

U. no: 6/2003-0-0

Date: 03/19/2003

Preface

The Constitutional Court of the Republic of Macedonia, by virtue of Article 110 of the Constitution of the Republic of Macedonia, and Articles 28 and 71 of the Rules of Procedure of the Constitutional Court of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia", no. 70/92), in its session held on March 19, 2003, adopted the following

RESOLUTION

Text

1. A PROCEDURE IS NOT INSTIGATED for appraisal of the constitutionality of "Part Five – Compulsory Insurance" and Articles 54 to 79-a of the Law on Insurance ("Official Gazette of the Republic of Macedonia" no. 49/97, 79/99, 13/01, 26/01, and 4/02).

2. The initiative for instigating a procedure for appraisal of the constitutionality of Articles 80, 81, 82, and 83 of the Law on Insurance IS HEREBY DENIED.

3. Stamen Filipov from Skopje submitted an initiative to the Constitutional Court of the Republic of Macedonia for instigating a procedure for appraisal of the constitutionality of subsection "Part Five – Compulsory Insurance" and Articles 54 through 83 of the Law on Insurance. According to the allegations in the initiative, the contested provisions in the Law force compulsory insurance on the owners and the users of motor vehicles, aircrafts, ships, motor powered boats and railway vehicles, who have a duty to insure the vehicles in the event of third party liability, and by being forced to do this they were exposed to paying expenses, even though they weren't interested in this kind of insurance. Namely, every contract, even the insurance contract, can be concluded only if the contractual parties agree to it, and in this case, with the contested provisions in the Law it is imposed to conclude a contract for compulsory insurance. Also, in the Law there were no penalty provisions. For these reasons the subsection "Part Five – Compulsory Insurance" and the above stated articles were not in accordance with the Constitution.

4. The Court in its session determined that the Law on Insurance ("Official Gazette of the Republic of Macedonia" no. 49/97, 79/99, 13/01, 26/01, and 4/02) in "Part Five – Compulsory Insurance" contains Articles 50 through 79-a. The Law in "Part Six – Trade books and annual report" contains, among others Articles 80, 81, 82, and 83 but these provisions ceased to be in force on the basis of Article 250 from the Law on Insurance Supervision ("Official Gazette of the Republic of Macedonia" no. 27/2002). Namely, Article 250 of the above stated Law determines that with the day of entry into force of this law: the provisions from Part One, Two, Three, Four, Six, Seven, Eight, Nine, Ten, Eleven, Twelve of the Law on Insurance; except the provisions in Part Five concerning the compulsory insurance, Article 122 paragraph 1 item 2 and paragraph 3 and Article 123; are no longer in force.

The Law on Insurance with the provisions contained in Part Five, Article 50 through Article 79-a, regulated compulsory insurance, and according to Law it is compulsory to insure: 1)

the passengers in the public transport from consequences of accidents; 2) the owners and the users of motor vehicles for third party liability; 3) the owners and the users of aircrafts for third party liability and 4) the owners and the users of ships and motor powered boats for third party liability.

In the part regarding the penal provisions of the Law on Insurance, according to Article 122 paragraph 1 item 2, legal person shall be fined with 250,000 to 300,000 Denars for a misdemeanour:

1. If the legal person does not conclude a contract for compulsory insurance according to this law (Articles 51, 53, 57, 79 and 79-a). According to paragraph 2 of this article of the Law, for the actions in paragraph 1 of this article the responsible person for the legal person will also be fined for a misdemeanour, with a fine ranging from 45,000 to 50,000 Denars.

In Article 123 of the Law it is anticipated that the natural person will be fined for a misdemeanour with a fine ranging from 45,000 to 50,000 Denars if it has not concluded the insurance contract which it should have concluded according to the law (Articles 51, 57, 77 and 79).

In the part including the contested articles concerning the compulsory insurance, the Article 54 of the Law defined what is considered as passengers in the public transport and determined that these are persons who for the purpose of travel are present in one of the vehicles designated for public transport, irrespective of whether they have a ticket or not, as well as the persons located in the stops' surroundings, the port, the airport or in the immediate vicinity of the vehicle prior to boarding or leaving, persons who had the intention to travel with a certain vehicle or who already travelled with it, while the burden for proving that certain person was a passenger falls onto the beneficiary of the insurance.

Article 55 of the Law determines the lowest insured amounts (premiums) that can be concluded with an insurance contract for a passenger in case of death, permanent loss of the general ability to work and transitory inability to work, expressed in Euros and converted to Denars according to the exchange rate of the National Bank of the Republic of Macedonia on the date of payment.

In Article 56 of the Law the right of the passenger in an accident or the beneficiary of the insurance in case of death of the passenger, is to request the insurance company to fulfil their obligation from the insurance contract directly to him, in a manner and under conditions determined with this article of the Law.

In Articles 57 through 76 of the Law the insurance of the owners and of the users of motor vehicles in case of damages caused to third parties is regulated.

Namely, in Article 57 of the Law it is determined that the owner and the user of the motor vehicle and coupled vehicle has a duty to conclude an insurance contract for liability of damages caused with the use of the motor vehicle (from now on: automobile liability insurance) to third parties in case of death, bodily injury, health damage, destruction and damaging objects, except for liability of damages for the objects which he took in for transport. According to Article 58 of the Law, motor and coupled vehicles are all vehicles, with a motor engine moving on public roads used for traffic and possessing a vehicle license.

In Article 59 of the Law it is regulated which persons are not considered as third parties and don't have a right to compensation of damages on the basis of automobile liability insurance under this law.

In Article 60 of the Law, the lowest amounts for which an automobile liability insurance contract must be concluded is determined, these amounts are given in Euros and converted to Denars according to the exchange rate of the National Bank of the Republic of Macedonia on the date of payment.

Then, in Article 61 of the Law the relationship between the rights and the duties of the subjects when a legal person performing work with health, disability or pension insurance presents a claim for damages to the insurance company, is regulated. In Article 62 it is determined that the damaged person has a right to present the request for compensation of damages directly to the insurance company, and in Article 63 it is anticipated that the automobile liability insurance includes the damages caused by use of the vehicle, by unauthorised persons, and determines who these persons are.

In the provisions of Article 64 and Article 65 of the Law it is determined that a change of the owners of the vehicle, results with transfer of the rights and duties from the automobile liability insurance contract, and determined the manner of compensation of damages inflicted with the usage of the vehicle in the countries members of the Council of Bureau to the third party up to the amount determined by the regulations of the compulsory insurance of the country where the damage is inflicted.

Article 66 of the Law has regulated the matters regarding the compensation of damages by the insurance company which conducts compulsory automobile liability insurance, towards domestic or foreign persons who have caused damages in the territory of the Republic of Macedonia with the use of the motor vehicle whose owner or user is not insured.

The provisions of article 67 of the Law regulated the right to compensation of damages caused to a damaged person by an unknown motor vehicle, and the duties of the insurance company in such cases, and with Article 68 it is determined how the right to compensation of damages can be exercised in cases where the perpetrators' insurance company ceases to exist.

Article 69 the Law determined that a person entering the territory of the Republic of Macedonia with a motor vehicle carrying foreign registration plates must possess a valid international automobile liability insurance document which is valid within the territory of the Republic of Macedonia, and in Article 70 of the Law it is determined that international documents and evidence can be considered valid once recognized by the National Insurance Bureau. If the person doesn't possess this document, he is obligated to conclude a contract with an insurance company, member of the National Insurance Bureau on the border of the Republic of Macedonia, according to Article 71 of the Law.

The provisions from Article 72 to Article 74 of the Law address the rights and duties arising from automobile liability insurance for the damaged person who has suffered damage by use of a vehicle with foreign registration plates, while the provisions in Article 75 and Article 76 of the Law address the duties of the participants in traffic to report and provide documents to the internal affairs organ.

Article 77 of the Law has determined the rights and duties from insurance for the owners and users of aircrafts registered by the registry of the Republic of Macedonia, which should mandatorily be insured through an insurance company, from liability for damages which may be inflicted on third parties, while Article 79 of the Law has regulated these rights and duties of insurance for owners and users of ships or motor powered boats with engine power over 1.5 HP (horse power), registered for business, sport and leisure, and registered in the ships registry, and Article 79-a of the Law regulates the insurance of the owners and users of railway vehicles for third party liability.

5. According to Article 8, paragraph 1, line 8 of the Constitution of the Republic of Macedonia, humanism, social justice and solidarity are part of the fundamental values of the constitutional order of the Republic, and according to Article 35, paragraph 1 of the Constitution, the Republic takes care of social protection and social security for citizens in accordance with the principle of social justice.

According to Article 34 of the Constitution, the citizens have a right to social security and social insurance, determined by law and collective agreement.

Also, the Constitution in Article 39 paragraph 2 determined that the citizen has the right and duty to protect and promote his own health and the health of others.

Article 51 of the Constitution determined that in the Republic of Macedonia the laws shall be in accordance with the Constitution, and all other regulations shall be in accordance with the Constitution and the laws, and it is everyone's duty to respect the Constitution and the laws.

In relation to the contested Articles 54 to 79-a of the Law on Insurance and the given analysis of the constitutionality of these provisions which regulate matters regarding compulsory insurance in the public transport sphere, the Court decided that they have a foundational basis in the determinations of the above mentioned constitutional norms.

Namely, in Articles 54 to 79-a of the Law, compulsory insurance of property, property interests and persons are regulated and the rights and duties of passengers on public transport, from consequences caused by an accident, whilst the owners and users of motor vehicles, aircrafts, ships, motor powered boats and railway vehicles, concerning third party liability are legislated.

The decision of the legislator to regulate this insurance as compulsory and not voluntary, in other words irrespective of the will of the subjects obliged to insurance, which encompasses the payment of a monetary contribution for insurance determined by law, expresses the care and responsibility of the state for providing services for the passengers on public transport and also for the third parties, this is because the consequences and damages come from vehicles of public transport belonging to the subjects who are obligated to get insured.

The legislative regulation of these matters, with an appropriate approach according to which these matters are given a degree of exceptional meaning and special compulsory treatment in the insurance sphere, is determined by the specific subject of public transport safety which creates special social problems. Considering this, and starting from the constitutional determination in Article 35 paragraph 1 of the Constitution, according to which the Republic provides social protection and social security for citizens in accordance with the principle of social justice, and according to Article 34 of the Constitution, stating that citizens have a right

to social security and social insurance, determined by laws and by collective agreement, as well as on the basis of Article 39 paragraph 2 of the Constitution, which states that a citizen has the right and the duty to protect and promote his own health and the health of others, we can conclude that the contested provisions in Articles 54 to 79-a of the Law on Insurance do indeed possess a constitutional basis to regulate the rights and duties arising from compulsory insurance.

Also in relation to the contested provisions of this part of the Law are the penal provisions in Article 122 paragraph 1 item 2 and paragraph 2 and Article 123 of the Law, with which the cases when the subjects of compulsory insurance will be penalized for a misdemeanour with a fine are stated, and because of this the claims in the initiative which state that the provisions in the Law regarding compulsory insurance were not regulated by penal provisions are unfounded.

On the basis of the above, the Court decided that regarding the contested Articles 54 to 79-a of the Law on Insurance, the issue of their compliance with the referenced constitutional provisions does not have a valid basis, and because of this the Court has decided as stated in item 1 of this resolution.

Regarding the contested Articles 80, 81, 82, and 83 of the Law on Insurance, the Court has decided that they ceased to be in force according to Article 250 of the Law on Insurance Supervision, they are no longer part of the legal order and cannot be the object of a constitutional-court decision, and according to Article 28 from the Rules of Procedure of the Constitutional Court of the Republic of Macedonia, the Court's decision is in item 2 of this resolution.

6. This resolution was delivered by the following composition of the Court: president of the Court Todor Dzunov PhD and the judges BahriIsljami, Nikola Krleski PhD, Olga Lazova, Milan Nedkov PhD, Stojmen Mihajlovski PhD, Besim Selimi and Josif Talevski PhD.

U. no: 6/2003
March 19, 2003
Skopje

PRESIDENT
of the Constitutional Court of the Republic of Macedonia
Todor Dzunov PhD