

The Romanian High Court of Cassation and Justice has settled, at the highest level, a long dispute regarding the obligation of the insurer to pay the insured amount in cases of automobile thefts where the original certificate of registration was inside the stolen automobile and, therefore, no longer in the possession of the automobile owner.

According to several decisions of the Romanian courts, in such cases, the insurer was not under an obligation to pay the insured amount due to the fact that the terms of the insurance agreement required the insured person to present both sets of keys and the original documents of the automobile to the insurance company prior to claim satisfaction. Since, in those cases, the documents were inside the automobile and were stolen together with the automobile, the insured could not fulfill such condition imposed by the insurance agreement and therefore the insurer refused to pay the insured amount.

The Romanian High Court of Cassation and Justice, by Decision no.2635/2012, settled that such interpretation by the Courts did not take into consideration that the theft of the original documents constituted a fortuitous event, as such relates to the obligation of the insured to present original documents to the insurer in order to claim the insured amount for the total theft of the automobile. "The existence of this obligation cannot be regarded as excluding the applicability of the causes leading to exemption from civil liability in case of a concomitant theft of the car and its identification documents, given that there is not expressly stipulated [in the insurance agreement] the obligation of the insured not to keep these documents in the automobile. To exclude ab initio the applicability of the fortuitous event signifies its sanctioning for culpable failure to fulfill an obligation that the insured has not assumed, whereas it acted with the diligence of a good owner announcing the disappearance of the original documents of the automobile along with the theft of the vehicle and it also provided to the insurer the two sets of keys".

Additionally, since the insurer accepts that the original documents of the automobile may also be subject to theft, irrespective of the place that the theft took place, and the insured is under the obligation to inform the police authority and the insurer regarding the loss of the original documents, the High Court considers that the insurer cannot legally refuse to pay the insured amount when the original documents of the automobile were stolen from and simultaneously with the automobile.

It is this ruling handed down by the High Court that takes one step further towards the protection of the insured consumers, stating that by acting as a normally diligent person and not breaching the obligations assumed, there are no legal reasons for an insurer to refuse payment of the insured amount. Since the presence of the original documents inside the automobile is a common and frequent practice and since no clause in the insurance agreement specifically forbids such practice, the insurer cannot refuse payment of the insured amount towards such normally diligent person.

According to the provisions of the Romanian Constitution, the decisions issued by the Romanian High Court of Cassation and Justice ensure the unitary interpretation and application of the law by the other courts.

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