

HIGHWAY TRAFFIC LAW

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PART 8 **Civil Liability and Insurance**

SECTION 1 **Civil Liability of the Operator**

Civil Liability of the entrepreneur to whom the operator and the vehicle operator are affiliated to

ARTICLE 85 –In instances when operating of a motorized vehicle causes the death or injury of any person or inflicts damage on anything, in case such a motorized vehicle is being operated under the title or company name of an enterprise or through tickets sold by such an enterprise, then the operator of the motorized vehicle as well as the owner of the enterprise to which the aforesaid operator is affiliated to shall be jointly and severally liable for any losses or damages suffered.

In case the motorized vehicle causes any deaths or injuries, an instruction is given by the Public Prosecutor's Office, into whose jurisdiction the event falls, for an annotation to be inserted on the traffic registration of the vehicle in question at the registration office where the vehicle is registered in order to prevent the vehicle, which is involved in an accident, from being assigned or transferred to others or to prevent the establishment any right therein. Any vehicle registrations performed in bad faith between the occurrence of the accident and an annotation being inserted on the traffic registration by the Public Prosecutor's Office are deemed to be null and void. The annotation shall be deemed to be null and void in one month's time as of the date such annotation is inserted unless a court order attesting to either the annotation having been released or otherwise is submitted.

In order for the operator of a motorized vehicle to be held liable due to a traffic accident caused by the same that is not in operation, the aggrieved party shall have the onus of proof regarding the existence of a defect with respect to the operator or persons for whose actions the operator is held liable for in the occurrence of the accident or else that a malfunction in the vehicle was the cause of the accident.

The operator and the owner of the enterprise operating the vehicle may, according to the discretion of the judge, be held liable for any losses sustained by those assisting in the aid efforts following an accident in which the vehicle of such an operator has been involved. However under such circumstances in order for the operator enterprise owner to be held liable, the operator ought to be responsible in person for the accident, and the aid ought to have been extended directly to the operator in person or those within the vehicle or third parties, who are engaged in the accident.

The operator and the owner of the enterprise operating the vehicle is responsible for the faults of the driver of or other persons assisting in the use of the vehicle, which is involved in an accident, as if such faults were his/her own.

Release of the operator or owner of the enterprise the vehicle operator is affiliated to from liability or mitigation of such liability

ARTICLE 86 –

The operator or the owner of the enterprise operating the vehicle shall be relieved of the liability if he/she is able to prove that the accident has occurred due to a force majeure or gross negligence of the aggrieved party without any fault of the operator or persons for whose actions the operator is held responsible for and without a malfunction in the vehicle having affected the accident.

The judge may have the indemnity amount reduced in case the owner or the owner of the enterprise operating the vehicle that fails to be relieved from the responsibility is able to prove that the aggrieved party is at fault in the occurrence of the accident.

Enforcement of general provisions

ARTICLE 87 –

In case the injured or dead person had been transported on a complimentary basis or the motorized vehicle had been given to the injured or dead person on a complimentary basis, the responsibility of the operator or the owner of the enterprise operating the vehicle and those in relation to the owner of the motorized vehicle and its operator due to damages inflicted on the vehicle shall be subject to general provisions.

The responsibility of the operator or the owner of the enterprise operating the vehicle due to damages that occur in the items being transported in the vehicle besides those such as the luggage of the aggrieved party are also subject to general provisions.

There being multiple damage inflictors

ARTICLE 88 – In case more than one person is found liable for indemnification due to losses a third party suffers in an accident that a motorized vehicle is involved in, such persons shall be held severally liable.

In instances when more than one person is liable, the loss, with regards to the relations among such persons, shall be allocated upon the assessment of the entire conditions of the event. Unless special circumstances and specifically operating hazards of the vehicles do not justify the allocation of the loss within the internal relationship in another manner, the operators as well as the enterprise owners to whom the vehicle operator is affiliated to shall participate in the loss in proportion to their faults.

Indemnification of the loss among the operators or the enterprise owners to whom the vehicle operator is affiliated to

ARTICLE 89 –

In case any of the operators suffer any damage in an accident in which more than one motorized vehicle is involved in, the operators of the vehicles and enterprise owners the vehicle operators are affiliated to that are involved in the accident shall carry the liability to indemnify the loss in the proportion of fault assigned to them unless special circumstances and specifically operating hazards of the vehicles justify the allocation of the loss in any another manner.

In instances when anything owned by the operators and enterprise owners the vehicle operators are affiliated to suffer losses, in case the aggrieved party is able to prove that such losses occurred due to the fault of the operator that inflicted the losses in question, or the owner of the enterprise operating the vehicle, or the person who is held responsible for the actions, or because

of temporal loss of judgment, then the operator inflicting the loss or the enterprise owner the operator is affiliated to shall be held liable for the indemnification.

The operators or enterprise owners the operator is affiliated to, which have the obligation to indemnify, shall be severally liable for the loss the operator or the enterprise owners the operator is affiliated to has suffered.

Pecuniary and non pecuniary damages

ARTICLE 90 –

Compensations within the scope of compulsory financial liability insurance are subject to the procedures and principles stipulated in this Law. The provisions of the Turkish Code of Obligations No. 6098 dated 11/1/2011 regarding torts shall apply to the matters not regulated in this Law regarding the compensations in question and moral compensation.

SECTION 2

Insurance

Obligation to take out liability insurance

ARTICLE 91 –

It is obligatory for the operators to take out liability insurance in order to ensure the satisfaction of their responsibilities stipulated in the first paragraph of ARTICLE 85 herein.

Insurance premiums associated with liability insurance are paid in advance. However the Ministry, to which the Treasury Undersecretariat reports to, has the authority to institute arrangements with regards to the collection of premiums in installments.

An amount corresponding to 5% of the insurance premium to be paid by the insured to the insurance companies shall be deposited by the insurance company into the Central Accounting account of the Ministry of Internal Affairs no later than the 20th day of the month following the month in which the premium was collected. The amounts deposited shall be recorded as revenue in the state budget

Vehicles that do not have liability insurance at the valid coverage sums shall be banned from traffic.

In case vehicles with foreign plates do not have insurance that is valid in Turkey according to the procedures and principles to be determined by the Ministry, the Undersecretariat of Treasury reports to, the compulsory liability insurance of such vehicles shall be taken out during their entry through the Turkish borders.

In instances when International Law deems as legitimate, this provision of the ARTICLE shall not apply in case subjects concerning the damages and losses, which foreign armed forces may cause that are permitted to be present in Turkey with the purpose of maneuvers, training, or military exercises within the framework of joint defense or peace operations, are arranged by a special agreement with regards to foreign military vehicles that may enter Turkey within this scope.

Those, who do not comply with the provision herein shall be penalized with a fine of 1.800.000 Liras.

Matters that fall outside of the scope of compulsory liability insurance

ARTICLE 92 – The following matters fall outside the scope of the compulsory liability insurance.

- a) The claims that the operator may address with regards to persons, for whose actions the operator is held responsible for pursuant to this Law,
- b) The claims that may be alleged due to losses that may occur to the belongings of the operator's wife, lineal consanguinity, those related to the operator through adoption relationship, and his/her brothers and sisters he/she resides together with,
- c) Claims regarding losses to those things the operator is not held liable for pursuant to this Law,
- d) Claims arising from accidents in motorized vehicle races or race trials that shall be performed under the coverage of liability insurance according to the third paragraph of ARTICLE 105 of the Law,
- e) Damages that goods carried in the motorized vehicle may suffer,
- f) Claims related to non-pecuniary damages.
- g) Compensation claims corresponding to the fault of the beneficiary,
- h) Compensation claims by parties for which the liability does not fall within the scope of the insured's responsibility,
- i) (Repealed: by the decision of the Constitutional Court dated 17 July 2020 and numbered E.:2019/40; K.:2020/40),
- j) Compensation claims of the beneficiary who has lost support, corresponding to the fault of the person from whom support was received,
- k) Indirect losses such as loss of income, loss of profit, business interruption, and loss of rent,
- l) Compensation claims for diminution in value of vehicles that have been withdrawn from traffic or scrapped due to the damage,
- m) Compensation claims not falling within the liability of the insured, arising from vehicles used in terrorist acts within the scope of the Anti-Terror Law No. 3713 dated 12 April 1991 and acts of sabotage resulting from such terrorism, as well as claims related to damages suffered by persons who knowingly boarded such vehicles used or intended to be used in terrorist acts, and those who participated in acts of terrorism or sabotage.

In cases of payments made by the Social Security Institution under the Social Insurance and General Health Insurance Law No. 5510 dated 31 May 2006, with respect to loss of income, if the insurer is liable to the Social Security Institution pursuant to ARTICLE 21 of Law No. 5510, such liability continues in proportion to the fault of the insured party of the insurer.

Minimum insurance amounts

ARTICLE 93 –The general provisions, coverage sums as well as tariffs and instructions are determined by the Ministry, the Treasury Undersecretariat reports to, and are published in the Official Gazette.

In the determination of tariffs and instructions, matters such as; awarding by way of reducing the premiums of operators, who do not cause any damage payment within the insurance period by vehicle types and geographical regions, and penalizing those operators, who cause such payments by increasing their premiums, and other matters of interest are taken into consideration.

Transactions to be performed in case the insurance contract is granted and the operator changes

ARTICLE 94 –

In case operators of the insured vehicle change, the assigning party shall have to inform the insurer of the situation within 15 days.

Those, who do not comply with the provision of this ARTICLE shall be penalized by a fine of 1.800.000 Liras.

Circumstances that cause the reduction or annulment of indemnity

ARTICLE 95 – Circumstances that arise from the provisions of the law regarding the insurance contract and lead to the annulment or reduction of indemnity liability, may not be argued against those, who are aggrieved.

The insurer that is undertaking the payment may apply the annulment or reduction of the indemnity to the insured in the ratio as per the provisions of the insurance contract and the provisions of the law regarding such insurance contract.

Existence of numerous aggrieved parties

ARTICLE 96 – In case the indemnity the aggrieved parties are to receive exceeds the insurance sum prescribed in the insurance contract, the indemnity claim of each aggrieved party that such may direct at the insurer shall be subjected to a discount according to the proportion of the indemnity receivables total of the insurance sum.

The bona fide insurer, who makes overpayments to one or more of the aggrieved parties in excess of what such parties should be receiving without the knowledge that there are other indemnity claims, shall be deemed to have been relieved of its debt to other aggrieved parties within the framework of the payment such insurer has already made.

Direct claim and cause of action right:

ARTICLE 97 – The injured party must submit a written application to the relevant insurance company before initiating legal proceedings, within the limits stipulated by the compulsory motor third party liability insurance. If the insurance company fails to respond in writing within 15 days from the date of application or if there is a dispute on the grounds that the response does not meet the claim, the injured party may file a lawsuit or apply for arbitration in accordance with Law No. 5684.

Payment of health service charges

ARTICLE 98 –

The costs of healthcare services provided by university hospitals and all other public and private healthcare institutions and organizations due to traffic accidents shall be covered by the Social Security Institution in accordance with the procedures and principles applicable to the reimbursement of healthcare services for those deemed to be general health insurance holders, regardless of whether the injured party has any social security coverage. However, the Social Security Institution shall determine additional healthcare services and set different unit prices for prostheses and orthoses for persons covered under this provision, beyond the standard healthcare services defined for general health insurance holders. These healthcare services shall not be considered within the scope of exceptional healthcare services as defined in the Healthcare Implementation Communiqué.

In compulsory insurances providing health coverage for traffic accidents, an amount not exceeding 15% of the premiums written by insurance companies and contributions collected by the Guarantee Account shall be transferred in full to the Social Security Institution by insurance companies and the Guarantee Account — for the cases specified under ARTICLE 14 of the Insurance Law No. 5684 dated 3 June 2007 — exclusively as compensation for this coverage, in accordance with the principles of insurance, either as a fixed or proportional amount to be determined by the Undersecretariat of Treasury. This amount may be determined separately for each insurance company based on insurance principles. Upon such transfer, the liabilities of the insurance companies and the Guarantee Account under this coverage shall be deemed fulfilled. The President shall be authorized to increase or decrease this amount by up to 50%.

In the event of late payment of the amount to be paid by insurance companies and the Guarantee Account under this ARTICLE, the second paragraph of ARTICLE 89 of the Social Insurance and General Health Insurance Law No. 5510 dated 31 May 2006 shall apply.

The determination and payment of the amount to be transferred by insurance companies and the Guarantee Account to the Social Security Institution, the identification of the insurance coverages that provide healthcare services for traffic accidents, and other procedures and principles regarding the implementation of this ARTICLE shall be determined by the Undersecretariat of Treasury, upon consultation with the Ministry of Health and the Social Security Institution. As for treatment expenses incurred by healthcare institutions affiliated with the Ministry of Health due to traffic accidents, the procedures and principles regarding payments to be made by the Social Security Institution to the Ministry of Health shall be determined separately by the Social Security Institution and the Ministry of Health.

Payment of indemnity and expenses

ARTICLE 99 – Insurers are obliged to pay to the beneficiaries the amounts that are within the compulsory liability insurance limits within eight business days as of the date the beneficiaries transmit the collision report regarding the accident or damage of the beneficiaries or the expert report to the center of the insurer or one of its organizations. The insurer that makes the payment demands in writing from other insurers for the amount paid to be shared according to the liability ratios.

Insurers that do not comply with the provision herein shall be penalized with a light fine of 108.000.000 Liras.

Provisions that apply to voluntary liability insurance

ARTICLE 100 – ARTICLE 95 of the Law regarding the annulment or reduction of indemnity liability, ARTICLE 97 related right to directly claim and file a lawsuit, and ARTICLE 109 with regards to the statute of limitations are also applied to voluntary liability insurance.

Insurance companies authorized to execute insurance contracts and the obligation to insure:

ARTICLE 101 – Compulsory liability insurance stipulated herein shall be performed by insurance companies that are authorized to operate in the accident insurance field in Turkey. These insurance companies have the obligation to write compulsory liability insurance.

Insurance companies that do not comply with the provisions set forth herein shall be penalized with a light fine of 108.000.000 Liras.

SECTION 3 Special Cases

Motorized vehicle trailers

ARTICLE 102 – The operator of the tow truck, whose trailer or semitrailer or a vehicle being towed has caused damages, shall be held liable according to the provisions of the liability of the motorized vehicle operator. The liability pertaining to the towed vehicle shall be subject to general provisions.

The liability insurance of the tow truck also covers the liability of the tow truck operator with regards to the damage the trailer may have caused.

Trailers used in human transportation shall not be allowed into traffic unless additional liability insurance is obtained for the trailer and the entire vehicle combination is included in the minimum compulsory liability insurance sums coverage.

Non-motorized vehicles and motorbikes

ARTICLE 103 – Civil liabilities of non-motorized vehicles and motorbike drivers are subject to general provisions.

Those involved in professional activity with regards to motorized vehicles

ARTICLE 104 – Enterprise owners, who are involved in a professional activity with regards to motorized vehicles, shall be held liable as if they are the operator of the motorized vehicle for any damage such may cause while left in their care for the purposes of monitoring, repair, maintenance, purchase – sale, or for changes to be made to the vehicle. The vehicle operator and the insurer, who has written the compulsory liability insurance for the vehicle, shall not be liable for such damages.

The enterprise owners, referred to above, are obliged to obtain a compulsory liability insurance, whose guidelines are to be determined by the Ministry, the Undersecretariat of Treasury reports to, in order to cover entire motorized vehicles left in their care, and to substantiate that the said insurance has been obtained in audits to be performed.

Provisions pertaining to the operator's liability insurance shall also be enforced herein.

Enterprise owners, who keep motorized vehicles for professional or commercial purposes, are obliged to keep an account of these vehicles in the manner that will be stipulated in the regulation.

Enterprise owners that do not comply with the provisions set forth herein shall be penalized with a light fine of 108.000.000 Liras.

These business locations of enterprise owners, who do not obtain the insurance referred to in the second paragraph, shall be suspended from operations up to 15 days by the most senior civilian authority of the district.

Races

ARTICLE 105 – Race organizers shall be liable for damages as per the provisions pertaining to the liability of motorized vehicle operators, which are caused by the vehicles of those participating in the race or those accompanying them, and other vehicles used in the performance.

The liability pertaining to injuries suffered by racers or those that are within the vehicle with them, and damages that vehicles used in the performance will sustain are subject to general provisions.

It is mandatory for the race organizers, race participants, and those assisting the aforesaid to obtain liability insurance in order to cover their responsibilities against third parties during the race. The Ministry of Commerce has the duty to determine the minimum insurance sums according to the situations and conditions upon the request of the office that has the authority to grant permits to such races. The minimum insurance sums for insurances to be written for motorized vehicles may not be less than the sums of compulsory liability insurance. Provisions of ARTICLE 97 pertaining to the right of the aggrieved party to directly sue the insurer as well as ARTICLE 96 provisions pertaining to the aggrieved parties being more than one stipulated in this Law also apply herein.

Damages that may occur in a race organized without obtaining the necessary permit from the competent authority shall be compensated by the liability insurer of the motorized vehicle that causes such damages. Under such circumstances, the insurer may recourse to the operator(s), who are aware of the fact that a special insurance coverage has not been obtained for the race, or who ought to have been aware in case due diligence had been exercised.

The provisions of this ARTICLE are implemented in motorized vehicle or bicycle sport performances with minimum average speeds that are over fifty kilometers per hour or stipulated to be assessed according to the speed to be reached. These provisions shall also be in effect in instances when the race track is closed to other traffic. The Ministry of Internal Affairs may also decide for the provisions herein to be applied to other races as well.

Vehicles Belonging to the State and Public Institutions

ARTICLE 106 -

The provisions pertaining to the civil liability of the operator herein shall apply with regards to damages caused by motorized vehicles that belong to government agencies included in the general budget, annexed budget administrations, provincial special administrations and municipalities, State Economic Enterprises and Public Institutions. These institutions are obligated to obtain liability insurance from national insurance companies that satisfy the terms

stipulated in Article 101 in order to ensure the coverage of their liabilities as per the first paragraph of Article 85.

Liability in stolen or seized vehicles

ARTICLE 107 – A person, who steals or seizes a motorized vehicle, shall be held liable as if he/she were the operator. The person driving such a vehicle, who is aware of the fact that the vehicle has been stolen or seized, or who ought to have been aware in case due diligence had been exercised, shall also be severally liable together with such a person. The operator may not be held liable, if he/she is able to prove that the operator in person or any of those for whose actions the operator is responsible for, have no fault in the theft or extortion of the vehicle. In instances when the operator is burdened with liability, he/she may recourse to others, who are liable.

Liability with regards to passengers, who get into a vehicle being aware of the fact that it is stolen or seized, shall be subject to general provisions.

Road Traffic Guarantee Insurance Account

ARTICLE 108 – (Repealed: 3/6/2007-5684/45 art.)

SECTION 5 Common Provisions

Statute of Limitations

ARTICLE 109 – Claims pertaining to the indemnification of pecuniary damages arising from motorized vehicle accidents shall lapse in two years as of the date the aggrieved party learns about the damage and the indemnity incumbent, and in any case within ten years as of the date of the accident.

In case the lawsuit arises from an event that requires penal action and the criminal code dictates a longer statute of limitations term for such an action, such a term shall also be valid for the said indemnity claims.

In case of suspension of prescription against the indemnity incumbent, the same shall also be deemed to have been suspended with respect to the insurer. The suspension of prescription with regards to the insurer shall also be deemed to have occurred with respect to the indemnity incumbent.

The right of recourse of indemnity incumbents to each other in motorized vehicle accidents shall lapse in two years as of the date they fully undertake their own liabilities, and learn about the person such recourse shall be made to.

General provisions shall be applicable in other matters.

Competent Court with Jurisdiction

ARTICLE 110 –

Lawsuits arising from liabilities under this Law, including those related to damages caused by vehicles operated or owned by the State or other public institutions, shall be heard before judicial courts. The fact that the injured party is a public official shall not prevent the application of this provision. The provisions of this Law shall also apply to train-traffic accidents occurring at level crossings.

Lawsuits regarding legal liability arising from motor vehicle accidents may be filed either with the court located in the jurisdiction where the insurer's branch office or the insurance agent who issued the policy is situated, or with the court where the accident occurred.

Agreements pertaining to liability

ARTICLE 111 – Agreements, which lift or constrict the civil liability stipulated herein, shall be deemed to be null and void.

Agreements or reconciliations that are clearly insufficient or exorbitant with regards to indemnity amounts may be cancelled within two years commencing as of the date they are executed.