

Germany

1. Actions to take immediately after road traffic accidents

The police must be notified if people have died or been injured in the accident. The police can be contacted on the national emergency number 110. The police will then draw up an official report. Whether or not you should inform the police in other cases, depends on the severity of the damage. In the case of accidents involving limited damage to property, the police are not obliged to draw up an official report. You may not leave the scene of the accident before you have exchanged information necessary to settle any claims with the other parties involved in the accident. It is a criminal offence to do so. If the police are not called to the site of the accident, for example, when the accident involves material damage only, you are strongly advised to use the European Claim Form which can be obtained from your insurance company. It is important that both parties involved in the accident sign the form because the form is normally used as evidence. It is also important to take down the names and addresses of any witnesses as well as to give information on the facts of the accident. It is also advisable to take a photograph of the scene of the accident.

NB: Do not sign the European Claim Form if you do not understand the content! The same applies to other statements on who is to blame for the accident. You should not sign the form if there are differences of opinion on the facts of the accident. In such a case it is advisable to contact the police, even if the accident only involves damage to property.

2. Legal procedure

In accordance with the German Road Traffic Act (*Straßenverkehrsgesetz*), the holder of a motor vehicle is strictly liable for the damage caused by him when using the car, even if he cannot be blamed for the accident. A motor vehicle is in use for so long as it is in traffic and exposes other road users to danger. The holder of the car is not liable if he can prove that the accident was caused as a result of *force majeure*. The strict liability does not apply to passengers.

In addition to this strict liability, there is also fault-based liability. According to the Civil Code, a person who does not exercise the due care required on the road, is liable for the damage caused by him as a result.

Criminal proceedings

If the driver of a vehicle involved in an accident has committed a traffic violation and this has resulted in the accident, this can lead to a preliminary inquiry. This may be the case, for example, if the accident has resulted in bodily injury or if the accident was caused as a result of a dangerous traffic manoeuvre.

If criminal proceedings are instituted, the victim may join the proceedings as a plaintiff claiming damages. This will only be the case if the civil claim is not too complex. The court adjudicating the criminal proceedings will then also adjudicate the civil claim. If the accused is acquitted or if the civil claim is too complex, the court may relinquish adjudication of the

civil claim. In Germany, this type of action brought by a plaintiff claiming damages as part of criminal proceedings is not very common in practice.

Legal assistance

It is advisable for the lower court (Amtsgericht) and compulsory for the other courts (Landgericht and others) to obtain legal assistance from a lawyer if criminal proceedings are instituted. Legal assistance insurance can be very useful in such a case.

Civil proceedings

In practice, claims for compensation are dealt with by the civil court. The majority of claims are settled out of court. Claims for compensation must be submitted to the other party's insurer. The claim can be made directly to this insurer. If a settlement cannot be reached with the insurer, the claim can be submitted to the civil court.

Legal assistance

If the accident has serious consequences, for example if someone is badly injured, it is advisable to seek legal assistance, possibly via a legal assistance insurer. Assistance by a lawyer is only compulsory in the case of district court proceedings (Landgericht); this is not compulsory for proceedings before a lower court (Amtsgericht).

The costs of legal assistance will be reimbursed if such assistance was necessary. If you win the case, the costs will be paid by the other party.

3. Compensation for damages/time limits

Written claims can be submitted directly to the other party's insurer. It is generally expected that you must be able to provide proof of the cause, amount and extent of the damage. This can be done by means of witnesses, invoices, assessor's reports etc.

If the person responsible for the damage is uninsured or if his identity cannot be ascertained, the injured party can claim against the German Motor Traffic Guarantee Fund (*Verein für Verkehrsoferhilfe*).

Time limits

Criminal proceedings

Time limits can differ. The time limit depends on the type of traffic offence and the punishment imposed for such a traffic offence. The time limit for minor traffic violations is 3-6 months; traffic offences that are resolved by means of a fine have a time limit of 6 months to 3 years. Serious traffic offences for which prison sentences are incurred have a time limit of 3-5 years.

Civil proceedings

The insurer or the liable other party must be notified of the damage within 2 months of the damage and the perpetrator of the damage becoming known. If this is not done, it will not be possible to claim compensation on the basis of strict liability. Claims for compensation after traffic accidents have a time limit of 3 years, regardless of whether they are based on strict liability or fault liability.

4. Damages to be compensated

All necessary and actually incurred costs for medical treatment and care, including travel costs incurred to get medical treatment, qualify for compensation.

Moreover, the person obliged to pay damages must pay compensation for all costs connected with the securing of income, therefore not only the loss of income, including the holiday allowance, bonuses and overtime, but also other forms of economic loss related to the loss of working capacity, such as gratuities, lost profit, pension benefits, and loss as a result of late entry into the labour market. If the employer is obliged to continue paying the salary, it will in principle not be possible to claim loss of income. The claim of the employee will then pass to the employer.

An injured victim is entitled to claim appropriate damages for pain and suffering. The amount of these damages depends on the nature and severity of the injury, the duration of the treatment and the degree of blame to be assigned to the victim and the perpetrator respectively.

If the victim has died, his dependents will be entitled to compensation for the cost of living if they were dependent on the deceased for their livelihood.

Dependents of a deceased or seriously injured victim will, in principle, not be entitled to non-economic damages. However, symbolic damages for pain and suffering may sometimes be paid out in the case of a particularly tragic loss, for example, where children die or in the case of serious psychological injury caused by the death of a family member, where such injury can be ascertained medically.

5. Accidents abroad

With effect from 20 January 2003, the 4th Motor Insurance Directive has been in force regarding traffic accidents outside your own country. Victims of traffic accidents can now claim compensation in a simple manner from the insurer of the party at fault. Such claims are submitted to the representative of the foreign insurer in the country of the victim: the claims representative. Addresses of claims representatives are available from the Information Centre. The centre can also provide information on the compensation body that will make payment if the insurer fails to designate a claims representative or does not respond to a victim's claim.

You can find additional information on this procedure at this website.

6. Useful addresses

FEVR member organisation

DIGNITAS

Friedlandstrasse 6, D-41747 Viersen 1

Tel: +49 2162 20032 Fax: +49 2162 352312

Website: www.dignitas-ev.de/index.htm

- Verein für Verkehrsofferhilfe e.V., Glockengießerwall 1, D - 20095 HAMBURG 1 (tel: (00-49) 40 301800, fax: (00-49) 4030180700, e-mail: voh@verkehrsofferhilfe.de)
- ADAC, Am Westpark 8, D-81373 Munich (www.adac.de)
- Police emergency number: 110

- Information centre: GDV Dienstleistungs- GmbH & Co.KG: Zentralruf der Autoversicherer
Glockengießerwall 1 - D 20095 Hamburg; tel 00 49 40 33 449 0; fax 00 49 40 33 449 7050; [www. zentralruf.de](http://www.zentralruf.de)