
INDEMNIFICATION OF NON-MATERIAL DAMAGES CAUSED BY ROAD TRAFFIC ACCIDENTS – ETHICAL AND FINANCIAL ASPECTS

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Abstract: With the development of road transport, social, labour, educational, investment, and cultural mobility has improved, at the expense of worsened traffic security, increased damage to property, health and lives of traffic participants. Car accidents have become a global phenomenon and are a leading cause of death compared to household and occupational accidents. The value of human life continues to be a challenging and unresolved problem facing science, politics, economic and social relations. However, healthcare, insurance, the fields of security and justice are daily confronted with the need to negotiate and find a pragmatic solution to the problem of the value of human life. Insurance companies offering the compulsory ‘Motor third party liability insurance’ cover the liability of the insured for the damage caused to third parties as a result of the possession or use of a motor vehicle while driving or idling. Insurers cover non material and material damages resulting from bodily injury or death, damage caused to other people’s property, loss of profit deriving directly and immediately from the damage, reasonable costs incurred in relation to the filing of a claim, including legal expenses awarded against the insured, and the interest. The current situation in the insurance market, the legal regulation of indemnities in our country, as well as the prosperity of the Bulgarian citizens, reflect on a number of problems accompanying this type of insurance.

Keywords: road transport, social cost, car insurance, ‘Third party liability’ insurance, indemnification of non-material and material damages, value of human life.

JEL: G22, G28, G38, R41, R48.

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The development of road transport over the past century has led modern society to a qualitatively new dimension of social, labour, educational, investment, and cultural mobility. Combining technical characteristics of vehicles, such as power, speed, and load capacity, contributes both to the autonomy, flexibility, and speed of mobility and to the deterioration of traffic safety, increased damage to property, health and the lives of traffic participants.

1. Road transport – development, social cost and ‘Third party liability’ insurance

With the dominant use of vehicles as a means of transport, drivers can cause injuries and damage to third parties, i.e. to other cars, drivers and passengers, freight, road and other transport infrastructure elements. The total number of injuries and damage caused by the use of motor vehicle transport in modern society amounts to billions of dollars and the only reason not to ban road transport as a means of mass destruction is the fact that economic benefits far exceed the economic costs. Virtually, modern society could not exist without cars.

The impossibility of reducing injuries and damage by conventional means also leads to the idea of imposing autonomous (self-driving) vehicles and intelligent car safety systems, where different degrees of artificial intelligence are used as a means of preserving tangible assets, health and lives of drivers and passengers. The concept of ‘*connected cars*’ treats cars as information devices communicating with road signs and markings, meteorological offices, travel agencies and other cars. The ‘*Big Data*’ concept implies accumulating and processing information on drivers’ behaviour, which allows a more focused and profiled assessment of individual driver risk. The abundance of information obtained in various ways and the faster and more efficient processing of this information transform automotive industry and reduce the economic cost of road transport to society. These trends will materialize more and more in the next decade, turning avant-garde concepts, laboratory developments, and test drive cars into serially-produced vehicles and mandatory standards.

Motor vehicle transport emerged a hundred and thirty years ago, taking advantage of the pioneering enthusiasm of Benz, Daimler, and Ford. Currently, the number of vehicles participating in traffic worldwide is 1.3 billion and is expected to reach 2 billion by 2030. For the last decade, the growth in the number of cars has been impressive – by 38% worldwide.

*Table 1. Number of vehicles in use worldwide (2006–2015), in thousands
(International Organization of Motor Vehicle Manufacturers (2017))*

	Commercial vehicles	Passenger vehicles	Total
2006	247, 488	679, 154	926, 642
2007	258, 538	701, 690	960, 228
2008	264, 970	727, 405	992, 375
2009	271, 957	747, 899	1, 019, 856
2010	280, 127	775, 573	1, 055, 700
2011	288, 618	808, 401	1, 097, 019
2012	306, 721	834, 916	1, 141, 637
2013	315, 845	869, 083	1, 184, 928
2014	327, 825	907, 062	1, 234, 887
2015	335, 190	947, 080	1, 282, 270

In Europe, the number of cars is 388 million (according to data from 2015). The continent has marked a growth rate of 18% over the last decade, the European Union and EFTA 10%, while the number of vehicles almost doubled in Bulgaria, i.e. 80%.

*Table 2. Number of vehicles in use in Europe (2006–2015), in thousands
(International Organization of Motor Vehicle Manufacturers (2017))*

	Europe	EU-28 + EFTA	Bulgaria
2006	329, 557	274, 912	2, 016
2007	334, 109	275, 327	2, 367
2008	343, 887	280, 826	2, 690
2009	347, 765	282, 685	2, 842
2010	353, 602	285, 997	2, 960
2011	360, 601	289, 504	3, 065
2012	366, 902	291, 856	3, 197
2013	373, 775	294, 519	3, 321
2014	380, 136	297, 291	3, 449
2015	387, 519	302, 582	3, 630

Data show that one third of the world's vehicles are driven in Europe, where, however, under 10% of the world's population live. The number of

vehicles per 1,000 people in Europe is 471, exceeding the number on any other continent. The world average number is 182. As vehicle density increases in road traffic, traffic safety problems related to risks to human life and health exacerbate. These issues came to the fore in Europe in the first decades of the 20th century and imposed legislative decisions on reasonable driving – speed limits, compliance with certain rules, consideration for passengers and other traffic participants, as well as accepting responsibility for damage caused to third parties. Guarantee deposits were initially introduced to cover injuries or damage which developed into the compulsory ‘Third party liability insurance’ at the time of introducing a statutory requirement accompanying the right to drive.

The compulsory ‘Motor third party liability’ insurance is based on the concept of delict. Unauthorized damage to the property, life, or health of others must be remedied or compensated by civil law. Insurance is to compensate for the damage guiltily caused and in a direct causal relationship with the behaviour of guilty drivers.

Certain European specifics, namely a large number of countries, small territory, high population density, developed road transport and road network, raise the need to unify insurance requirements. After the end of the Second World War, a work group developed recommendations, known as the Geneva recommendations marking the beginning of the international Green Card system, which initially comprised eight European countries – Austria, Belgium, UK, West Germany, France, the Netherlands, and Switzerland. A unified travel insurance document was introduced – the Green Card, certifying that holders had a valid ‘Third party liability insurance’ covering the minimum mandatory liability limits to third parties required by the law in visited countries. The main purpose of the system is to compensate the victims of road traffic accidents for material and non-material damages caused by vehicles registered abroad. At the same time, the system allows unimpeded visits to foreign member countries without proof of insurance coverage at the border of the visited country. The synchronization of liability limits, insurance conditions and how to settle damage claims in the member countries is done by the National bureaus, set up and regulated by the laws of each country recognizing the benefits of the Green Card system.

2. Road deaths in Europe and Bulgaria caused by cars. Philosophical and theosophical foundations in the assessment of human life

Over the last few years, the number of deaths due to car accidents in the European Union has been about 25,500, and another 135,000 suffer serious injuries. In Bulgaria, the number of people killed and injured in road traffic accidents has also remained unchanged for the past three years, with about 750 fatal crashes per year. The number of deaths in 2016 was 708, over 300 less per year compared to 2001 when 1011 people died in car accidents. At the same time, the population of the country has declined significantly and the 'Number of killed in road accidents per million residents' indicator is even worse. According to this criterion, in 2016, our country was one of the leading countries in the European Union with 99.7 per million population, while the average European levels were twice lower – 49.99 killed per 1 million residents.

The value of human life continues to be a challenging and unresolved problem facing science, politics, economic and social relations. However, healthcare, insurance, security and justice are confronted with the need to negotiate and find a pragmatic solution to the problem of the value of human life.

The philosophical and theosophical principles of assessing human life, respectively compensating for disabilities, are deeply rooted and have numerous ideological differences. Middle Eastern cultures and religions set an example of a pragmatic and well-grounded approach. Both Jewish and Muslim religions fix a cash equivalent for lost lives and injuries to health, differentiating between the potential for income generation, i.e. material damages and the value of life in general, regardless of age, i.e. non-material damages.

The Christian world has long perceived the philosophical and theosophical concept of the Natural Law deriving from the eternal law of God. According to St. Thomas Aquinas, the concepts of natural law are known to every reasonable person, and all human laws, in conformity with God's eternal reason, derive from the Natural Law. St. Thomas Aquinas views life as a spiritual gift of infinite value that cannot be compensated or replaced. Life is invaluable, and following this attitude closes the door for any debate about cash equivalents or compensation for human life.

Natural law occupies an important place in the works of Thomas Hobbes, Hugo Grotius, John Locke, and Jean-Jacques Rousseau in another philosophical school – contractualism based on the idea of a public contract. This concept develops the fundamental idea of the equality of people and the

equal liberty that each individual possesses as a natural state. Nations are created on the basis of an act of consent given by individuals – future members of the state. The distinguished contemporary philosopher John Rawls derives two principles: of the equal liberty in which “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others” and the principle of difference that “social and economic inequalities are to be arranged so that they are both to the greatest benefit of everyone, and attached to offices and positions open to all.”

Utilitarianism, another central concept in Western philosophical, social and economic thought, originates from Jeremy Bentham and John Stewart Mill. Followers of utilitarianism assert hedonism – pleasures and lack of pain are beneficial and have real value. In the case of bodily injuries, compensation awarded for lost profit as a global assessment of pain and suffering implies that the expected satisfaction as a result of goods and services consumed at the expense of damages will compensate for the fully anticipated pain related to disability and inability to earn while restoring the quality of life. Additionally, Bentham describes the Factor of pleasure and pain as directly related to time and space. Closer in time and lower-risk cash flows are of higher utility, which is the rationale for using the financial concept of the current value.

According to personalism of Berkeley, Kant and Berdyaev, intangible contribution to the family, employers, and societies makes life meaningful. Traumas change the structure of social interactions. The scope of compensation is limited to income generating capacity, including the negative impact on the productivity of the victim’s employer.

3. Injuries, damages and compensation for road accidents in Europe

Injuries and damages are identified and compensated in accordance with the national law of the country where the road traffic accident is registered and in conformity with the Green Card system regulations. The applicable legislation also includes the Regulations of the Council of Bureaux, the European Union Motor Insurance Directives and the Hague Convention on the Law Applicable to Traffic Accidents at International Level. There are significant differences between national laws in this area, which complicates the processes of handling cross-border insurance claims and setting appropriate reserves in Bulgarian insurance companies, especially after the accession of Bulgaria as a full member of the European Union. Compensation categories cover economic and biological damages affecting the

psychological and physical integrity of individuals, as well as non-material or moral damages, including pain and suffering compensation. While handling material damage claims allows for minor variations in the way of specifying and assessing, with non-material damages there is a dramatic distinction.

Therefore, indemnification of damages caused by road accidents in Europe includes:

- 1) Moral (non-material) damages:
 - a) Pain and suffering in a personal injury case (respectively in case of disfigurement);
 - b) Non-material compensation for relatives.
- 2) Material damages:
 - a) Medical bills (medical treatment – ambulatory care and hospitalization, rehabilitation);
 - b) Loss of profit during treatment and later;
 - c) Home care and assistance costs (monthly annuity, calculated at hourly or daily rates);
 - d) Additional needs (prosthesis, wheelchair, additional medical expenses, household income losses);
 - e) Funeral costs;
 - f) Maintenance payments to family members (husband or wife, children);
 - g) Attorney and court costs.

The system of general (case) law and the continental system of civil law provide a different blend of decisions on non-material damages caused by road accidents. The first group includes the UK, Ireland, and the second group – Germany, Austria, Poland, the Netherlands, Norway, and Bulgaria. The special law (*Loi Badinter*) in France, as well as the point system and the scales in the Czech Republic, Slovakia, Belgium, Spain, and Italy can also be added to the traditional division of continental and case law. Each national judicial system defines differences in specifying damages and their amount, as well as different court practice.

According to the *Insurance Code (2015), Art. 493 (1)*, an insurer under the compulsory Motor third party liability insurance covers the liability of the insured for damages caused to third parties, including pedestrians, cyclists and other traffic participants in traffic, damages resulting from the possession or use of a motor vehicle while driving or idling. In such cases, insurers cover non-material and material damages resulting from bodily injury or death, damages caused to the property of others, the loss of profit deriving directly and immediately from the damage, the reasonable costs incurred in relation to the filing of a claim, including legal expenses awarded against the insured, and the interest.

This heterogeneous and controversial picture of compensation for damages caused by road accidents is the result of great differences in the national identity, culture and religion, traditions, national prosperity, socio-economic system, attitude towards the 'work-free time' compromise. There are deep contradictions between how northern Protestant and southern Catholic states treat moral damages. The usual approach the first countries apply is to assess partially or not to recognize non-economic or moral damages, while with the second the main component of compensation is exactly that for moral damages, for indemnification of pain and suffering. Things are different in Central and Eastern European countries, with reminiscences about socialist judicial systems. Contrary to what is known in this area in the European Union, the Bulgarian approach requires compensation by payment of a lump sum (including compensation for material and non-material damages guiltily caused to another person), which is not exhaustively defined and is subject to negotiation between victims and guilty people or their insurers or is a subject to a judicial decision, based on the judge's fair judgment.

Obviously, this unique approach contradicts to the practices established in the European Union, creates uncertainty in assessing, claims handling and setting appropriate reserves, and generates tension in national insurance. The approach derives from the national historical and cultural characteristics, the inheritance of the so-called 'blood money' as a structure of the collective responsibility of the Bulgarian municipality in the conditions of the Ottoman state and the current then Sharia law. (*Markov, G. Et al, 2003. pp. 137-138*). In order to avoid costly Ottoman justice, in cases of serious felonies such as murders or large thefts leading to collective responsibility and legally imposed 'dem-i diyat' (blood money), direct negotiations between plaintiffs and defendants were often conducted, where victims refused further claims in exchange for monetary compensation collected from the whole community (*Markov, G. et al., 2003, pp. 137-138*).

Similarly, to-date compensation for death, including caused by road traffic accidents, is known as 'blood money' and relies on the fairness of today's Nasreddin Hodja. Although the Insurance Code makes a distinction between material and non-material damages, practice shows that material damages represent a small part of the total sum awarded. For the most part, compensation for death caused by road traffic accidents is awarded for the pain, grief and suffering to the deceased's closest relatives – parents, children and spouse, and in case the deceased has no spouse – the people who have had a lasting factual cohabitation with the deceased without marriage. According to the existing legal norms, only medical expenses resulting from and are directly related to the injury can be reimbursed in Bulgaria.

The grounds for indemnification of non-material damages can be found in Art. 52 of the OCA (*Obligations and Contracts Act* (1950), which stipulates that “Compensation for non material damages is determined ex aequo et bono (i.e. by equity) by the court.” This text supplements Art. 51 of the OCA, which states that “Compensation is due for all damages which are a direct and immediate consequence of the injury. This compensation may be payable as a lump sum or in scheduled payments. If the person suffering the damage has contributed to its occurrence, the compensation may be reduced. Where compensation for impaired capacity to work has been awarded, it may be reduced or increased if the injured persons’ capacity to work changes in connection with the damages caused.”

The concise provisions of this Act, unlike the detailed European regulations, require numerous explications and clarification. Decree № 4/1961, Decree № 5/1969, and Decree № 4/1984 of the Supreme Court Plenum define the circle of legitimate people who can claim non material damages in case of decease of their relatives. They also determine that the right to compensation for non-material damages should be entitled to the closest relatives, both in descending and ascending lines, and the spouse, including a child being raised but not adopted, respectively the person bringing the child up, if one of the spouses dies as a result of delict. A definition is also unequivocally given that parents are the closest lineal ascendants while children are the closest lineal descendants. All other people outside this circle, including brothers and sisters, ascendants of second and higher degrees, and in the descending line, namely grandchildren and great grandchildren, are excluded from the circle of people eligible for indemnification of non-material damages. These decrees have not been changed over the last three decades and the Bulgarian courts have been consistently applying their provisions.

4. Accompanying problems and challenges facing the insurance industry in Bulgaria

The situation on the insurance market, the legal regulation of damages in our country, as well as the prosperity of the Bulgarian citizens, reflect on a number of problems accompanying this type of insurance.

First, a lack of methodology or detailed justification for determining material and non-material damages. Long-standing attempts and projects to develop a Methodology on the rules regulating the indemnification of non-material and material damages as a result of death or bodily injuries have

failed as well as 3-4 other initiatives undertaken to formulate a sound and fair methodology similar to those used in European countries.

There is an exceptionally rapid growth rate of compensation for non-material damages awarded by the court. Over the last two decades, indemnification of non-material damages in case of death caused by road traffic accidents have been growing exponentially in the absence of detailed regulation and decomposition of compensation for material and non-material damages. The average growth rate of compensation for non-material damages in case of death caused by road traffic accidents has been over 72% per year for the period from 2000 to 2017. During the studied period, a 200-fold increase in liability limits has been observed, especially after Bulgaria's accession to the EU and the harmonization of national legislation with the EU legislation. At the same time, premiums on the compulsory Motor third party liability insurance have increased by just over 10% annually, while the coverage of the compulsory insurance have increased from 74% to 95-96% as a result of the introduction of official deregistration of motor vehicles without a Third party liability insurance policy.

Figure 1. Compensation payments to heirs for non-material damages caused by road traffic accidents in case of death, BGN, Calculations by the author

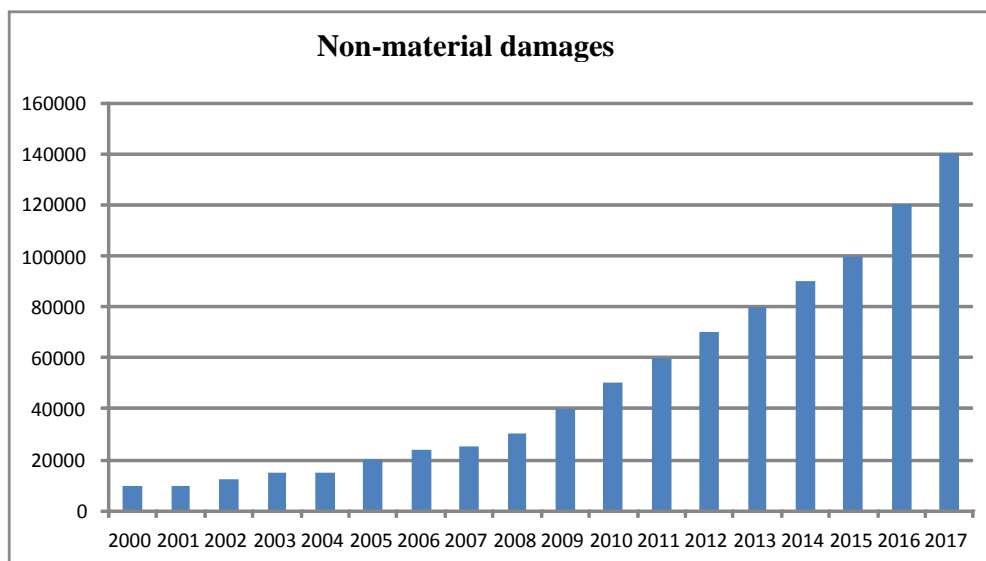
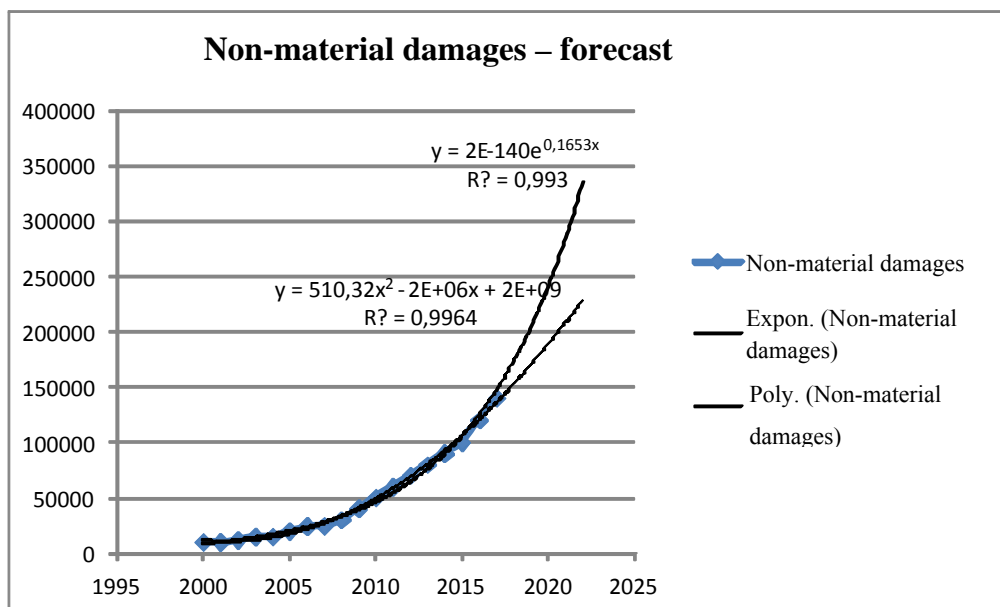


Figure 2. Estimation of compensation payments to heirs for non-material damages caused by road traffic accidents in case of death, BGN, Calculations by the author



The rapid growth in the indemnification of non-material damages and the objective impossibility to accumulate sufficient funds for compensation payments poses a serious systemic risk. The estimated value of compensation payments to heirs for non-material damages caused by road traffic accidents in case of death five years from now, based on existing data and lack of detailed regulation, shows values ranging from BGN 230,000 to BGN 340,000 per eligible heir. With an average number of 700 people killed in road traffic accidents annually in Bulgaria and an average number of four heirs, between BGN 650 million and BGN 1 billion have to be paid for these insurance events only at the end of the 5-year forecast period, which exceeds the potential for growth in the insurance market. The existing status quo in determining compensation for non-material damages will also affect the system of reinsurance contracts guaranteeing the functioning of insurance, involving reinsurers increasingly in compensation settlements not only abroad but also in our country, and this will inevitably lead to an increase in reinsurance premiums.

Last but not least, there is a lack of a financially sound basis for indemnification of material damages, which is the basis for compensation for death caused by culpable driving in most European countries. In particular,

compensation for lost profit and maintenance paid to the family members of the injured person is practically completely lacking in Bulgarian court practice. The lack of detailed regulation and decomposition of compensation for material and non-material damages leads to the paradox that Bulgaria is the only country in the EU where indemnification of death caused by road traffic accidents consists almost entirely of a non-material component “mainly compensating for the pain or loss of moral support suffered by the injured person as a result of the injury” (*Decree № 4 of the Supreme Court Plenum (1961)*). The modern approach includes a material and non-material component in compensation that equally compensates the injured and their relatives for both pain and suffering as well as for lost profit, family maintenance, and the cost of treatment and medical care. All imperfections require a change in the regulatory framework, which is more than urgent.

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YEAR LXX, BOOK 4 – 2017

CONTENTS

Stoyan Prodanov

Indemnification of Non-Material Damages Caused by Road
Traffic Accidents – Ethical and Financial Aspects / 3

Lyudmil V. Naydenov

Inter-Jurisdictional Tax Competition – The Bulgarian Case / 15

Valentin Milinov

Rositsa Radoeva

Human Resources in Regional Administration - Financial, Management
and Organizational Aspects / 28

Plamen M. Pavlov

Innovation Strategies in the Industrial Enterprises
of the Varna Region / 42

Plamen Dimitrov

Modelling Involuntary Part-Time and Fixed-Term Employment
among Young People and Adults in Bulgaria / 56

This issue has been published with the financial support of the Scientific Research Fund at the Ministry of Education and Science as part of the project No NP 04/68 approved by the Editorial Board from the competition “Bulgarian Scientific Periodicals – 2016.”

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ISSN 0323-9004

Economic Archive

Svishtov, Year LXX, Issue 4 - 2017

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Enterprises of the Varna Region**

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and Fixed-Term Employment
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