

EJTN - Seminar on Civil Liability arising from motor vehicle accidents

Overview on legal basis of Civil liability arising from motor vehicle accidents

Ljubljana/Slovenia, 25.9.2013

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Overview

I. International Jurisdiction

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I. International Jurisdiction

Where is the competent court?

- „Brussels I-Regulation“ No 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
 - *New Regulation No 1215/2012 will enter into force on January 10th, 2015.*
- Art 2: domicile of defendant
- Art 5 No 3: place where the harmful event occurred
- Art 11 par 2, Art 9: domicile of plaintiff in procedures against the insurer
 - Cf., ECJ *Odenbreit*, C-463/06
 - But not seat of the (social) insurance (company/authority) if it recovers damages
 - Cf, ECJ *VGKK./WGV*, C-347/08



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II. Applicable law

Which law is applicable?

- The Hague Convention on the Law applicable to Traffic Accidents (May 4th, 1971)
 - Art 3: The applicable law is the internal law of the State where the accident occurred
 - several exceptions
 - Some EU-MS: A, B, CZ, SLO, F, LUX, NL, POL, P, SLK, E and CH but not IT and Germany

- Rome II-Regulation No 864/2007 on the law applicable to non-contractual obligations
 - Art 4: law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.



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III. „Our Case“

Austrian Supreme Court, March 28th, 2012, 2 Ob 9/12f

Our Case – Decision of the Austrian Supreme Court, March 28th, 2012, 2 Ob 9/12f

- Road accident in Austria of Moldovan car.
- “Bursting” of Tires
- Two passengers (Moldovan nationals) were thrown out of the car
- No fault of the driver
- Each of passengers claim approx € 66.000,-- for bodily injury

- In Moldova no strict liability (Law No 1508-XII of Republic of Moldova)
- Austrian Supreme Court denied liability – no infringement of Austrian ordre public

IV. 31 National Reports

Sources:

Lemor/Becker, Road Accidents – The Victim's Guide to Europe, 2nd edition, 2004

Bachmeier (ed), Regulierung von Auslandsunfällen, 2013



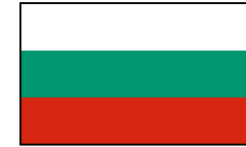
Austria

- The basis for compensation claims resulting from road traffic accidents may lie in strict liability according to the Law of railway and motor liability of 21st January 1959 (EKHG) as well as in liability arising from negligence according to §§1293 ff of the General Civil Law Code (ABGB).
- Strict liability is imposed on the registered user as well as an unauthorized driver of a vehicle. It is excluded if the accident was caused by an unavoidable incident. The amount of liability is limited.
- There are no limits regarding liability arising from negligence. Contributory negligence limits liability. If the degree of negligence to be imposed on each party concerned cannot be determined each party bears half of the damage. In a case of minor negligence damages are limited in certain respects, for example, no claim for loss of earnings is possible.
- Verband der Versicherungsunternehmen Österreichs: www.vvo.at
- Access to law: www.ris.bka.gv.at



Belgium

- The basis for compensation lies in Art. 1382 etc. of the „Code Civil“: Liability is principally established by proving that the accident was caused by negligence.
- Negligence of the registered user, however is assumed if the responsible motor vehicle was technically defective. The assumption can only be refuted if the registered user proves that the accident was not due to the technical defect of the motor vehicle but to another cause.
- Besides this liability can only be defended on the basis that the accident was caused by an Act of God, third parties or the victim himself. If the defendant pleads on Act of God it must have been the exclusive cause of the accident (in cases of minor negligence the defence of an Act of God is excluded). Acts/negligence of third parties or the victim may limit liability completely or partly.
- Belgian Motorinsurance Information Center (BMIC): www.fcga-gmwf.be



Bulgaria

- The basis for compensation of claims resulting from a traffic accident is the liability for tort, stipulated by Art. 45 of the Law of Obligations and Contracts. Liability is based on negligence. There is an assumption of negligence in all cases.
- No liability is borne in the cases of accidental event or insuperable force (force majeure). In order to be exempt from liability the driver must prove that the event was unforeseeable and independent of human will and that the result of the event was unavoidable by permitted and necessary measures.
- In certain cases strict liability may be attributed to the owner of the vehicle for damages caused by an object. In order to be exempt from liability, the owner must prove that the event has been caused by negligent act of another person or force majeure.
- There is no limitation of the liability for tort, including in respect of liability resulting from traffic accidents.

Croatia



- The basis for compensation claims due to traffic accidents is the Law of Obligations
- The Law of Obligations knows strict liability;
- see Art 1063 - 1072 Law of Obligations



Cyprus

- The basis for damage claims in Cyprus is the Law of Torts (illegalities).
- For this reason, the insured's fault must be proven.
- In certain cases liability can be taken for granted.
- Contributory negligence can reduce the third party's liability, and as a consequence, also the amount of compensation claimable.
- Director of the Road Transport Department: <http://rtd.mcw.gov.cy>



Czech Republic

- According to § 420 of the Czech Civil Law Act (ZGB) the driver is only liable on the basis of negligence for damages due to traffic accidents.
- The operator (most frequently the registered owner) of the vehicle causing the accident is liable on the basis of §§ 427 until 431 ZGB irrespective of negligence.
- Liability goes on from the operation of means of transport and applies to bodily injury and property damage.
- The nature and scope of compensation are founded on § 442 to § 450 ZGB. Contributory negligence of the injured party reduces liability.
- Česká Kancelár Pojistitelu (Czech Insurers' Bureau): www.ckp.cz



Denmark

- The basis for claiming compensation, apart from negligence due to tort, is strict liability according to the Road Traffic Act (§ 101).
- But only for bodily injury
- Not for property damage (negligence required)
- Strict liability applies against the driver and the registered user. As the law does not allow any defence (not even a defence of inevitable accident) it can be described as absolute liability. Only the intentional contributory negligence of a claimant limits the extent of liability.
- No use of §101 of the RTA can be made by the drivers and the registered users of the motor vehicles involved in the accident as far as their own property damage is concerned. In this case compensation can only be claimed in the event of negligence.
- DFIM (The Danish Motor Insurers Bureaux): www.dfim.dk



Estonia

- Accidental damage consists of bodily injury or property damage caused by a traffic accident.
- Accidental damage is only concerned subject to the following pre-requisites:
 - The damage must have been caused by the operation of a vehicle (vehicle in motion or stationary) insured against third party liability;
 - there must be a cause-and-effect connection between the operation of the vehicle and the damage caused;
 - liability is granted towards the registered owner and driver of a vehicle (even if the damage was caused by the driver of an unidentified vehicle).
- Estonian Traffic Insurance Fund: www.eksl.ee

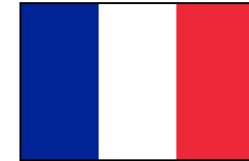
Finland



- The basis for compensation claims arising from traffic accidents is liability due to negligence according to the Act of Torts of 1974 and strict liability according to the Motor Liability Insurance Act of 1959.
- In accordance with the Motor Liability Insurance Act, compensation for any damage or injury resulting from a road accident is paid out of the policy taken out for the motor vehicle that caused the accident. Compensation is always paid according to the principle of strict liability; the victim does not need to present any proof of negligence. Strict liability only allows claims against the insurer of the vehicle responsible for the accident and principally only applies to non-motorised victims of traffic accidents.
- Under the provisions any person (i.e. also the driver, possessor or owner of the insured vehicle, „First party cover“) suffering bodily injuries is entitled to receive compensation for his/her own injuries, except the owner/driver of the vehicle being registered abroad.

Finland II

- As regards collisions of two or more vehicles, compensation for material damage is paid in accordance with culpability. Guilty party's motor liability insurance covers all other material damages except damages occurred to his/her vehicle or property transported in the vehicle.
- Contributory negligence can only be taken into account in respect of property damage claims.
- Subject to special circumstances liability is excluded:
 - If the accident has been caused deliberately;
 - If the accident involves drink-driving;
 - If the case involves a crime (unauthorised possession of vehicle).
- Liability for property damage in the event of strict liability is limited. Thereafter the extent of compensation depends on the application of loss compensation rules.
- Liikennevakuutuskeskus (Finnish Motor Insurers' Centre): www.lvk.fi/ic



France

- The basis for compensation is Art. 1382 ff of the Civil Law Code (Code Civil) as well as the Law No 85-677 of 5.7.85 („Loi Badinter“) modified by the Law No 2003-706 of 1st August 2003.
- The „Loi Badinter“ provides for strict liability on the part of the registered user and driver of a motor vehicle. In respect of bodily injury (excluding bodily injury of the driver) strict liability has to a large extent developed into absolute liability. In fact the law is based on the concept of „involvement“ of the vehicle (distinct from the notion of liability). The insurer of the vehicle involved must compensate the victim (but he may subsequently seek redress). Neither an Act of God or an act of a third party exclude liability. Only a fault on the part of a driver reduces or extinguishes his right to compensation.

France II

- Further, no contributory negligence can be assumed against the injured/deceased party unless there is inexcusable conduct which has been the exclusive cause of the accident.
- Even this possibility of contributory negligence does not apply where „vulnerable“ road users are involved, except if they cause the injury deliberately.
- If property damage (or bodily injury of the driver) has to be compensated the law also provides for strict liability. In such a case, the contributory negligence of the injured party can be valid defence. If responsibility cannot be determined, each driver is liable for the full damage of the other driver (no sharing of liability).
- AGIRA – Organisme d’information: www.agira.asso.fr/content/organisme-dinformation



Germany

- Claims for compensation can arise from both liability based on negligence and from strict liability.
 - Liability based on negligence
 - The liability based on negligence is due to the law of tort and is laid down in Art 823, par 1 BGB (Civil Code).
 - A basis for compensation claims according to Art 823, par 2 BGB can also result from the violation of a law aiming to protect another person. In the first place, the provisions of the StVO (Road Traffic Regulation) as well as the StVZO (Regulations Authorizing the Use of Vehicles for Road Traffic) have to be named as protective laws in the sense of Art. 823, §2 BGB.
 - Strict liability
 - The basis for strict liability is Art. 7 StVG (Road Traffic Act). Consequently, the registered user of a motor vehicle is liable for damage caused by the operation of the vehicle. Claims based on strict liability are only possible against the registered user or his insurer.
 - If the accident happens during the operation of an articulated vehicle the injured party can claim compensation from the registered user of either the trailer or the tractor.
 - The extent of liability is laid down in Art. 12, §1 StVG. The liability is limited.
- GDV Dienstleistungs- GmbH & Co KG: www.zentralruf.de



Great Britain

- The basis for compensation lies in the law of tort. Liability is established where there is negligence, together with a duty of care to the victim.
- Assumptions of negligence only exist in exceptional circumstances (e.g. in cases where the motorist has been convicted of a serious driving offence, or where the victim is a child). Contributory negligence limits liability.
- Great Britain is made up for three different legal jurisdictions and whilst the law in each jurisdiction is similar there are important differences both in the compensation payable and the legal process.
- Motor Insurers' Information Centre (MIIC): www.miic.org.uk



Greece

- The basis for compensation can be both strict liability (Law on strict liability of 1911) and liability due to negligence further to tort (Art. 914 of Civil Law Code). Strict liability applies to both the registered user and the driver. It is not applicable if the accident was due to an Act of God or if the accident was caused entirely by the injured party. The driver is released from strict liability if the accident was due to a technical defect of the car of which he was unaware. Passengers car cannot plead that strict liability applies against the driver of the vehicle in which they were travelling (exception: Bus passengers). The law does not provide for any limit of indemnity on a liability basis. However, the courts and others must take the solvency of the offender into account when establishing the compensation. Within the scope of liability due to negligence, contributory negligence is considered to limit liability.
- Kyriakos Tsenidis, The Greek Information Center: www.gge.gr

Hungary



- A potential basis for compensation is negligence and a special fact of strict liability both of which are governed by the Civil Code of 1959 (Ptk). Liability due to negligence is based on the general law of tort (§339 (1) Ptk), strict liability is a special right of claim for damages resulting from dangerous activities (§345 Ptk).
- A new Civil Code will enter into force on March 15th, 2014 (§ 6:519 – liability and § 6:535 et seqq – strict liability)
- The person under strict liability shall be exempted only in cases where the damage was caused by an unavoidable event beyond the scope of the highly dangerous activity. The driver is not exempted from liability even if he exercised the utmost care. However, contributory negligence of the victim reduces liability. Unless otherwise stated, strict liability is unlimited.
- In case of two or more vehicles involved in an accident, the negligent party is liable; if there is no negligence at all – in case of all the participating cars –, the one will be held liable, who had – as a cause of the accident – a malfunction in connection with the use of his car; finally if no malfunction is connected with the use of any of the participating cars, everyone shall bear his own loss by himself (§346 Ptk).
- Magyar Biztosítók Szövetsége Gépjármű Kárrendezési Iroda – MABISZ GKI
Association of Hungarian Insurance Companies Motor Insurance Bureau:

Ireland



- Liability in tort arising from improper action is regarded as the basis for a claim (tort of negligence).
- Account is taken of contributory liability on the part of the injured party.



Italy

- The exclusive basis for claims compensation is liability arising from negligence according to Art. 2043 ff of the Civil Law Code (Codice Civile). However, negligence is assumed against the driver (Art. 2054 CC).
- This assumption can be disproved if the driver shows that even by observing the utmost care the damage could not have been avoided by him.
- There is a strict liability of the registered user (Art. 2054 par. 3 CC)
- In the event of a collision between several vehicles it is assumed – pending proof to the contrary – that all drivers involved contributed to the accident to the same extent.
- Car passengers can only assert the assumption of negligence towards the driver if they have been carried for reward on a commercial basis.
- The owner of the vehicle (or his servant or agent) is jointly liable – together with the driver, unless the driver used the vehicle without the permission of the owner of the vehicle.
- Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (ISVAP): www.ivass.it

Lithuania



- The system of legal liability for which insurance is compulsory is based on tort. The basis for claim compensation is liability according to the Civil Code.
- Motor Insurers' Bureau of the Republic of Lithuania: www.cab.lt



Liechtenstein

- As the right of claim is governed by the same rules like in Austria (tort)/Switzerland (strict liability) it can be fully referred to the relevant chapter in the report on Austria/Switzerland.
- NBI/NGF, Information Center CH/FL: www.nbingf.ch

Latvia



- There are three main legislation acts that concern the compulsory TPL insurance in Latvia: The „Law on Third Party Liability Insurance for Inland Motor Vehicle Owners of the Republic of Latvia“ (Motor TPL Law), the „Law on Insurance Companies and their Supervision“ and the „Law on Insurance Contracts“.
- Traffic Bureau of the Republic of Latvia: www.ltab.lv

Luxembourg



- The basic requirement for compensation from traffic accidents is liability arising from negligence according to Art. 1382 ff Code Civil. In view of a presumption of negligence, contained in Art. 1384 §1 Code Civil, which applies to the vehicle driver (not the registered user), liability has developed to being close to that strict liability. The presumption can be disproved by evidence that the accident was due to an unavoidable event other than a defect of the vehicle. If the accident was caused by a third party liability can be shared. Further, on the basis of liability arising from negligence, liability is attributed to the driver only. Contributory negligence limits liability.
- Fonds de Garantie Automobile: www.fga.lu



Malta

- The exclusive basis for compensation is liability arising from a criminal or a negligent act or omission. Article 1031 of the Civil Code lays down the principle that every person shall be liable for the damage which occurs through his fault.
- According to Article 1032 a person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence and attention of a bonus paterfamilias.
- The provisions on tort further provide that any person who, with or without intent to injure, voluntarily or through negligence, imprudence or want of attention, is guilty of an act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.
- The person claiming compensation must prove a causal link between the driver's negligent act or omission and the resulting damage. It is the onus of the victim to prove that the damage is actually the direct effect of the negligent act or omission of the defendant.



The Netherlands

- The basis for compensation claims resulting from traffic accidents is liability arising from negligence according to the Civil Law Code (Art. 6:162 Burgerlijk Wetboek).
- Art. 185 of the Road Traffic Act (Wegenverkeerswet) contains a legal presumption of strict liability (in order to protect those injured parties who are not motorised road users) against the registered user of a vehicle, which extends the principle of liability arising from negligence according to the Civil Law Code. Only Acts of God or deliberate acts or gross negligence on the part of the non-motorised road user would exclude liability.
- Nederlands Bureau Motorrijtuigverzekeraars: www.nlbureau.nl



Norway

- For compensation claims resulting from traffic accidents the injured party can base his claim on negligence arising from tort and also on strict liability.
- Strict liability, independent of negligence, is set out in the Motor Liability Law of the 3rd February 1961. It only allows claims against the insurance company, not against the offender or registered vehicle user. Furthermore according to strict liability damage to a vehicle or its passengers and goods transported therein which have been caused by another vehicle – subject to special circumstances – are only to be compensated where the owner, driver or passenger of the other vehicle has caused the damage as a consequence of negligence; defect in the other vehicle; there has been a road traffic violation, or the vehicle was driven in a way and manner, was parked or otherwise used, contrary to prevailing traffic laws.
- Norwegian Motor Insurers' Bureau: www.tff.no

Poland



- Regarding claims for damages resulting from road accidents the civil law code of 3rd April 1964 („ZGB“) comprises liability based on negligence as laid down in the common law of torts (Art. 415 ZGB) as well as liability based on a special strict liability (Art. 436 in conjunction with Art. 435 ZGB).
- Strict liability is provided for damages resulting from the operation of mechanically driven means of transport – now and then also of motor vehicles. It concerns the exclusive possessor respectively – if existing – the possessor as bailee. An Act of God as well as the sole liability of the injured party or of a third party exclude the claim. Contractual exclusions or restrictions are not admitted. Claims for bodily injury, property damage and financial loss are subject to be indemnified. In the case of collisions between vehicles strict liability cannot be pleaded by: the vehicle owners and persons transported on a courtesy basis. They only can go back to liability based on negligence according to the law of torts. However, the vehicle drivers, too, maintain in such a case their claims on the basis of negligence. The claim is restricted by contributory negligence.
- Insurance Guarantee Fund (IGF)



Portugal

- The basis for compensation may be liability resulting from negligence as well as strict liability. Liability resulting from negligence is founded on the right of tort (Art. 483 nr. 1 Civil Code), strict liability is founded on Art. 503 Civil Code.
- Strict liability applies to a person who actually controls a vehicle. Liability is excluded if the accident was due to an Act of God but not a vehicle defect. Furthermore liability does not apply if the accident was exclusively caused by the claimant himself or another third party. The liability to indemnify is limited to specific maximum amounts. If it cannot be determined which of the parties involved caused the accident liability is shared (Art. 506 Civil Code).
- Instituto de Seguros de Portugal: www.isp.pt

Romania



- The liability based on negligence is due to the law of tort and is laid down in Art. 998 – 1003 of the Romanian Civil Code as well as the Law 105/1992 relating to the settlement of the international private law relationships.



Slovak Republic

- Basic prerequisites for the origin of liability as set out in the Civil Code are: Breach of a legal obligation, existence of a damage, cause-and-effect-connection between the breach of a legal obligation and the damage, and liability.
- Slovenska Kancelaria Poistovatelov: www.skp.sk

Slovenia



- Loss compensation rules are governed by the Law of obligations of the year 2001 (official journal RS No 83/01 of 25th October 2001) in the following called OG. Liability is based on negligence by changing the onus of proof (assumed liability), Art. 131 (1) OG. Objective liability – objective causal liability (Art. 131 (2) OG) – is applicable for damages caused by an object from which an increased peril for environmental damage originates. The owner of the dangerous object can avoid liability by proving that the damage is due to a circumstance beyond the quality of this object and that such an effect could not be expected. The owner is also exempted from liability if he submits evidence that the damage was caused by an unforeseeable conduct of the victim or by a third party whose consequences could not be avoided or eliminated by him. The owner can be partly exempted from objective liability if a partial contributory negligence lies upon the victim (Art. 153 (1)-(4) OG).

Slovenia II

- Liability between the owners of vehicles is laid down in Art. 154 OG. The principle of negligence applies regarding damages caused by the use of vehicles. If both parties are negligent there is an equal repartition of liability unless this would be contrary to equity. There is a joint and several liability of the two or more vehicle drivers involved in the accident relating to the damages suffered by third parties.
- Slovenian Insurance Association: www.zav-zdruzenje.si



Spain

- Civil liability arising from traffic accidents and the claims that can be made on the basis of it are governed by Law 30/95, 8th November, „Regulation and Supervision of the Private Insurances“ and 8th Additional Disposition „Civil Liability and Motor Car Insurance“, published 9th November 1995, which introduced into the Spanish Law the three E.U. Directives concerning Third Party Liability (TPL) Motor Car Insurance.
- Civil Liability in traffic accidents can be established via both the civil and criminal courts; through article 1902 following the Spanish Civil Code which establishes Civil Liability derived from guilty and/or negligent acts. In the criminal courts, it is also possible to pursue civil actions to obtain damages resulting from punishable acts.
- Damages for bodily injury are governed by the principle of liability through risk (strict liability). The material damages are governed by the principle of negligence (causal acts) and both apply to the driver of the vehicle causing the accident.

Spain II

- The driver has no liability where the accident is due to the sole fault or negligence of the victim; or where the cause is Force Majeure or other than the driving or functioning of the vehicle. The behaviour of the victim where it amounts to contributory negligence will reduce the assessment of damages.
- Civil Liability arising from traffic accidents is limited.
- Consorsio de Compensación de Seguros: www.consorsegueros.es



Sweden

- The personal injury claim is settled in first place by the Traffic Damage Act (in force from 1st July 1976) including MTPL-insurance of the vehicle in which the injured person was transported or by which he was injured. The indemnity is paid on basis of objective liability. The driver, too, is entitled to compensation irrespective of responsibility.
- Damages for personal injury according to the Traffic Damage Act can be claimed only from the insurer and not from the owner, user, driver or passenger of the vehicle involved in the accident.
- Trafikförsäkringsföreningen – Swedish Motor Insurers' Bureau: www.tff.se



Switzerland

- A potential basis for damages resulting from traffic accidents can be strict liability according to the Road Traffic Act (Art. 58 pp SVG) and liability arising from negligence according to the right of obligations (OR). The liable party within the framework of strict liability is the registered user of the motor vehicle causing the accident. Liability is excluded in case of an Act of God or if the accident was caused by the gross negligence of the injured party or by a third party. Moreover, in order to be exempted from liability, it is necessary that neither the registered user himself nor persons under his responsibility are negligent nor any faulty condition of the car has contributed towards the accident. Liability is reduced by contributory negligence of the injured party. Principally, property damage is compensated between registered users on the basis of negligence; the injured user has to prove negligence of the third party resp. of the person being under the responsibility of that person. The same applies in case of a temporary disorder of consciousness or in case of a vehicle defect. If there is a discrepancy regarding the operational hazard of each vehicle involved in the accident this element will also be of importance for the evaluation of liability.
- NBI/NGF: www.nbingf.ch

Thanks for your attention

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