

By the sole article of Law 4147/1961, Greece has ratified the European Convention of Strasbourg on compulsory insurance against civil liability in respect of motor vehicles, dated 20 April 1959. By the aforesaid ratification, the Convention has become an integral part of the national law with increased typical force, since the instrument of ratification by the Greek Parliament, grants it the power to prevail over any opposite provision of national laws, either current or future (*article 28 § 1 of the Constitution*). From *article 9 of the said European Convention*, derives the obligation of Greece (and each of the Contracting Parties) to establish an **Insurance Guarantee Fund** or to make other equivalent arrangements, in order to compensate injured parties for damages caused in such circumstances, that civil liability is incurred, in case the vehicle has not been insured or the person liable has not been identified. In addition, insurance must include coverage for **damage caused to persons and property** in the national territory, with the exception of damage to the insured vehicle and to property carried by it, according to *article 3 of the Annex I of the Convention*.

For this reason, Greece has established the **Auxiliary Fund** provided in articles 16-25 of the codified Law 489/1976, which is in charge with the payment of indemnities to motor accident victims (*article 19*). More specifically, the Subsidiary Capital indemnifies the injured parties for death, bodily injuries and damages to property.

The aforesaid obligations derive also from European law and especially from the provisions of *articles 10 § 1 and § 3 sub. b', case c' of the codified EU Directive 2009/103 for insurance against civil liability in respect of the use of motor vehicles*.

Codified Law 489/1976 (*articles 2 § 1 and 6 § 1*) provides that compulsory insurance must cover civil liability of the vehicle's owner, holder and of **any driver** or person responsible for it. Persons possessing the vehicle by theft or violence as well as any person who has caused the accident with intent are excluded from the indemnity. Furthermore, according to this Law, insurance coverage must include **compensation for psychological injury or moral distress**, resulting from death, bodily injuries or damages to property of third parties, injured by the insured in the occurrence of a motor vehicle accident.

Contrary to Greek Law, the provisions of the Convention and Directive do not include "*monetary compensation for bereavement or moral distress*". Also, contrary to Greek Law (*article 16 et. all of codified Law 489/1976*) the Convention as well as the Directive make no reference to cases where **the insurer has become bankrupt**, or the **execution of a court judgment against him without result**, or **the license for operation of an insurance undertaking has been revoked** due to violation of the Law.

Greek Law provides that all insurance companies conducting motor vehicle third party liability insurance shall compulsorily and automatically become members of the Auxiliary Fund and pay contributions corresponding initially to 2 % of the net premium collected from this class of activities. Contributions have been increased to 5%, by Ministerial Decision K3/529/08.01.1996. Thirty percent of the above mentioned contribution comes from insureds, while seventy percent comes from insurers. This method of financing the Auxiliary Fund met its limits when the latter's obligations disproportionately increased due to the increase of number of claims and its volume against insurance companies whose operation licenses were revoked by the State Supervision, as well as due to the increase of the amounts the Courts adjudicate as compensation for bereavement or moral distress. The Greek State could have chosen to once more increase the said contribution to adequately finance the Auxiliary Fund. Instead, by *article 4 of new Law 4092/2012* the Greek State chose to limit the monetary compensation for bereavement to the amount of 6.000 Euros, and limit compensation for damages to property as well, regarding claims against insurance companies whose licenses were revoked, to a percentage ranging from 10 % up to 30 % of the total damages amount.

The obligations of Greece, arising from Strasbourg's Convention and European law (the European commitments), is the introduction of a system that will guarantee the coverage of the case in which the vehicle has not been insured or the person liable has not been identified. Greece has chosen the system of the establishment of the Auxiliary Fund, that will be responsible for the insurance coverage of the aforesaid cases. For this reason, **Greece must also guarantee that the Auxiliary Fund will have sufficient revenue** in order to cover the above two cases. Therefore, the lack of money or the bankruptcy of the Auxiliary Fund do not justify derogation by the European commitments, because the lack of money is a result from the free decision of the legislator to limit the revenue of the Auxiliary Fund to 5% of the premium collected from this activity.

The Greek State is passing the cost of the compensations for injured parties on the Auxiliary Fund, while the Auxiliary Fund is passing it on the insured persons via the payment of the premium collected from this activity. Instead of the increase of the contribution to Auxiliary Fund (to a percentage of 10 % to 15 %, for example), Greece has chosen the decrease of the amenities to injured parties. In conclusion, the insured persons are not financially affected by the payment of the contribution to Auxiliary Fund and concerning the solution of the financial problems of the Auxiliary Fund may become realizable by the decrease of the compensations of the injured parties.

In light of the above, it is obvious that Greece has fulfilled its obligations arising from the international and European law, by changing the model of the Auxiliary Fund financing; thus in this way its financial reorganisation may become feasible.