, there is an entitlement to both parties to compensation, in proportion with their contribution to the damage, which is normally expressed in percentages, such as e.g. the driver of the vehicle A has contributed with a certain percentage to the accident due to driving above the speed limit in that area of the road, but the driver of the vehicle B has also contributed, because of overtaking in that area of the road, which was prohibited by a traffic sign, in which case, the liability may be ruled to be 60% to 40% or 50% to 50 % etc., depending on the written traffic expert opinion, and the trust given to such an opinion. Such an expert is normally bound only to describe the omissions of the contributing parties, and not to provide an opinion of the percentages of such contribution to the traffic accident of any of the parties.

b. Owner, co-owner and any other user of a motor vehicle causing the accident; for material damage;

According to the law, the insurance coverage excludes the owner, the co-owner and any other user of a motor vehicle causing an accident for damages to items. By adding this provision, the legislator has regulated on such situations in which in a travelling vehicle, the driver or the passengers may have in possession items of a considerable value, which are damaged due to the accident, and in such cases, the damages to such items are not compensated by the insurer, because for such transport of items, there is a special coverage policy, called the insurance of goods in transport, which is a separate class or product offered by insurers in a range of other products.

We consider that the legislator was right in regulating an exclusion to such cases, because it may well happen that anyone purchasing a TV set or a computer in a store for personal purposes, and then while carrying such item, be involved in an accident, and consequently damage the TV set or computer, and it would be irrational for the compensation to be claimed with the respective insurer.

- c. *Fellow traveller that happened to be on his own will in the motor vehicle with the operation of which the damage has been caused, when the insurer finds out that the fellow traveller was aware that the motor vehicle was stolen or burgled.*

The cases above are also excluded from the insurance coverage according to the LCMLI, but it is rather debatable in practice how can one prove such claims, because it is very difficult for the insurer to prove that the fellow traveller had knowledge of the motor vehicle being stolen or burgled. In cases, the circumstances may guide to such a conclusion themselves, since there are no items to prove force majeure or any other cases of exclusion of liability, in cases when a minor had unlawfully seized the keys to the motor vehicle owned by a parent, and drive such a vehicle, and in the worst case, cause a traffic accident. In similar cases, although the parent may not report to the police that the vehicle was stolen or unlawfully seized, the event itself guides to such a logical result, that the vehicle was stolen or unlawfully seized, and the fellow passenger had no way of not knowing that the vehicle was driven by a minor, who due to age limits, cannot have a driver license, and such action is undoubtedly considered to be unlawful.

- d. *Fellow traveller that happened to be on his own will in an uninsured motor vehicle causing the accident, when it is found out that the fellow traveller was aware of such circumstance;*

These cases are also excluded from the insurance coverage, but in comparison with the item preceding, this circumstance is much harder to prove, because very few of us found in the position of a fellow traveller can know whether the vehicle has a valid insurance policy or not, but ultimately, no traveller enjoying a third party status shall remain uncompensated in an insured case.

- e. *A person injured due to:*
- *driving a motor vehicle during sports manifestations in such roads or parts of the roads prohibited to be used by other drivers, with purpose of reaching the maximum speed or training for racing;*
 - *atomic energy activity during the transportation of radioactive materials;*

- *combating operations or manoeuvres, riots or other terrorist acts, if it found that the damage is in causal relations to such events;*
- *force majeure activity and other cases, disclaiming by law the liability for the damage caused by the motor vehicle.*

All cases above pertain to the situations in which the motor liability insurance provides no insurance coverage, despite the existence of a valid motor liability insurance policy for third party damage.

The LCMLI has also provided on the loss of insurance coverage, along with the exclusions to the insurance coverage, but for a difference from the latter, the loss of insurance coverage has no influence on the entitlement to compensation of third parties, which shall be addressed in a further paper.

4. Conclusion

In general, insurance is divided into two major groups:

- Compulsory insurance, and
- Voluntary insurance.

The first and the second group contain various types of insurance products, categorized further into classes or products of insurance, in compliance with the legal framework.

In the group of compulsory insurance, an important place is taken by compulsory motor liability insurance for third party damages, while the voluntary insurance group is richer in insurance products, such as the health insurance, personal accident insurance, Kasko insurance, asset insurance, etc., but unfortunately, the general insurance portfolio is largely dominated by the compulsory motor liability insurance for third party damages.

The development and expansion in the voluntary insurance portfolio is rather conditioned by the overall economic development of a society, and as much as the development goes further, it will undoubtedly reflect into the premium level for voluntary insurance products.

A common denominator for both groups of insurance products, compulsory and voluntary, is the section on general terms in an insurance policy, the content of which provides on the exclusions to the underwriting coverage, which are usually explicitly provided upon.

It is obvious that exclusions may be different and depending on the type of insurance purchased, but all are aimed at protecting the insurers from various misinterpretations that may occur between contracting parties (insurer and insured) in an insured case.

The contents of this paper has only addressed the exclusions in the motor liability insurance for third party damages, while such exclusions may be more variable for other insurance products.

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