

Indemnification of Damage Based on Compulsory and Voluntary Insurance

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Abstract

This scientific paper shall review the indemnification of damage, based on compulsory and voluntary insurance in theoretical as well as in practical terms of property material and personal goods, inflicted by case-insured risk. In this scientific paper, it shall be professionally attempted to scrutinize judicial and procedural issues in realization of a claim, as well as lawsuit for indemnification of damage from the insured case.

I hope this scientific paper shall be helpful to lawyers, scholars and students of law, in order to create a clearer and more punctual vision over the concepts of indemnification of damage in general, and in particular compulsory and voluntary damage which is regulated by the Law on compulsory motor liability insurance as well as by the Law on Obligational Relationships. It will also help in expanding the knowledge during the implementation in legal daily life, moreover while studies of this type were absent in our legal literature.

Key Words: Extrajudicial procedure-direct claim, judicial proceedings with lawsuit, extrajudicial conciliation, the lawsuit for indemnification of damage by insured case

1. Introduction

This scientific paper addresses the issue of indemnification of damage based on compulsory and voluntary insurance on legal-civil terms, for realization law subjects' claims in order to be holders of rights and obligations and at the same time to be also a subject in the capacity of insurer and insured from vehicle insurance and other motor vehicles by compulsory motor liability insurance for damage inflicted to the third party. Insurance companies licensed by Central Bank of the Republic of Kosovo, are obliged in cases of inflicting material and non-material damage to compensate the inflicted damage to injured parties. This scientific paper also addresses the issue of contract as a source of creating obligations and indemnification of damage between contracting parties, where one contracting party inflicts damage to another party and in such case the other contracting party shall compensate the damage in proportion with the inflicted level based on civil-legal liability to repay materially and morally the damaged subject.

So, civil-legal effects create rights and obligations of insurer and insured.¹

The insured is obliged to notify the insurer within contracting deadline for occurrence-presenting the insured case. I consider that in current circumstances the insured shall notify the insurer for insured case in two forms: oral (verbally) by using telephone and internet and in writing by insurer forms, which is submitted to the insured. The insurer based on notification by the insured and in compliance with contracting terms is obligated to undertake all the necessary actions in order to ascertain right whether the insured case is inflicted according to the contract.

After ascertaining the insured case, the insurer assigns an evaluating commission for the inflicted damage in insured property. Depending on type and nature of the inflicted damage, also the professional composition of evaluating commission shall be assigned. Obligation of the insurer is to participate in the composition of commission experts who have professional skills and knowledge for right finding and realistic assessment of inflicted damage by insured case.

¹ Hetemi, M., 2002, *The law to basic knowledge of business law*, Prishtina, "RILINDJA",
Dauti, N., 2001, *Law on Obligations (General and special part)*, "FOKUS". Prishtina,.

Law on Obligational Relationships of Kosovo² is a basic law for indemnification of material and moral damage, whereas the Law on compulsory motor liability insurance³ is a special law which in a more concrete manner regulates the compulsory motor liability insurance. These laws complement each other only concerning compulsory insurance, whereas concerning voluntary insurance the Law on compulsory motor liability insurance does not contain provisions, but as such is regulated by the contract which should be in accordance with provisions of the Law on Obligational Relationships.

In adopting the Law on compulsory motor liability insurance and in accordance with the rules which have been approved from insurance companies licensed by Central Bank of Kosovo in the Republic of Kosovo the practice that was applicable was that the inflicted damage in insured case to be realized in these two manners:

In extrajudicial procedure-direct claim; In judicial procedure- lawsuit.

2. Extrajudicial procedure

Extrajudicial procedure for indemnification of damage based on compulsory and voluntary insurance commences by presenting direct claim from the insured or by third person after inflicting the insured case to insurer. To compulsory motor liability insurance the claim for indemnification of damage in extrajudicial procedure, except the insured which has entered into a contract for insurance with insurer, may be submitted also by persons belonging to the category of third persons-TPL.⁴ So, the circle of persons having active legitimacy to submit a direct claim to insurer for indemnification of inflicted damage in extrajudicial procedure after inflicting the insured case is broader than to voluntary insurance. To voluntary insurance the claim is submitted only by insured or his representative as provided in the contract.

In order to implement successfully the direct claim for indemnification of damage is important to be fulfilled these conditions: the injured party to belong to third persons category in accordance with compulsory insurance rules and the inflicted damage to be as a result of use of vehicle or other

² Assembly of the Republic of Kosovo, *Law no. 04/L-077 on Obligational Relationships*.

³ Assembly of the Republic of Kosovo, *Law no. 04/L-18 on compulsory motor liability insurance*.

⁴ Third persons liability.

motor vehicles which belong to the category of vehicles that are obliged by the law to make the compulsory insurance.

The injured party is not obliged by any legal provision to submit the claim to insurer in order to realize the indemnification of damage in extrajudicial procedure. This solution is made by him according to his will.

Practice of indemnification of damage realization in Kosovo has proven that a considerable part of the injured in any traffic accident have addressed the insurers by direct claim for indemnification of damage.⁵ The claim for indemnification of damage in extrajudicial procedure is done pursuant to the Law on compulsory motor liability insurance.

The category of third persons according to the rule three is: "the following persons have no right to indemnification of damage based on motor liability insurance, meaning they do not have the status of a third person": a) responsible driver for damage, b) a person which comes to vehicle unlawfully and is damaged by using vehicle and c) owner, co-owner and other registered users of a vehicle in case of damage in their property.

By the Law on compulsory motor liability insurance is foreseen the term for submission of a direct claim. The plaintiff is entitled to claim for compensation based on motor liability insurance to file directly to responsible insurers. The insurer is required the day of acceptance to file a claim for compensation in the book/record for special damages in the numerical order and within three (3) days to acknowledge the receipt by notifying the party with reference recorded claim.⁶

If the injured party did not file a direct claim for indemnification of damage, but he has filed a lawsuit, in these situations were not caused legal circumstances, due to the fact that the filed lawsuit was not rejected as inadmissible but contested procedure has been developed unobstructed and the court has adjudicated on merit concerning the claim of the plaintiff. This legal opinion has been accepted in judicial practice before and after the Kosovo war. So, judicial practice of post-war period in Kosovo did not implement the terms set out in Rule 3 on compulsory motor liability insurance.

⁵ Assembly of the Republic of Kosovo, *Law no. 04/L-18 on compulsory motor liability insurance*.

⁶ *Ibid.* Article 25, Paragraph 1.

In the meantime, it is worth to emphasize that Italian law of 1969, in article 22 had foreseen that lawsuit for indemnification of damage which had been inflicted by the use of vehicle, if damage is covered by compulsory insurance, cannot be filed in court before expiry of 60 days period from the date when claimant with registered-paper and receipt of admission had claimed from insurer the compensation of damage.⁷

Since now compulsory insurance is regulated by provisions of the Law on compulsory motor liability insurance, it is more than necessary in the following to scrutinize the realization of claim for compensation of damage in accordance with legal provisions.

This practice of claim realization for compensation of damage in principle has been accepted by legislator so the procedure of claims for compensation has been regulated by provision of the article 25 and 26 of the Law on compulsory motor liability insurance. While by provision of the article 25 has been regulated the right to file a claim for compensation of damage on basis of motor liability and legal possibility of insurer to conclude an agreement concerning filed claim from the insured, by provision of article 26, where in detail has been regulated realization of claim procedure for compensation of damage on basis of motor liability.⁸

In accordance with mentioned provision, insurer is liable for damage to property of the insured, at the latest within fifteen (15) days of the claim, whereas for material and non-material damage to persons, insurer is liable at the latest within sixty (60) days from submitted claim. Within these legal terms the insurer must consider the claim and to notify in writing the injured party with compensation offer, by relevant explanations and justified decision regarding submitted claim.⁹

From what was emphasized above it results that extrajudicial procedure consists the following actions:

- a) Claim for compensation of damage
- b) Offer for compensation of damage and
- c) Justified decision¹⁰

⁷ Italian law of 1969, article 22.

⁸ Assembly of the Republic of Kosovo, *Law no. 04/L-18 on compulsory motor liability insurance*, Articles 25-26.

⁹ Qehaja, Rr., 2012, *Arbitration- a manner of solving disputes by insurance policy, "E Drejta" "Grafobeni" Prishtina*, p. 73.

¹⁰ *Ibid.* Article 26, Paragraph 1.1.1, 1.2.

Extrajudicial procedure ends when insurer is not liable within legal terms concerning the submitted claim and when the decision of insurer regarding the claim for compensation of damage of insured by means of which the claim for compensation of damage has been rejected becomes final and the insured does not conclude agreement with insurer for compensation of damage which is assigned by insurer.

It is important to emphasize that insured and third person who has suffered damage to property or bodily injury to take care of subjective and objective term of statutory limitation damage by justifying that statutory limitation of damage has been regulated by provisions of article 357, paragraph 1 and 2 of the Law on Obligational Relationships. If the insured or third person assess that claim for compensation of damage in extrajudicial procedure is delayed, or during term of reviewing the claim is caused the statutory limitation of claim, in order not to lose the right to lawsuit due to the statutory limitation of damage the insured or third person must immediately file a lawsuit in court within subjective term of 3 years from the day when the injured party learnt of the damage and of the person that inflicted it and 5 years after damage occurred.¹¹

Submitted claim does not interrupt the term of statutory limitation, whereas the term of statutory limitation damage is interrupted only by submitted claim in competent court or legal-property claim of injured party filed in criminal or misdemeanor proceedings. In addition, in this phase of realization of claim on compensation of damage, it is important to emphasize that failure to file a claim does not inflict loss of the right on filing a lawsuit.

Submitting claim inflicts legal effect due to the fact procedure of damage realization is fast and if the insured is not liable to insurer and third person within legal term then the insured is obliged in accordance with provision of the article 26, paragraph 6 of the Law on compulsory motor liability insurance to pay the interest in the amount of 12%, starting from the date of submission of the claim for compensation of damage up to full payment of the assessed damage,¹² whereas if claim is not submitted and the insured or third person file a direct lawsuit, then the interest shall be calculated pursuant to the provision of the article 382, paragraph 1 of the Law on

¹¹ Assembly of the Republic of Kosovo, *Law no. 04/L-077 on Obligational Relationships of Kosovo*, Article 357, Paragraph 1-2.

¹² Assembly of the Republic of Kosovo, *Law no. 04/L-18 on compulsory motor liability insurance*, Article 26, Paragraph 6.

Obligational Relationships. Concerning voluntary insurance, I consider that the insured shall realize the inflicted damage in accordance with foreseen terms on the insurance contract, as well as acceptable rules by insurance companies licensed in the Republic of Kosovo. The claim for compensation of damage shall be submitted by insured person who as abovementioned can be natural or legal person.

For natural person claim shall be submitted by the insured person himself or the authorized person, whereas for legal person the claim shall be submitted by legal representative or his authorized. The claim can be formulated by the insured person himself or in most of the cases, as currently in Kosovo is practiced in formulated manner as a form by insurer.

Form and content of the claim is not regulated by any special legal provision, however the claim whether formulated by insurer or the insured person must contain the data: personal data of the insured person when dealing with natural persons, whereas for legal persons full data concerning full name and correct address of the insured economic-business enterprise. The claim shall contain a short description on the facts which had inflicted the insured case and evidences regarding legal base of the insured case-contract as well as other facts which are important to confirm the compensation of insured damage in the insured property.

In cases of indemnification of damage upon bases of compulsory motor liability insurance, the claim except abovementioned data shall include also the policy, the vehicle damage report and other property which is damaged during the use of vehicle or the property which is damaged as a result of traffic accident.

To compulsory insurance based on motor liability the active legitimacy to file a direct claim for indemnification of damage, except the insured person have also third persons which in traffic accident had suffered damage whether material or non-material/moral. In the meantime just like emphasized above, compensation of damage based on voluntary insurance, active legitimacy to submit a direct claim has only the insured person. Active legitimacy of voluntary insured derives from the contract on voluntary insurance. The insurer is obliged within legal term to invite the insured in session to review the submitted claim. If the insurer invites insured to realize the submitted claim and when the insured agrees that compensation of damage issue to be realized based on insurer offer, than the procedure of claim realization ends with consent or agreement of the parties.

2.1. Extrajudicial reconciliation

Extrajudicial reconciliation in procedure of realization of indemnification of damage based on compulsory and voluntary insurance is a written act which is as a result of free will of insured on the one hand, and insurer on the other hand concerning compensation rate of inflicted damage from insured case. Extrajudicial reconciliation in fact represents a contract, which establishes rights and obligations for contracting parties only when contracting parties, insured and insurer sign it. By signing extrajudicial reconciliation the insured accepts from insurer to compensate the inflicted damage in certain rate and concerning this damage, waives from any other right to seek again from insurer compensation of damage.¹³

By achieving extrajudicial reconciliation, all disputable issues concerning insurer liability for compensation of inflicted damage from insured case shall be eliminated.

Extrajudicial reconciliation can be achieved only for a part of the inflicted damage from insured case and for the whole inflicted damage.

To compulsory insurance based on motor liability, extrajudicial reconciliation shall be achieved only for some forms of material and non-material damage. In cases when extrajudicial reconciliation is achieved only for several forms of damage, then in content of reconciliation shall be specified type and form of the damage as well as compensation of damage rate. For example if insured has agreed with the insurer on behalf of inflicted damage in traffic accident due to the physical pain to pay the amount of 5.000 €, whereas for other forms of non-material damage and fear in the amount of 3.000 €, reduction of general living ability in the amount of 10.000 € and disfigurement-loss of sight in the amount of 3.000 €, did not agree, then in the agreement it must be emphasized that insured has agreed on behalf of compensation of non-material damage and only for spiritual pain because of physical pain to pay the amount of 5.000 €.

It is very important to emphasize this agreement (reconciliation) does not represent an enforcement document-executive title, therefore if insurer within foreseen term in agreement (reconciliation) does not fulfill to insured obligation concerning compensation of damage, the insured cannot submit to the competent court proposal for enforcement because there is a lack of fulfillment of legal conditions foreseen by provisions of the article 24

¹³ Jankovec, I., 1977, *Obavezno osiguranje za stete od motornih vozila*, Beograd. "Savrenena administracija", OOUR "Branko Dovonic", Crnotravska 7-9, Beograd.

of the Law on Executive Procedure that this agreement or reconciliation to be qualified as an executive document.¹⁴ The insurer is entitled to seek from the insured to fulfill his obligation in agreement or reconciliation by submitting a lawsuit for fulfillment of the contract.

In practice agreement and extrajudicial reconciliation occurs to be achieved under the influence of fraud, intimidation-violence or mistake which shall be carried out by insurer. In these factual situations, the insured is entitled to file a lawsuit for annulment of this agreement, which also is performed in contested procedure. Lawsuit for annulment shall be submitted within deadline which is foreseen by legal provisions of the Law on Obligational Relationships,¹⁵ because otherwise, by presenting the insured objection for statutory limitation of claim, in court the lawsuit of the insured (claimant) shall be rejected as unfounded and thus the insured shall lose the right for compensation of damage.

Such case we encountered in judicial practice of Municipal Court of Prishtina, already Basic Court of Prishtina regarding the contentious case C. 1949/05. From case files we came to the conclusion that Private Trade Enterprise "Ben Com" owned by natural person with residency in the village "Babush i Ri" entered into a contract for voluntary insurance property with the insurer Insurance Company "Insig" in Prishtina the insured based on the contract made the insurance of building and various goods in warehouse from risk of fire in the amount of € 300,000. Between contracting parties is not disputed the fact of presenting the insured case, because in the abovementioned procedure, insurer by expertise has confirmed the fact that property of the mentioned enterprise-the insured has been damaged by fire. Evaluating Commission consisting of professional experts has evaluated because of the fire the insured property of the insured has been damaged in the amount of 131.160 €.

Based on direct claim of insured, the insurer has made compensation of the inflicted damage from insured case in accordance with evaluation of commission-experts, and the insured with insurer achieved extrajudicial reconciliation based on which insurer has agreed to compensate the inflicted damage to the insured in the amount of 135.840 €, whereas the insured also has agreed with this compensation of the inflicted damage.

¹⁴ Assembly of the Republic of Kosovo, *Law no. 03/L-008 on Executive Procedure of Kosovo*, Article 24.

¹⁵ Assembly of the Republic of Kosovo, *Law no. 04/L-077 on Obligational Relationships of Kosovo*.

Reconciliation has been signed without objection by the authorized insurer and the owner of insured. Considering with this reconciliation the insured has been damaged by insurer due to the fact it is not made the real compensation of inflicted damage, within deadline submitted a lawsuit in referred court for annulment of agreement, by requesting the damage to be compensated up to the limit of insured property value. During conducted procedure, first instance court based on examined and assessed evidences has confirmed that lawsuit of claimant is founded and annulled the agreement of contracting parties, respectively litigants, whereas insurer-the defendant was forced to repay material damage to the insured-claimant in the amount of 131.160 £.

Against this judgment insurer-claimant has filed a complaint and this issue has been adjudicated from District Court of Prishtina, now The Appeal Court of Prishtina, regarding the case Ac.nr.452/2007. Adjudicating panel of the second instance court has changed the judgment of the first instance court and the lawsuit of insured-claimant has rejected as unfounded by justifying there was a lack of legal conditions for relative invalidity of the agreement, because it is not confirmed this agreement was concluded under the influence of intimidation fraud or mistake.

I think if the insured confirms the fact extrajudicial reconciliation for compensation of damage is concluded under the influence of violence, fraud, mistake or damage more than half of the inflicted damage, then this reconciliation shall be annulled and the insured shall be compensated at confirmed rate by expertise up to the limit of insured property value of enterprise.¹⁶

3. Lawsuit for indemnification of damage from insured case

When insurer does not invite the insured to realize the compensation of inflicted damage from insured case upon voluntary insurance contract within deadline, which has been assigned by legal provisions or acceptable rules in insurance companies in Kosovo, or when the insured does not agree with compensation rate of damage based on compulsory motor liability insurance, then insurer the compensation of inflicted damage requires by presenting lawsuit to the competent court. Lawsuit in cases of

¹⁶ See case files C.no. 1949/2005 and case files Ac.no. 452/2007, which are in Municipal Court of Prishtina, now Basic Court of Prishtina.

voluntary insurance, as well as in cases of compulsory insurance shall be filed within deadline which is foreseen by provisions of the Law on Obligational Relationships.

If, the lawsuit is not filed within this legal term and when the insurer during contested procedure presents the objection of statutory limitation, which is of material nature, then insurer due to the statutory limitation claim loses the right for compensation of damage and thus the court rejects by judgment the lawsuit of insurer in the capacity of claimant as unfounded.

In cases of compulsory insurance (when there is only a direct lawsuit of the injured party against insurer) is assessed that claim of the injured party from compulsory insurance base has character of damage compensation and due to this reason statutory limitation of damage compensation is done within 3 years and not within 5 years as it is foreseen concerning claims from insurance contract base.¹⁷

The Law on Obligational Relationships of Kosovo contains general provisions on statutory limitation of the lawsuit, where more concretely is regulated by provision of the article 341 of the Law on Obligational Relationships, however the assessment of deadline for presenting the lawsuit shall be made according to general provisions for statutory limitation of compensation of damage. According to general provisions statutory limitation for indemnification of inflicted damage shall become statute-barred three (3) years after the injured party learnt of the damage and of the person that inflicted it in each case the claim shall become statute-barred five (5) years after the damage occurred (article 357, paragraph 1 and 2 of the Law on Obligational Relationships).¹⁸

Identified position of insured and insurer in relation to the injured party claim also in this regard has been accepted in judicial practice, period of statutory limitation claim for compensation of damage from compulsory insurance relations in traffic accidents commences even to insurer from the day when the injured party learnt for damage and offender, and not from the moment when by judgment has been confirmed the liability of insured as a direct causative of the damage to compensate the damage to injured

¹⁷ Viši privedni sud u Beogradu, SL. 666/71 prej 25.06.1971. "Zbornik", nr. 2-3/71, str. 200, isti, SL. 1577/71 14.10.1971, zbornik nr 5-6/72 str 425.

¹⁸ Assembly of the Republic of Kosovo, *Law no. 04/L-077 on Obligational Relationships of Kosovo*, Article 357, Paragraph 1-2.

party¹⁹, neither from the moment when the injured party learnt or could have been able to learn that insured as owner of vehicle has ensured the vehicle from liability for inflicted damage to the third party.²⁰

In situations when the injured part at the same time did not learn about the inflicted damage and the person who inflicted it (for example the damage was inflicted in traffic accident by unknown vehicle and driver, and after a period of time from the date of accident later has been confirmed the identity of person which inflicted the damage or when later on was finally proved disability degree of the injured person etc), in these situations statutory limitations commence at the moment where there is a fulfillment of other necessary conditions for real assessment (learning about inflicted damage and the person who inflicted it).²¹ In all other cases the statutory limitation deadline commences from the moment when there is a fulfillment of two abovementioned conditions and when is learnt for the damage and liable person who inflicted it. If the inflicted damage is expressed in different forms, especially when dealing with grievous bodily injury with permanent living consequences, statutory limitation claim of damage compensation shall be assessed for each form separately.

In practice may occur that any form of damage to be statute-barred, whereas any form of damage not to be statute-barred. For example: if in a traffic accident a person has suffered grievous bodily injury, by means of which the injured party has suffered material damage due to the damage of vehicle, statutory limitation deadline for this form of material damage commences in accordance with conditions abovementioned, whereas concerning grievous bodily injury for which the injured has an urgent need for further medical healing, statutory limitation concerning this form of non-material damage commences from the moment when full medical treatment ends and when the injured part learnt about the inflicted damage.

Since statutory limitation period on types and forms of abovementioned damage is the same, due to this reason the insured shall be careful on preservation of legal term for presenting a lawsuit within this deadline, because by objection of the insured, the insured can lose the right to claim for compensation of damage.

¹⁹ Vrhovni sud Hrvatske, GZ. 964/73 i dt. April 24, 1974.

²⁰ Vrhovni sud Hrvatske GZ. 4273/71 i dt. November 1, 1973.

²¹ Sulejić, P., 1977, *Pravo osiguranja*, "Margo-art". Beograd.

To voluntary insurance the insured as an injured party has active legitimacy in order to file a lawsuit in competent court for compensation of the inflicted damage only when there is a contract signed on property insurance. Whereas, to compulsory motor liability insurance just like abovementioned, the lawsuit for compensation of the inflicted damage by insured case is entitled to present except the insured, also persons which belong to the third persons category and all those persons which had suffered damage during the use of vehicle and other motor vehicles. Lawsuit for compensation of damage shall contain all the elements which are foreseen by provisions of the article 253, paragraph 1, point a, b, c, d, e, f, related to article 99 of the Law on Obligational Relationships.²²

Lawsuit for indemnification of damage based on insurance in accordance with provisions of the article 47, paragraph 3 of the Law on Obligational Relationships, is presented to the court in whose territory the damage was inflicted, or the court in whose territory were initiated the consequence of the damage.

If the damage inflicted is death, except abovementioned courts, the insured and other persons are entitled to file a lawsuit also in the territory of court in which they have their habitation or residence. So, by these abovementioned provisions, the injured persons on this legal base of inflicted damage have the right to make resolution of territorial jurisdiction for adjudicating lawsuits concerning indemnification of damage.²³

It is important to emphasize that when as contracting party in voluntary insurance contract of property in economy are economic-business enterprises and where there is a fulfillment of conditions concerning realization of damage compensation which has been inflicted by insured case, then insurer shall present a lawsuit to District Economic Court, now Department on economic issues at the Basic Court of Prishtina, which is competent for adjudicating this contentious issue.²⁴

The insured or third person who has suffered damage based on compulsory motor liability insurance can file a lawsuit only against the insurer respectively insurance company which entered into a contract for

²² Assembly of the Republic of Kosovo, *Law no. 03/L-008 on Executive Procedure of Kosovo*, Article 253 Paragraph 1, point a), b), c), d), e), f) related to Article 99 as well as to Article 47 of the Law on Executive Procedure.

²³ *Ibid.*

²⁴ See: Assembly of the Republic of Kosovo, *Law no. 03/L-199, on Courts in Kosovo*.

compulsory insurance to other insurer, which has inflicted the damage during the use of vehicle or other insured vehicle.

In judicial practice occurs the traffic accident to be inflicted by actions of vehicle driver or other motor vehicle, which shall be subject to compulsory motor liability insurance. The injured party, to which is inflicted the damage within territory of the Republic of Kosovo by a motor vehicle, whose owner is not covered by motor liability insurance, is entitled to claim the compensation of damage from Kosovo Security Bureau.²⁵

Insurer is liable for compensation of damage due to the fact he has accepted this responsibility by voluntary insurance contract, whereas is obliged to make compensation of damage to the insured and third persons, because this responsibility is foreseen by compulsory insurance rules, whereas other persons which inflicted the damage are liable for compensation of damage where their duty is to restore the situation which has been foreseen when the damage occurs in accordance with provision of the article 169, paragraph 1 of the Law on Obligational Relationships.²⁶

In situations when the damage is inflicted as a result of criminal offence against security of public traffic foreseen by provisions of the article 297, endangering public traffic while intoxicated, article 298 of Kosovo Criminal Code,²⁷ with death or grievous bodily injury consequences, then the lawsuit for compensation of damage is submitted to the insurance company or Kosovo Security Bureau, according to provision of the article 47, paragraph 2 of the Law on Contested Procedure.²⁸ Whereas concerning grievous bodily injury, for assessment of competence it is crucial these grievous bodily injury to be proven by medical expertise. If medical expert finds that injured party in traffic accident had suffered bodily injury with a broken leg or arm or with a loss of any vital part of the body, then competence is assigned in accordance with abovementioned provision.

It is important also the confirmation of insurance company residency on assessing territorial competence of the court. By residency is implied the

²⁵ Assembly of the Republic of Kosovo, *Law no. 04/L-18 on compulsory motor liability insurance*, Article 18, Paragraph 1 related to Article 29.

²⁶ Assembly of the Republic of Kosovo, *Law no. 04/L-077 on Obligational Relationships of Kosovo*, Article 169, Paragraph 1.

²⁷ *Criminal Code of Kosovo*, chapter 26, criminal offences against security of public traffic, Article 297-298.

²⁸ Assembly of the Republic of Kosovo, *Law no. 03/L-006 on Contested Procedure of Kosovo*, Article 47, Paragraph 2.

place where company is licensed in order to exercise insurance activities, respectively the place where governing responsible body operates. Other forms of organization, despite of establishment place and activity, do not have influence in territorial competence.

4. Conclusion

From abovementioned reviews concerning compensation of damage based on compulsory and voluntary insurance of property and other material and personal goods, where consequently have been accompanied by bodily injury from accidents on road traffic, where except material damages is at risk human life itself, it is more than necessary to be undertaken preventive measures in order to avoid accidents in traffic.

This issue has been regulated by legal provisions where is specified that such persons-drivers should not violate public traffic rules by means of which come to criminal sanctions, and also insurance companies in Kosovo should increase insurance premiums in order to be more aware in the future and have less traffic accidents.

Therefore persons included in a traffic accident are entitled to address the insurance companies in order to compensate the inflicted damage but also by unidentified vehicles and without having insurance policy, as well as persons included in public traffic as passengers have the right based on the Law provisions on compulsory motor liability insurance, to submit a claim as well as lawsuit within legal term, with the Kosovo Security Bureau for compensation of material and non-material damage in competent court.

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