

COMPULSORY TRAFFIC INSURANCE: CONSTITUTIONAL COURT ALTERS COMPENSATION CALCULATION METHOD

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The Constitutional Court of the Republic of Türkiye [**“the Court”**], reshaped the method of calculating compensation paid under the compulsory traffic liability insurance (**“CTLI”**) with its decision entered into force on February 14, 2023 (**“The Decision”** numbered E. 2021/82 K.2022/167, 29.12.2022). The Court thereby ruled that Article 90 of the Highway Traffic Law is unconstitutional and annulled the same.

This annulment was ultimately caused by the discrepancy between the general liability provisions under the Turkish Code of Obligations (**“TCO”**) and the bylaws issued the regulator bodies based on their administrative identities.

The primary objective of the CTLI is to compensate individuals who suffer losses due to vehicle operations. Such losses would normally be assessed according to TCO’s tort provisions that aim at the actual value of the loss. The Article 90, on the other hand, had regulated that the compensation for diminished value of vehicles, loss of support, and permanent disability under the CTLI shall be calculated as per the CTLI general conditions issued by the Insurance and Private Pension Regulation and Supervision Agency [**“IRSA”**].

The Court, in the Decision, confirmed that there could be discrepancy between the compensation amounts calculated under the Art. 90 and the tort provisions under the TCO. The Court warned the risk that the injured party might not receive full compensation from their insurers; in case of which the constitutionally guaranteed rights, including the right to property and physical and moral integrity would be violated. As a result, the Art. 90 directing the insurers to be bound by the general conditions disregarding the most fundamental provisions and principles of law of obligations, was deemed unconstitutional. The Court, by annulling the Art. 90, ultimately concluded that the compensation under CTLI policies should be calculated under the tort provisions of the TCO, which relatively works to the best interests of the aggrieved parties.

The Decision, albeit indirectly, may uplift the ongoing debate on whether IRSA, as an administrative authority, through the general conditions which form an integral part of the insurance policies, can delimit or supersede the freedom of contract granted by the TCO or essential insurance provisions of the Turkish Commercial Code

(“TCC”). On the face value, the general conditions often set forth the issues the parties cannot negotiate or the risks that cannot be included within coverage. This is despite the fact the TCC and TCO that enters the picture when TCC is silent, principally respect party autonomy when tailoring the policy. The Decision seems to lend support to party autonomy and encourage the parties to a policy to disregard the general conditions as long as they have a mutual agreement to that end.

Expectedly, the insurers didn’t take kindly to being told to pay more than they initially projected. Especially for the policies concluded before the decision, there appeared to be a mismatch between the premiums being collected by insurers and the exposure. For the new policies, the insured were equally concerned because of the high premiums coupled by the unpredictability of the exposure. This concern was indeed confirmed to be accurate with the insurance companies’ public statements.

However, subsequent regulatory adjustments over the Tariff Implementation Principles at least try to address these issues. With the regulation change which took effect on April 4, 2023, the amended tariff now aims to mitigate the Decision’s adverse financial impacts on policyholders by introducing new incentives and discounts in view the level of risk the driver carries or poses. This amendment, on the side of the pendulum, allows the insurers to enjoy a greater increase in premiums given the driver’s track records.

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