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TITLE

THE ISSUES ARISING OUT FROM THE COMPENSATION OF PROPERTY DAMAGES IN THE LIGHT OF INSURANCE LAW: PRACTICAL ANALYSES

STUDENT'S NAME

ANI OHANJANYAN

SUPERVISOR'S NAME

PROF.LUSINE SHAHMURADYAN

NUMBER OF WORDS

8889

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

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40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

LIST OF ABBREVIATIONS

MTPL	Motor Third Part Liability
RAMI	Russian Association of Motor Insurers
MLA	Motor Liability Act

40 Marshal Baghramyan Avenue
0019, Yerevan, Armenia
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
law@aua.am

What is success? I think it is a mixture of having a flair for the thing

that you are doing; knowing that it is not enough,

that you have got to have hard work and a certain sense of purpose.

Margaret
Thatcher

INTRODUCTION

People have always had a desire to somehow protect themselves from the harmful effects of life, or at least try to reduce them to the minimum. Today driving a car is one of the risky aspects of each individual's life. In case of car accident the property damage is caused, people are killed and injured. In all these cases, people can resort to insurance in which specialized organizations collect contributions from citizens and organizations that have entered into insurance contracts. A special insurance fund is created from which the insurer pays to the insured natural or legal person when a certain event occurs. The stipulated amount is usually greater than the amount of contributions. This of course does not prevent the occurrence of an adverse event but somehow overcomes it.

As it was mentioned above, usually, in the result of a car accident the following costs can occur:

- *the expenses regarding the damages caused to the car, property and life of the guilty driver*

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

- *the expenses regarding to the property and personal damages of the third party*

If the first type of costs is under the discretion of the culpable driver, then the second type is binding on the law and there is no possibility to avoid the compensation for the third party.

Moreover, the costs of the second group are unpredictable and may hit to the driver's budget. If a guilty driver cannot afford the compensation for some reason, it remains on the injured person who has to deal with the long-running proceedings. Taking into account the fact that, in many cases, the aggrieved party does not have the opportunity to recover its losses and pay for example, recovering his/her property damages, with the expectation of receiving further compensation, in this case, social problems and tensions occur.

In case of having MTPL contract:

- *The car owner (driver) through his insurance company will have the opportunity to compensate the damages caused to the third parties (pedestrians, passengers, other drivers) as a result of a car accident,*
- *The victim will receive compensation for personal injury (health recovery costs, unpaid salaries, death costs) and property damage (vehicle and other property).*

The Law on Compulsory Motor Third Party Liability Insurance[1] differentiates two types of damages, i.e., damages related to the property and personal injury.

According to the Rules RL1-001of Bureau of Armenian Motor Insurers (hereinafter referred to as "Bureau")[2] there are two ways to get the compensation for damages caused to the property, i.e., monetary compensation and compensation in kind.

Unfortunately, Armenian legislator faces some problems related to the first one. The numbers of fraudulence cases connected with the monetary compensation are rising every year, which leads to the losses of huge amount of money from the funds of insurers. Armenian insurance companies, regulators, and law enforcement officers are making great efforts to fight fraud at all levels. The legislator and insurance companies try to follow the

[1] *RA Law on Compulsory Motor Third Party Liability Insurance*, 18 May 2010, available at https://www.arlis.am/documentview.aspx?docid=58667

[2] *Rules RL1-001of* Armenian Motor Insurers Bureau ,15 February 2019, available at http://paap.am/datas/zlawdocs/065f7d8adeb85fcfe8d835b1de990f5a.pdf

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

international practice to improve their system and protect their financials from any manipulations.

However, each country applies different mechanism for achieving the goal mentioned above. This thesis will be devoted to the one of that mechanisms i.e., development the institute of in kind compensation and make the latter more preferable for drivers.

In kind compensation is very comfortable both for insurers and for adequate motorists, the purpose of which is to repair a car that has damaged in the accident, and not to try to cash in on the funds of insurer. Still, the main purpose of insurance is to put the car back into exploitation. [3]

The problem question or **subject matter** of the present thesis paper is whether using compensation in kind could solve the problem related to insurance fraud and if yes, what kind of steps should be done.

The following **methods** of analysis have been applied: the cognitive method, the comparative method, the qualitative data collection method, content analysis, interviews with experts in the field.

The choice of the subject matter is **justified** by the fact that in Armenia, the most drivers prefer to get their compensation through cash payments.

According to the data provided by the Bureau[4], only 3 billion drams were spent on compensating property damages of insured persons started with this year until March 31th. The amount of compensation is increasing every year.

The problem lying behind the growing amount of compensation is not only connected with the quantity of car accidents, but also the fraud that takes place nowadays in the sphere of insurance law.

The practical **significance** of the paper lies in the fact that nowadays there is no effective mechanism which could help to develop the institute of compensation (hereinafter "Institute") for the property damage. Compensation in kind is not the preferable way of compensation in Armenia, people do not rely on repair companies that are included in a list

[3] See the interview of Director General of "Alarm-Motors", Roman Slutsky, available at https://www.dp.ru/a/2016/04/21/Pljusi_i_minusi_naturalno

[4] Annual Statistic of Bureau regarding MTPL sphere , available at http://paap.am/datas/zlawdocs/fb41cb5fae16c00834a21fc050a114e7.pdf

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

of insurance companies. As consequence, the relationships between insurance and repair companies do not developed as there is no stimulus for it.

The paper **aims** to examine the possible mechanisms for developing the institute of compensation for property damages in kind.

To achieve the aim of the research the following **objectives** have been set forth

- To examine the Institute for property damages in Armenian legislation
- To analyze the concept of compensation for vehicle damages in kind
- To offer an insight on international practice related to the Institute for the damages caused to the vehicles in the light of Insurance Law
- To present the problems related to property damages compensation that Armenian legislator faces
- To discuss and analyze the possible defense mechanism from fraud cases for Armenian legislator
- to come up with some general recommendations to manage and prepare for changes in Armenian insurance legislation

The paper **literature** is based on a vast array of research articles, legal journals, scholarly papers, as well as books by reputable authorities and world-acclaimed authors involved in both legal and economic fields of insurance issues. The paper makes references to international and national reports. It also includes the Articles of Civil Code of the Republic of Armenia, Rules RL1-001 and Rules RL 1-013 of Armenian Bureau of Motor Insurers and the Law on Compulsory Motor Third Party Liability Insurance. For comparison with Armenian insurance Law there are used some international Acts and Laws in the mentioned field.

The following **methods** of analysis have been applied: the cognitive method, the comparative method, the qualitative data collection method, content analysis, interviews with experts in the field.

This thesis paper shall consist of an introduction, three chapters, a conclusion and a bibliography. The **Introduction** highlights the background information about the MTPL contract, the types of compensation for damages in Armenian Insurance Law and problems connected with the fraudulent actions and possible solutions for it. Moreover, the Introduction points out the statement of the problem, methodology of the research,

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

justification and significance of the issue raised. **Chapter 1** titled "History and the types of Motor Insurance" will present the historical background of Motor insurance. Also the chapter will introduce the concept of tort, its role in classification of types of motor insurance. **Chapter 2** will be devoted to international practice of the institute of compensation for the damages, caused to the vehicles in the light of insurance law. **Chapter 3** titled "Current Issues and Practice of the Institute of Compensation for the Damages caused to the Vehicles in Armenia". It consist five subchapters. **Subchapter 1** will be devoted to the role of Institute in Armenian legislation and it finds its reflection in Armenian laws. **Subchapter 2** will present the cases of fraudulent in the system of Armenian motor insurance and the problems that the legislator faces connected with the losses that the fraud cause to the funds of insurance companies. **Subchapter 3** will touch upon the ways of resolving the above-mentioned. **Subchapter 4** will be devoted to the process of assessment of property damages in Armenian Insurance Law. **Subchapter 5** will present the issues arising out from limitation period of related to the driver's obligation to call insurance company and reporting about the car accident. Finally, **Conclusion** will succinctly outline main findings of the research.

CHAPTER 1

History and the types of Motor Insurance

Motor Insurance had its beginnings in the United Kingdom in the early part of 19th century. The first motor car was introduced into England in1894. The first motor policy was launched in 1895 to cover third party liabilities. By 1899, accidental damage to the vehicle was added to the policy, thus introducing, the comprehensive policy along the lines of the policy today. In 1903, the Car and General Insurance Corporation LTD was established mainly to transact motor insurance, followed by other companies. After World War I, there was a considerable increase in the number of vehicles on the road as also in the number of road accidents. Many injured persons in road accidents were unable to recover damages because not all motorists were insured. This led to the introduction of compulsory third party

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

insurance through the passing of the Road Traffic Acts 1930 and 1934. The compulsory insurance provisions of these acts have been consolidated by the Road Traffic Acts 1960.[5]

Every year in the world there is a huge number of road accidents, as a result of which property damage is caused, people are killed and injured. All over the world, this problem is called "genocide on the roads." The first traffic accident that killed a woman happened in London on August 17, 1896. The first instance judge said: "This should never happen again." Unfortunately, this case was the first in multi-million statistics.

According to the data presented in the report of the UN General Assembly, about 1.35 million people die every year as a result of road traffic accidents in the world. [6]

Motor insurance is one of the largest non-life insurance businesses in the world. All motor vehicles are required to be registered with the road transport authorities and insured for third party liability. The basic premise is that motor vehicles could either cause injury or be a subject of damage and injury and thus require insurance. Legally, no motor vehicle is allowed to be driven on the road without valid insurance. Hence, it is obligatory to get the vehicle insured. Motor insurance provides compulsory personal accident for individual owners of the vehicle while driving. One can also opt for a personal accident cover for passengers and third party legal liability. [7]

The liability under the motor vehicle act is based on the concept of tort (civil wrong). That is to get compensation under a vehicle accident you have to prove the negligence of the driver. This is called fault liability.

Under a traditional tort system, at-fault drivers are liable for the economic and non-economic damages they inflict on third parties. In all tort countries, such drivers must insure themselves against this potential liability. This insurance comes in the form of third-party bodily injury (BI) and property damage (PD) liability insurance that covers the insured against claims for damages made by third parties up to some specified limit. Typically, states require drivers to carry some minimum level of liability coverage specified

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[5] Indian journal of *Management science* (IJMS) available at http://www.scholarshub.net/ijms/vol5/issue2/Paper_09.pdf

[6] The *Global status report on road safety, 2018* , available at https://www.who.int/violence_injury_prevention/road_safety_status/2018/en/

[7] *https://ru.scribd.com/doc/59694635/Motor-Insurance (last visited March 22, 2019)*

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

in both per-person and per-accident terms. Thus, the insurance company of the at-fault driver will compensate the third party for the losses sustained in an accident up to the policy limits. The at-fault driver's own insurance covers his or her injuries and property damage (for example, collision), assuming he or she chooses to carry such insurance.

Under a typical no-fault system, economic damages from injuries sustained in an accident are covered by a driver's own insurance, known as personal injury protection insurance, without regard to fault. Thus, compensation for injuries does not depend on the determination of fault; injured parties who were in no way responsible for the accident recover economic damages from their insurance as does the at-fault driver.[8]

Armenia adheres the concept of fault liability and based on it the drivers in Armenia are liable for the damages caused to another person's property or vehicle.

The damage caused to the life and health of people, as well as their property almost all over the world, is compensated for by ensuring the civil liability of car owners. This type of insurance is compulsory in most developed countries. The introduction of compulsory insurance allows you to create a system of financial guarantees, which provides victims with compensation for damage caused as a result of an accident.[9]

The implementation of compulsory insurance of civil liability of vehicle owners in Armenia has been postponed for a long time. Several reasons were hindering the formation of this type of insurance. First of all, it is the deterioration of the economic situation of the population during the period of economic reforms, and as a result, the low level of solvency and demand for insurance services; lack of a system of measures to improve the legislative framework in the insurance industry; informational closeness of the insurance market, which creates problems for potential insurers in choosing reliable insurance companies.

With the adoption of the RA Law on Compulsory Motor Third Party Liability Insurance (hereinafter MTPL Law) in 2010, our country has come closer to the level of legal support

[8] Edward L. Jr. Lascher, Michael R. Powers, *The Economics and Politics of Choice No-Fault Insurance §2 (2d ed. 1986)*, available at https://www.rand.org/content/dam/rand/pubs/monograph_reports/MR1384/MR1384.ch2.pdf

[9] Chandralekha Mukerji, *Claiming compensation under third-party motor insurance, available at https://economictimes.indiatimes.com/tdmc/your-money/claiming-compensation-under-third-party-motor-insurance/tomorrowmakersshow/49086589.cms*

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

in the field of insurance of civil liability of vehicle owners, which exists in almost all developed countries of the world.

Chapter 2

International Practice of the Institute of Compensation for the Damages caused to the Vehicles in the light of Insurance Law

In the international practice there are two types of compensation schemes for the property damages. Based on international practice the legislator divides two ways for. Here are some examples of international practice regarding this sphere.

According to Article 34 of Finish Motor Liability Insurance Act *"The owner of a damaged motor vehicle is entitled to receive compensation (i.e., the repair costs or the corresponding amount of money). If the motor vehicle cannot be repaired at a reasonable expense, the insurance company shall pay compensation matching the valid value of the*

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

vehicle. In that case, the motor vehicle is assigned to the insurance company. The decrease in value of the damaged vehicle will not be compensated for." [10]

As we can see the Finnish legislator also provides compensation options for car damages. However, analyzing the context of the article, it becomes clear that at first, the legislator gives preference to compensate the damages in kind and notices that if the motor vehicle cannot be repaired at reasonable expense, the insurance company shall pay compensation matching the valid value of the vehicle. So only in this case, the compensation could be done through cash payment.

According to Article 26(2) of Motor Insurance Act of Estonia "*In the event of harming a vehicle, the injured party has the right to choose the repair undertaking that is to restore and repair the vehicle. In such an event the injured party must submit to the insurer a calculation drawn up by the restore and repair undertaking for the purpose of identifying the scope of performance of the obligation. The insurer's compensation obligation will be limited to reasonable expenses of restoration of the condition preceding the insured event. At the request of the injured party, the insurer will issue to the restore and repair undertaking a letter of guarantee of the payment of the cost of the restoration and repairs for the injured party to the extent and on the conditions set out in the letter of guarantee."*[11]

The 3rd paragraph of the same article states that "A*t the request of the injured party, the insurer must assist in organizing the restoration and repairs of the vehicle.*[12]"

According to the 4th paragraph of mentioned Article "*The payment of the insurance compensation in cash is permitted only if the vehicle cannot be restored, the restoration and repairs of the vehicle are unreasonable or if the parties have an agreement that the insurance compensation will be paid out in cash."*[13]

The Estonian legislator, unlike Finnish one, provides us more grounds for getting compensation in cash which are: 1)the vehicle cannot be restored,2) the restoration and

[10] Article 34 of RF Motor Liability Insurance Act, 1 January 2017, available at http://erso.swov.nl/safetynet/content/finnish_motor_insurers_centre_finland.htm retrieved on 18 April, 2019.
[11] Article 26(2) of Motor Insurance Act of Republic of Estonia, 15 March 2019, available at https://www.riigiteataja.ee/en/eli/ee/526032019008/consolide/current , retrieved on 18 April, 2019
[12] Ibid.
[13] Ibid.

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia law@aua.am

repairs of the vehicle is unreasonable,3)if the parties have an agreement that the insurance compensation will be paid out in cash. In all other cases, the driver should get the compensation in kind.

According to Law on compensation for damages in kind in MTPL of Russian Federation "*payment on MTPL will be carried out in the form of car repairs by default*." [14] The Law provides that funds can be obtained only in exceptional cases - this is the destruction of the car, the excess of the cost of repair over the limit for MTPL insurance if the victim does not agree to pay also.

Referred to the mentioned law, the payment is monetary in the event of the death of the victim in an accident or causing serious/moderate injury to his health. Disabled people can also claim cash payments. Payment can be in the money and based on the agreement of the victim with the insurer.

Also, the car owner will be able to demand money if the insurance company cannot arrange repairs in a service that meets all the requirements that the law makes for reimbursement "in kind."

Moreover, it is stated that the repair station will be chosen by the victim but from the list partners that are proposed by the insurer. The law leaves the car owner the opportunity to repair the car at the station, with which the insurer has no contract, but only by written agreement with the insurance company. If the car is restored poorly, its owner has the right to require the insurance company to make a repeated repair through a judicial proceeding.

As it was shown the Russian legislator has supported more to the strict-related model. Based on the Law mentioned above there are only several cases when the driver/owner of car could get the monetary compensation.

In Norway, Motor liability is regulated by the act of February 3, 1961, known as the Motor Liability Act (MLA),[15] including its later amendments. MLA applies to compensation for and insurance against injury which motor vehicles cause to person or property.

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[14]Law on compensation for damages in kind in MTPL of Russian Federation ,17 March 2017 available at https://credits.ru/publications/osago/federalnyy-zakon-osago-s-poslednimi-popravkami-/ , retrieved on April 30

[15] Motor Liability Act of the Kingdom of Norway ,February 3, 1961

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

According to MLA there are three different methods of settlement: repair, cash settlement or replacement.

Referred to the repair the MLA states that "*If the insurance company finds the repair technically and financially feasible, the repair expenses are compensated. The company has the right to decide whether the repair is to be done and where it is to be done. It is presupposed that the vehicle is restored to the technical condition it had been in before the damage occurred.*"[16]

If the repair of particular parts is neither technically or financially feasible in the insurer's opinion, they must be replaced with equivalent – or generally equivalent – parts.[17]

Regarding the cash settlement the Acts declares that "*If the injured person wishes to repair the vehicle on his/her own, the compensation can be paid in cash according to the following rules.*

1. *Compensation cannot exceed the cost of repair or replacement.*

2. *Compensation is paid based on the appraisal.*

3. *Compensation of labor is based on 50 % of the repair shop price in the appraisal report"*[18]

Norwegian legislator also includes other type of compensation that are more common in Northern Europe i.e., replacement. In particular The Act states that "*if in the insurer's opinion the repair of damage is not technically or financially feasible, the insurer will compensate the damage with the amount it would have cost to purchase a car in virtually the same technical condition and of the same make, type and year (market price) at the time the damage occurred"*[19]

Almost in every Scandinavian country, the legislator leaves the right to decide whether the compensation for car damages will be done by cash payment or by reparation. The

[16] Cited from Norwegian guide to compensation, available at <https://www.tff.no/siteassets/blokker/norwegian-compensation-guide-eng.doc>
[17] See footnote 16

[18] See footnote 16
[19] See footnote 16

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

choice depends on the assessment of the expert that the insurance companies hire. If the expert decides that the repair is technically and financially feasible, then the compensation should be done through the repair. If the reparation is impossible then by virtue of MLA the car could be replaced.

Nevertheless, the drivers still have a right to choose cash settlement, but again he should follow some rules that are mentioned above.

However, there are not such strict limitations regarding the method of compensation as in Estonian Law. In Norway when the injured party and the insurer cannot agree on the method of repair, the scope of damage or the assessment of the market price for an equivalent vehicle. In such cases the insurer and the sufferer can demand the repair method etc. be decided using arbitration. Arbitration is done by competent and impartial persons. Both parties appoint one expert. The experts appoint an arbitrator whose role is to intervene if the experts do not reach an agreement. The appraisal done by the experts is binding for both parties.

Nevertheless, in international practice there are two schemes for compensating property damages: i.e., to provide the drivers right to choose whether they want to get the compensation by cash or repair. However, each country decides which method to choose, that choice is based on their experience in the field of motor insurance. Some countries like Russia chose strict-regulated way so there is no choice for clients to decide which type of compensation to choose. The other ones, like Norway gives preference to in kind method. However, the Norwegian legislator does not exclude the possibility to choose the method of cash settlement but it depends on some factors.

CHAPTER 3

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

Current Issues and Practice of the Institute of Compensation for the Damages caused to the Vehicles in Armenia

3.1 The role of the institute of compensation in Armenian legislation

In Armenia the institute of compensation for damages is regulated by the Civil Code of the Republic of Armenia [20](hereinafter referred to as the "Code"), Rules RL1-001of "Armenian Bureau of Motor Insurers" (hereinafter referred to as the "Rules") and the Law on Compulsory Motor Third Party Liability Insurance (hereinafter refered to as the "MTPL").

First of all, it is important to mention that the institute of compensation for damages is found in the Civil Code of Armenia. In particular, Article 1058 (1) of the Code clearly defines that "*personal or property damage caused to a citizen, as well as damage to the property of a legal person shall be subject to full compensation by the person who caused the damage*".[21]

Moreover, according to Article 17 of Code, "*a person whose right has been violated may demand full compensation for the losses caused to it unless statute or contract provides for compensation for losses in a lesser amount*".[22]

The second paragraph of the same Article states that "*losses mean the expenses that the person whose right was violated made or must make to reinstate the right that was infringed, the loss of or injury to his property (actual damage), and also income not received that this person would have received under the usual conditions of civil commerce if his right had not been violated (forgone benefit)"*.[23]

Further, it is stipulated in the same Article that "*if the person who has violated a right has received income as thereby, the person whose right has been violated has the right to demand compensation along with other losses for forgone benefit in a measure not less than such income."*[24]

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[20] Civil Code of the Republic of Armenia, 05 May, 1998, available at https://www.arlis.am/
[21] See footnote 20 Article 1058
[22] See footnote 20 Article 17
[23] *Ibid.*
[24] *Ibid*

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

In addition, Article 1075 of the same Code states that "*in satisfying a claim for compensation for harm, the court, in accordance with the circumstances of the case, shall obligate the person liable for the causing of harm to compensate for the harm physically (to provide property of the same type and quality, fix the damaged property, etc.) or to compensate for the losses caused* "[25].

Further, according to Article 10 of Armenian MTPL law "*Under the MTPL contract, compulsory insurance must be subject to the civil liability arising out of the following damages to the injured person by using motor vehicles: 1) personal injuries: damages caused to the victim's health and the lost earnings (income) as well as the death of the victim; 2) damages caused to the property*".[26]

As per Article 15(1) of the same Law "*damage caused to the property of the victim is considered as 1) damage, destruction or loss of the victim's car; 2) damages, destruction or loss of the property belonging to the aggrieved party, attached to or attached to the vehicle or the attachment (semi-trailer) of the offender, (hereinafter referred to as "motor vehicle") and property right;3) Damage, destruction or loss of the property belonging to the victim and not specified in points 1 and 2 of this Part.*"[27]

The institute of compensation for damages caused to the property is also regulated by the Rules RL1-001of Armenian Bureau of Motor Insurers.

As stipulated in Article 31 of the Rules "*the property interests of the insured person are considered as the object of insurance, which is linked with the civil liability arising out from the use of the motor vehicle, and the liability arises from the damage caused by use of the motor vehicle to the injured or his/her property determined by law and conditions."*[28]

Based on the Civil Code the Bureau determined two ways for getting the compensation for property damages caused by the driver.

In particular, Article 80 of above-mentioned Rules states that "*the damage caused to the property of the victim shall be compensated in the form of payment to the victim or,*

[25] See footnote 14 Article 1075
[26] See footnote 1 Article 10
[27] See footnote 1 Article 15
[28] See footnote 2 Article 31

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia law@aua.am

restoration of caused damage. The choice of options is performed by the victim. Moreover, if according to the conclusion of the insurer's expert, the restoration of the damage is not possible or unreasonable; the compensation should be done through payment."[29]

It can be inferred that the legislator provides two options for the aggrieved party to get the compensation for their car damages. In Armenia, the most clients prefer to get their compensation through cash payments. According to the data[30] provided by the Bureau, in 2019 only 3 billion drams were spent on compensating property damages of insured persons started with January until March 31th. The amount of compensation is increasing every year.

The problem lying behind the growing amount of compensation is not only connected with the quantity of car accidents, but also the fraud that takes place nowadays in the sphere of insurance law. Car insurance fraud occurs when someone deceives an auto insurance company to benefit financially. Such cases jeopardize the stability of the system by striking all the reforms in this area aimed at improving the accident registration and insurance compensation in our country. There are many cases of vehicle fraud; some of them are discussed below.

3.2 Cases of fraud in MTPL system

One of the common types of fraud is when the driver himself is guilty in the accident causing damages to his own car. In this situation the driver acknowledges that it was his guilt and he could not get any compensation for his car damages. Therefore, he decides to turns to some fraudulent actions to get some compensation. In order to receive payment, the driver performs such an accident a few days after the incident and tries to present the circumstances in such a way to be recognized as a victim. After the so-called "accident" the driver calls to his Insurance company and reports about the incident. Afterwards, the Insurer's expert should assess the damages and sometimes it is very challenging for an expert to understand when the damages were caused. Even when the Insurer has reasonable doubts about the date when the car was damaged and the accident staged, it is hard to evaluate whether the accident was done intentionally to get compensated for the damages

[29] See footnote 2 Article 80
[30] http://paap.am/datas/zlawdocs/fb41cb5fae16c00834a21fc050a114e7.pdf

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

caused by the previous accident, especially when there is no information about the first incident.

The other type of fraud is when the driver had an accident where his car was damaged not by his own fault. The driver files a claim for damages and chooses to get it through cash payment. However, after getting the money, he does not spend it for repayment and uses the compensation for other purposes. When next time he has an accident and the expert asks about the damages, the driver (to benefit more money from insurance companies) hides the information that some damages were caused in past accident and mentions that all damages have appeared as a result of the new accident. In this situation, it is easier to confirm the truthfulness of the above-mentioned information as the Insurance companies have sources to check that information via road cameras. However, it is hard for the experts to understand and assess whether the damages were caused by the new accident or there were caused by the previous accident for which the compensation already was paid but the damages were not renovated. As a result, the compensation for the damages will be assessed higher, including not only compensation for the new damages but also the old ones, which are difficult (if not impossible) to identify.

In all mentioned-above situations in case of failing to prove the existence of fraud, the Insurance companies have to pay the drivers a significant amount of money.

According to a representative of the insurance company "Rosgosstrakh Armenia", a significant part of fraud attempts are carried out by "diligent" citizens who are not connected to the criminal world, who do not plan a crime in advance, but do not realize that providing a misleading information to the insurer is a criminally punishable act.

According to the international statistics, the share of fraud in insurance payments is about 15 percent, 10 percent of which are done by the "professionals." [31]

3.3 Possible ways of resolving the problem of fraud cases in MTPL system

Insurance companies, regulators, and law enforcement officers are making great efforts to fight fraud at all levels. The legislator and insurance companies try to follow the

[31] *See official webpage of "Rosgosstrakh Armenia" Insurance company, available at* http://www.rgs.am/arm/59/news.more.html

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Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

international practice to improve their system and protect their financials from any manipulations.

One of the ways to avoid such fraud cases is to compensate the driver's car damages only in kind, i.e. to repair it. This method is aimed to keep away the rogues from getting enriched by the funds of Insurance companies.

According to the Bureau's regulations, after receiving the damage assessment report and the decision from the insurance company about getting the compensation, the injured person can get the estimated amount in the way of either cash payment or reparation.

At this stage, having such a choice creates a mechanism of deterrence that does not allow the insurance company to undercharge the price of the damages. Hence, the company should be able to organize reparation of a car equal to the value that was stipulated. The company cannot overvalue the price of damage because the client may claim a monetary compensation. This mechanism prevents the risk that the cost of damages could be artificially overestimated with the aim to transfer money to the funds of reparation companies.

In this case, besides this deterrent mechanism, there is neither technical nor theoretical possibility for the legislator to supervise over the activity of insurance companies and reparation companies.

There are qualified experts who evaluate the cost of the car damages, however, it is not possible to conduct widespread control over all reports.

In present, the value of insurance policy in Armenian MTPL system is regulated by the Rules of Bureau. The insurance company can sell MTPL contracts based on the maximum and minimum thresholds of insurance premiums which are designated by Bureau and they have to act within these limits.

Such kind of supervision from Bureau is somehow justified as if the legislator provides an opportunity for insurance companies to make a compensation only in kind, that may entail some negative consequences. For example, it is known that the price of the contract is calculated based on its risk, hence, the insurance companies may always increase the amount

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

of damages and all the money will be transferred to the reparation companies. The risk in the market will rise, the money will be transferred to repair organizations because the victim will not be able to get that high valued compensation. In this case, Bureau will have to raise the premium, but these amounts will be accumulated in the funds of repair companies instead of good service.

In order to avoid such pressure there are two options:

1) *Creating a very strictly-regulated MTPL system* as in Russia, particularly:

According to the Law on Compulsory Motor third party liability insurance of Russian Federation,[32] the prices for automobile products are set by the Russian Association of Motor Insurers (RAMI). It is a non-profit organization that is a consolidated all-Russian professional association founded on the principle of compulsory membership of insurers that exercise obligatory liability insurance of motor vehicle owners. It acts to provide interaction of its affiliates and the establishment of professional rules of conduct in the implementation of compulsory insurance.[33]

The prices for automobile products are fixed and updated at regular intervals (six months). This mechanism in such a way creates stability in the market of motor parts and also prevents any fraud connected with the assessment of car damages. When the expert makes a report about the damages and evaluates the price of each detail, he is guided by the price list that is presented by RAMI.

Such a method has its negative and positive sides. The positive side, as it was mentioned above is that the value of vehicle goods is fixed in the market. That makes the reports and assessments of experts more reliable and diminishes the number of appeals connected with the evaluation of car damages.

The negative aspect also lies in the fact that the prices for goods are fixed, under the above-mentioned Law the cost of the reparation of damaged parts of a car is based on the price list of RAMI. The Association updates price list every six month. However the prices in practice do not correspond to the present market value. When prices for auto parts are

[32] Law on Compulsory Motor Third Party Liability Insurance of the Russian Federation, 25 April,2002 available at http://www.consultant.ru/document/cons_doc_LAW_36528/

[33] See official website of Russian Association of Motor Insurers available at https://www.autoins.ru/

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

undervalued, either the insured person receives less than the damage incurred, or the auto repair service receives less money from the insurance company.

Undercharged prices are a long-standing problem for the for repair service companies. The amount that the Insurers pay to repair companies is calculated on the basis of price list of RAMI. In many cases it is impossible to find even non-original spare parts corresponding to the price that were prescribed in the list. However, using non-original parts could lead to poor quality of service .This aspect creates problems for repair companies since according to the Law, they takes the responsibility for poor reparation.

Customers also suffer from undervaluation of prices as the amount of money is not enough for a good service they have to pay extra money from their own pocket.

2) *Switching to the more marketable model*.

This could be possible if the legislator enables insurance companies to calculate the premiums of their MTPL contracts.

In this case, no artificial behavior should be performed; the insurance companies will not be motivated to give too much compensation and save money on the balance of repaired companies, because the value of its MTPL contract will rise and other insurance companies will be able to sell their contracts in a lower price.

The insurance company should always keep track of the amount of its compensation, to be able to sell a contract at normal market price and at the same time the amount of compensation should not be undercharged. The damages should not be assessed lower because the quality of the service will fall which will lead to that the company will stay out of competition in the insurance market.

At the same time, switching to this market mechanism should not mean that the supervision over the market will stopped, even in this case it is necessary to have a unified system. The Bureau intends to establish the unified system, in which some functions of the MTPL contract will be included.

In the future, such things as an assessment of the property damages, the process of compensation and subrogation could also be included in this unified system. In case if the

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

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compensation for property damages will be performing in kind, that could also help to develop the relations between insurance and repair companies.

3.4 The process of assessment of car damages in Armenia

In fact, creating an open market model could open many doors for improving several spheres in insurance law, also found an answer for problems that need to be regulated. In particular, it relates to the problem of the sphere of expertise connected with the assessment of the damages of the car.

The legislator provides two ways of assessment of damages caused to the property. In particular, Article 21 of Law states that "*In case of initiation of administrative, civil or criminal proceedings, the number of damages caused to the property shall be assessed, and the degree of guilt of the person shall be determined by the judicial order, in essence, resolving the case in full, and the judicial order which has not been instituted or substantiated, in case of non-acceptance by the qualified experts of the Bureau"*[34]

So if the driver decides to initiate administrative, civil or criminal proceedings the amount of the damages caused to the property shall be assessed by the judicial order. In case of non-initiation, the assessment is made by a qualified expert [35]of the insurance company (Bureau).

In the case of choosing the latter, the process of assessment for car damages can be taken in three stages. The first one called *preliminary assessment* which happened when after a car accident a driver files an application called "*Insurance compensation on damages caused by property*" the aim of which is to examine the incident presented in the application and make insurance compensation. After the request, the insurance company appoints the preliminary assessment which is made by an expert from the insurance company. The expert evaluates the damages and makes a report about the amount of compensation. In case if the client does not agree with the amount of the compensation the legislator provides the driver an opportunity to appoint another expertise.

[34] See footnote 1 Article 21

[35] According to Article 8 of the Rules RL 1-013 of Bureau, an expert could be a legal entity or an individual which/who carry out an assessment of the property based on the contract concluded with the insurance company.

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Article 22 (2) of the Law states that, "*if the expert's conclusion is not clear or complete, insurance company, insured person and the injured one ,shall have the right, within five working days after the date of the notification,… with mutual consent appointing additional expertise…*"[36] If after additional examination the client still is not satisfied with the results of the expertise there is another opportunity to appeal the abovementioned decision.

In particular, the clause 3 of the same Article states that, "*where the insured, the insured person (his legal successor) or the insurance company (the Bureau) disagrees with the results of the examination … has the right to request a re-examination. The repeated examination shall be carried out at the expense of the person who has filed the request. Within the limits of the same insurance event, the requirement of repeated expertise provided by this law may be filed only once."*[37]

Also clause 4 of the above-mentioned Article declares that *"…no further expert examination can be imposed after repeated expertise, and the results of double examination may be appealed only through judicial proceedings..."*[38]

As it was shown above if after all these three examinations the client still not satisfied with the result of the expertise, it could be appealed only by the judicial order.

Article 21(2) of the Rules RL 1-013 of Bureau states that "*the expert who undertakes to determine the price of damaged or replaced parts or parts, as well as when calculating the repair work that must be performed in accordance with these rules, should take into consideration the permanent market price of abovementioned parts corresponding to the date of MTPL contract."*[39]

In order to make the process of assessment more reliable and objective, the legislator states that the same expert cannot expertise the same case twice. So whenever the damages are evaluated, they should be done by different experts. Moreover, when an expert assesses the damages, he/it does not rely on the results of previous reports.

[36] See footnote 1 Article 21
[37] Ibid.
[38] Ibid.
[39] Rules RL 1-013 of Bureau, 27 December, 2017 available at https://www.cba.am/AM/lalaws/RL_1_013.pdf , retrieved on April 30

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Tel: (37410) 51 27 55
0019, Yerevan, Armenia law@aua.am

Taking into consideration that during the assessment the expert should rely on the market price of the damaged part of the car it seems logical that the amount of the compensation of each type of expertise should not have much difference but the practice showed the opposite situation. There are cases when the price of compensation from a preliminary assessment is growing twice or even more when the client reaches the last examination. Sometimes there are cases when the situation is the right opposite. Such kind of illogical phenomena leads to hundreds of judicial cases that overload the judicial system.

During the process of assessment of the car part, the expert should find out whether the recovery is possible or the detail should be replaced. The amount of the compensation should be based on the average market price of reparation or replacement of the detail. But the practice showed that the amount of the same car parts in different type of assessment reports could be completely different. Such kind of instability gives a reason of doubt whether the decisions of the experts are guided by Law or rules of Bureau.. These kinds of cases allow unscrupulous clients to get financial benefits from insurance companies. They always appoint new assessment and desire to get as more money as they can even when the damage is minor.

Not only injured persons but also insurance companies suffered from such kind of instability. For example, in the case "*Sil Insurance v "R V M" Consulting*" (ԵԿԴ/0683/02/17)[40] where the expertise company "R V M" Consulting was sued by Sil insurance as the amount of compensation that the expertise company defined in re-examination expertise gives ground for a reasonable doubt of the legality of the assessment report. During the judicial process, the new expertise was appointed in a result of which it was founded out that the price of compensation did not correspond to the market value of the detail and the price has been greatly exaggerated.

Creating the analog of the RAMI in Armenia could solve this problem. Such an organization could create a unified fixed price list for car details and recovery services. This step will stabilize an assessment process an there will be no place for any price manipulation from the expert organization. This step could also help to expert organizations too. Thus, the

[40] "*Sil Insurance v "R V M" Consulting* (ԵԿԴ/0683/02/17) <http://www.datalex.am/?app=AppCaseSearch&case_id=14355223812351894>

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

price list will greatly facilitate to the work of the expert as his/it assessment will be based on the document that provides information about the price each repair service or detail.

However, taking into consideration unsuccessful experience of Russian legislator connecting with the time of updating of price list, Armenian one should keep track of market prices and updates it as often as possible. That will make the system of assessment more flexible.

Above all, in a compartment with making the process of compensation in the way of repair the legislator will also promote the stability of the assessment system. This step will reduce the cases where the insured person wants to cash in on finance of insurance companies

3.5 The issue related to the time limitations regarding the notification about car accident

There is another problem in our insurance system that needs to be solved. It is connected with the time limitation that the legislator gives the driver to call and report about the accident.

Article 76 (4) of the Rules RL 1-001 of Bureau states that the driver after the insured event of an accident after releasing he carriageway but not late than 40 minutes should call to the telephone number mentioned his or her MTPL contract and report his/her insurance company about the accident. [41]

Article 27 of the Law states that "*the insurance company shall have the right of subrogation (subrogation) if... the insurance company has not been notified of the insurance event within the time and in the manner prescribed by the MTPL contract*."[42]

According to clause 2 of Article 19 of the Law " *The MTPL contract stipulates the exemptions from the requirements set forth in paragraph 1 of this Article when the insurer and/or another person legally acquired under a motor vehicle are found unconscious in the event of an accident or that it was impossible within the period specified by the contract and to inform the insured event, or the insurer was not aware and could not have been aware of*

[41] See footnote 2 Article 76
[42] See footnote 1 Article 27

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

an insurance event, whether the motor vehicle was legally owned by the person notifying him or for any other reason. The insured and another person legally acquiring the motor vehicle shall bear the obligation to prove to the insurance company the impossibility (or ignorance) of the insured event". [43]

Analyzing the international practice, it was founded out that such kind of time limitation does not exist in any of the insurance systems of European and post-Soviet countries.

Article 39 of the Road Traffic Act that was adopted in 1972 in the United Kingdom based on which Each European country creates its Insurance legislation states that, "*after a car accident the driver of the car should notify the insurance company about the accident as soon as possible*". [44]The same "scope of time" is mentioned in Russian MTPL Law too.

However, such time limitation in Armenian legislation has its grounds. In particular, stipulating tis time frames the legislator fights against the fraud on the roads.There are some cases when the driver in the moment of accident do not have valid MTPL contract so will be no compensation for the damages caused by his car to another, in order to get the compensation the drivers try to sign a contract after the accident and only after calling the insurance company and report about the accident. 40 minutes that the legislator provides a driver greatly minimize the opportunity of making such a maneuver.

Nevertheless, such kind of time limitation has more negative aspects rather than positive. The practice shows that 40 minutes objectively is a short period for reporting about the accident. There are cases when the driver under the emotions after the accident is not able to report about the accident. In this case, the burden of proof is under the driver to prove his/her inability which is not so easy.

Also, while registration the time of the accident the driver does not pay attention to the time that he/she mentions in the report and could mention the approximate time. As a result, the time that was mentioned in the report and the one that was fixed in insurance companies becomes different, and it could find out that the driver reports about the accident later than

[43] Ibid.

[44] Article 39 of the Road Traffic Act of UK , 1972

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

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40 minutes after the accident. Such incidents lead to the situation when the insurance companies get the ground for subrogation while the driver does not violate the Law.

There are also cases when drivers agree to sign a consensus statement.[45] In this case, the parties can sign a statement without the intervention of a police officer. There are registered many cases when the drivers do not notify the insurance company about the accident thinking that there is no need on it. Nevertheless, when the driver does not report about the accident, it is qualified as a violation of the Law and creates a ground (mentioned above) of subrogation for insurance companies.

So, the timeframe that the legislator had predetermined to improve the accident management process had the opposite effect and makes additional problems for drivers.

The numerous cases that are filed to the court, connected with Article 76, prove the inefficiency of this article clause. It is harm more to the conscientious drivers, make them face problems mentioned above.

However, the reasons for this limitation are the cases of fraud aimed to benefit financially from insurance companies. In case when the insurance companies start to compensate only in kind the main reason of fraud should disappear, and the legislator could rely more on the drivers, in consequences the need to determine time frames will not be needed.

CONCLUSION

Summarizing the claims, findings and observations in this paper, it can be concluded that Armenian legislator provides two options for the aggrieved party to get the compensation for property damages i.e., monetary and in kind compensation.

[45] **Consensus Statement:** a form of a form filled out by the persons legally competent in the event of accident at the scene of the accident, where their signature is provided by the circumstances, facts and other information of the accident;

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

However, the last one is not so popular in Armenia; people prefer to get monetary compensation. Here are the reasons why:

- People rely on the repair masters that they know rather than repair companies that the insurer provides,
- In repair companies that the Insurer provides the price of reparation is higher than in other companies and people do not want to pay extra from their pocket

Annually billions of drams are spend to compensate the property damages caused in accidents. The problem lying behind the growing amount of compensation is not only connected with the quantity of car accidents, but also the fraud that takes place nowadays in the sphere of insurance law.

For preventing fraud cases the legislator and insurance companies try to follow the international practice to improve their system and protect their financials from any manipulations.

One of the ways that could improve the institute of compensation for property damages is making compensation in kind mandatory and not optional for drivers in Armenia. This decision could lead to:

- Stabilizing the system of compensations,
- Reducing numbers of cases in judicial system,
- Improving the quality of the repair services,
- Developing the relations between insurance, assessment and repair companies,
- Absence of fraud cases connected with monetary compensation

For reaching such results some steps should be done. In particular:

- Letting the Insurance company to count the Premiums for their MTPL contracts
- Creating an association that will determine the fixed prices of car details
- The above-mentioned prices should be updated in regular basis.

In result of such changes the institute of assessment of a car details will be developed. The fixed price list will make the expert's reports more reliable and the changes in a cost of

40 Marshal Baghramyan Avenue Tel: (37410) 51 27 55

Tel: (37410) 51 27 55

0019, Yerevan, Armenia law@aua.am

reparation in a different assessments reports will be minor. That will lead to reduction of appeals numbers.

Referring to the limitation period of 40 minutes related to the driver's obligation to call insurance company it was founded out that such limitation which was aimed to improve the accident management process and reduce the fraud cases in motor insurance founds ineffective.

In case when the insurance companies start to compensate only in kind the main reason of fraud should disappear, and the legislator could rely more on the drivers, in consequences the need to determine time frames will not be needed.

40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

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40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am

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40 Marshal Baghramyan Avenue
Tel: (37410) 51 27 55
Tel: (37410) 51 27 55
0019, Yerevan, Armenia
law@aua.am