EXTENT OF LIABILITY

Dr. ANGEL ESPINIELLA MENÉNDEZ

4th Civil Seminar CILAW – Ljubljana, 25-26/09/2013
Civil Liability arising from motor vehicle accidents
1. Introduction: Divergences in Member States

2. Damage to Property

3. Personal Injury

4. Economic Losses for Personal Injury

5. Damage to Third Parties

6. Solutions
1. INTRODUCTION: DIVERGENCES IN MEMBER STATES

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Civil Liability arising from motor vehicle accidents
1. **INTRODUCTION: DIVERGENCES IN MEMBER STATES**

- Non Harmonization of European Law - Inconveniences

- Unequal treatment between European Citizens

- Risks of undercompensation in cases of cross-border accidents
2. DAMAGE TO PROPERTY

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Civil Liability arising from motor vehicle accidents
2. DAMAGE TO PROPERTY

1. Repair or Replacement of Vehicle
2. Damage to Personal Assets
3. Costs of Car Rental
4. Accommodation Costs
5. Consequential Losses:
   5.1. Loss of Profit
   5.2. Loss of Use
Do residents of other EU countries involved in road accidents – for which they are not liable – in your Member State generally receive a satisfactory compensation for property damages?

- Yes: 86%
- No: 14%
Source of the graph:

COMPENSATION OF VICTIMS OF CROSS-BORDER ROAD TRAFFIC ACCIDENTS IN THE EU: COMPARISON OF NATIONAL PRACTICES, ANALYSIS OF PROBLEMS AN EVALUATION OF OPTIONS FOR IMPROVING THE POSITION OF CROSS-BORDER VICTIMS

REPORT FOR THE EUROPEAN COMMISSION

IMPLEMENTED BY: DEMOLIN, BRULARD, BARTHELEMY (HOCHE)

SUBMITTED BY: JEAN ALBERT (team leader)


Brussels, 2009
Civil Liability arising from motor vehicle accidents
3. PERSONAL INJURY

- Body Injury to Physical Integrity
- Aesthetic Damage
- Sexual Damage
- Mental Injury
- Pain and Suffering
- Loss of Social Status
- Physical Discomfort (not affecting to work)
- Loss of Life Expectancy
Source of the graph:

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Brussels, 2009
4. ECONOMIC LOSSES FOR PERSONAL INJURY

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4. ECONOMIC LOSSES FOR PERSONAL INJURY

- Medical Expenses
- Nursing Care, Attendance and Special Accommodation
- Funeral Expenses
- Loss of a Chance
- Temporary/Permanent Incapacity to Work
Basis = Compensation level amount for France

Differential

- SK
- SI
- DK
- BG
- ES
- LT
- RO
- MT
- PL
- EE
- CY
- LV
- LU
- PT
- IE
- BE
- HU
- IT
- FR base
- CZ
- UK
- NL
- SE
- EL
- AT
- FI
- DE
Source of the graph:

COMPENSATION OF VICTIMS OF CROSS-BORDER ROAD TRAFFIC ACCIDENTS IN THE EU: COMPARISON OF NATIONAL PRACTICES, ANALYSIS OF PROBLEMS AND EVALUATION OF OPTIONS FOR IMPROVING THE POSITION OF CROSS-BORDER VICTIMS

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Brussels, 2009
5. DAMAGE TO THIRD PARTIES

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5. DAMAGE TO THIRD PARTIES

-Loss of income of third parties: financial dependence on the deceased person

-Models on Pain and Suffering (moral damages)
  -non recognition
  -restrictive recognition
  -wide recognition

[see Martín Casals 2 INDRET(2013)]
5. DAMAGE TO THIRD PARTIES (SIMULATION)
6. SOLUTIONS

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Civil Liability arising from motor vehicle accidents
Art. 3 Directive 2009/103, relating to insurance of motor vehicle

“The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of the measures referred to in the first paragraph (compulsory insurance). (…) The insurance referred to in the first paragraph shall cover compulsorily both damage to property and personal injuries”
6. SOLUTIONS:

6.2. SOFT LAW: PRINCIPLES OF EUROPEAN TORT LAW

Article 10:101: nature and purpose of damage

Articule 10:202: personal injury and death

Articule 10: 203: damage to property

Articule 10:301: non pecuniary damages, including moral damages for third persons
### 6.3. Unification of Conflict of Laws Rules

<table>
<thead>
<tr>
<th>Rome II Regulation</th>
<th>Hague Convention of 1971</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fourteen Member States: Germany, Bulgaria, Cyprus, Estonia, Finland, Greece, Hungary, Ireland, Italy, Malta, UK, Romania, Sweden and Portugal</td>
<td>Thirteen Member States: Austria, Belgium, Croatia, Czech Republic, France, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia and Spain</td>
</tr>
</tbody>
</table>
## 6. SOLUTIONS:

### 6.3. UNIFICATION OF CONFLICT OF LAWS RULES

<table>
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<tr>
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<tr>
<td>Freedom of Choice (art. 14)</td>
<td>-</td>
</tr>
<tr>
<td>Habitual Residence in the same country (art. 4)</td>
<td>-</td>
</tr>
<tr>
<td>Law of the country where the accident occurred (art. 4)</td>
<td>Law of the country where the accident occurred (art. 3)</td>
</tr>
<tr>
<td>Extent of Liability (art. 15)</td>
<td>Extent of Liability (art. 8)</td>
</tr>
</tbody>
</table>
### 6. SOLUTIONS:
#### 6.3. UNIFICATION OF CONFLICT OF LAWS RULES

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<td>-Exception: A manifestly closer connection with another country (art. 4.3)</td>
<td>Exception: preference for the law of vehicle registration, provided that:</td>
</tr>
<tr>
<td>-Hue: when the accident occurs in a State other than the country where the habitual residence of the victim is located, the court should take into account all the relevant actual circumstances of the victim (Recital 33)</td>
<td>-Passengers are not resident in the country where the accident occurs</td>
</tr>
<tr>
<td></td>
<td>-Victims who are outside the vehicle are residents of the State of registration</td>
</tr>
<tr>
<td></td>
<td>All vehicles involved are registered in the same country or all tortfeasors outside the vehicle have habitual residence in the State of registration (Article 4)</td>
</tr>
</tbody>
</table>
6. SOLUTIONS:

6.4. CASE STUDY

- Plaintiff: Spanish and resident in Spain

- Defendants: the driver of the vehicle, registered in Spain, in which the plaintiff was traveling, and his insurer, both resident and domiciled in Spain.

- Backgrounds: the accident occurs in Portugal. A second vehicle registered in Portugal is involved although neither the driver nor his insurer have been sued.

[RULING OF THE AUDIENCIA PROVINCIAL DE PONTEVEDRA
13 DECEMBER 2012, AEDIPR. XII (2012)]
Espiniella Menéndez, *Las reclamaciones derivadas de accidentes de circulación por carretera transfronterizos* (2012)

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