

PORTUGAL

1. Actions to take immediately after road traffic accidents

Police

The police must be called whenever a road accident takes place, unless the damage is very minor. The police can be reached by calling the national emergency number – 112. This is also the number to call for an ambulance and the fire brigade.

The police will take charge of the situation and will take down all the details of the accident and identify all those involved. It is usual for police to test blood alcohol levels. If there are witnesses, they will only be asked to provide identification. Copies of the police report may be requested two weeks after the accident occurred, and the contents of the report are accepted as legal evidence in the case of litigation.

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.

Hospital

Injured persons will be transported to the nearest hospital that is equipped to handle such injuries and able to provide all the necessary medical care and other forms of assistance. It is advisable to take some form of food and drink, such as fruit, biscuits and bottled water, because although the hospital will supply food it may not be of the type desired.

Should a fatality occur, the body will be taken to the morgue of the nearest city. The police will call a family member to identify the body, after which it will be released for the funeral, except in cases in which a crime is suspected. In such cases the body will be released after an autopsy has been performed. A Portuguese funeral agency will deal with the process of transporting the body. The death certificate will be issued by a doctor connected with the hospital in question, the morgue, or the Institute of Legal Medicine.

2. Legal procedure

A person who causes a traffic accident is liable under criminal and civil law.

Criminal proceedings.

When an accident leads to a death, this is considered to be a public crime, so in this kind of case it is the state that initiates criminal proceedings. The family of the victim may become the plaintiff in the case, but the state undertakes the case and conducts it through prosecutors from the Public Prosecutions Department (*Ministério Público*). If the family of the victim is claiming compensation,

they must engage a lawyer who will bring a civil suit, which will take place at the same time as the criminal case, and, normally, be resolved simultaneously.

If there is a victim who has suffered physical injury, the criminal proceedings are undertaken by the victim. However, if the state considers that there is cause to bring criminal proceedings, it will conduct the case with the injured person as plaintiff. In this situation, it will also be necessary to engage the services of a lawyer.

Civil proceedings.

Civil liability in the case of traffic accidents is determined according to fault liability and strict liability. Strict liability applies to the person in control of the vehicle, unless the accident involved *force majeure* or was due solely to fault on the part of the victim himself or a third party. *Force majeure* cannot be invoked if the accident was caused as a result of a defect in the vehicle.

Whenever an accident involves pedestrians, it is presumed that the driver of the vehicle is liable, even if in fact he was not to blame, because it is very difficult to prove incorrect behaviour on the part of a pedestrian.

The person who caused the accident must notify his insurance company about the accident. Should he not do so, the injured party may make a "third party notification" directly to the insurance company of the person who caused the accident, forcing him to acknowledge the event. For this reason you should always request the presence of the police when any accident takes place, since if the person who caused the accident does not report it, the police report is fundamental in order for the insurance company to assume its civil liability.

In order to complete the bureaucratic procedures for making a claim for compensation under civil law to be paid by the insurance company, it is not always necessary to engage a lawyer. A lawyer must be engaged in legal proceedings for claims amounting to € 2,500 or more. Care should be taken in negotiating the honorarium to be paid, which should not exceed € 75 /hour + VAT + expenses. Honoraria calculated as a percentage of the amount to be received are not permitted in Portugal.

The subdistrict court (*Tribunal de Comarca*) having jurisdiction over the location where the accident took place is the competent court, regardless of the amount of the claim for compensation.

3. Compensation for damages/time limits

The claim for compensation can be submitted directly to the motor insurer of the person who caused the damage. The person who caused the accident must notify his insurance company about the accident. Correspondence with the insurer can be in English or French.

If the vehicle is uninsured or if the liable driver cannot be identified, the claim can be submitted to the Portuguese Guarantee Fund. The Guarantee Fund must provide cover for loss resulting from an injury and damage to property. An excess applies in the case of damage to property.

Time limits

Criminal proceedings

Various time limits have been set, depending on the nature of the offence. The time limit for a traffic violation is shorter than for a traffic offence (for example, driving under the influence).

Civil proceedings

The time limit for claims for compensation is 3 years. The time limit starts on the day on which the injured party becomes aware of the damage. This is normally the day of the accident. If the accident is based on an offence, the time limits set by criminal law for that offence will apply, although only if those time limits are longer than the time limits set by civil law.

4. Damages to be compensated

Medical costs will in fact only qualify for full compensation if the victim's own health insurance does not cover these and if the (hospital) treatment takes place in Portugal. Furthermore, travel costs incurred to undergo a medical examination, if necessary, as well as travel costs incurred to visit the victim, if the visitors are financially dependent on the victim, will also qualify for compensation.

Lost income qualifies for compensation. The point of departure is the gross income in the case of temporary disability. Compensation for lost income in the case of permanent disability is normally paid out in a lump sum. There is no standardised method for calculating the amount of the compensation in the case of permanent disability. Where a housewife/mother is injured, the costs of domestic help, where required, will also qualify for compensation.

The victim is entitled to compensation for immaterial damage. The damages for pain and suffering are paid out in a lump sum and depend on the severity of the injury.

Where the victim dies, the spouse and children are entitled to damages for pain and suffering. In the absence of a spouse or children, the claim will pass to the parents, and where they are no longer alive, the brothers and sisters will be eligible for compensation.

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

Emergency: Police, ambulance, fire brigade: 112

Insurance and assistance for vehicles

Information Centre: not yet in force

The Portuguese Office of the Green Card,
Avenida José Malhoa, lote 1674-3
P—1070 LISBON, telephone 21-721-2951, fax 21-726-1989 or 21-7262352,

Associação de Cidadãos Auto-Mobilizados (ACA-M)

Av. 5 de Outubro, 142, 1º Dtº 1050-061 Lisbon, Portugal
Tel: +351-21-780 1997, Fax: +352-21-780 1997,
e-mails: direccao@aca-m.org, aca-m@aca-m.org

Isabel GOULAO, e-mail: igoulao@netcabo.pt

Website: www.aca-m.org

INSTITUTO SEGUROS DE PORTUGAL (PORTUGUESE INSTITUTE OF INSURERS)

Avenida Berna, 19 - 1050-037 LISBON
Telephone: 217 903 100
Fax: 217 938 568
e-mail: isp@isp.pt

ACP - Automóvel Clube de Portugal (Portuguese Automobile Club)

Rua Rosa Araújo 24/6 - 1250-195 LISBON
Telephone: 213 180 100
Fax: 213 577 930
e-mail: acp@mail.telepac.pt
Web: <http://www.acp.pt>

Organizations that offer support to victims and/or their families:

APAV - Associação Portuguesa de Apoio à Vítima (Portuguese Association for the Support of Victims)

Rua Comércio 56, 5º-E - 1100-150 LISBON
Telephone: 218 884 732
Fax: 218 876 351
e-mail: apav.sede@apav.pt
Web: <http://www.apav.pt>

A NOSSA ÂNCORA - Apoio a Pais em Luto
Rua Doutor Almada Guerra, 25 Portela - 2710-417 SINTRA
Telephone: 219 105 750

Protection of the rights of the consumer

DECO - Associação Portuguesa p/ Defesa do Consumidor
Rua Artilharia 1 79, 4º - 1250-038 LISBON
Telephone: 213 710 200
Fax: 213 710 299
e-mail: decolx@deco.pt
Web: <http://www.deco.proteste.pt>

CENTRO DE ARBITRAGEM DE CONFLITOS DE CONSUMO (ARBITRATION OF CONSUMER CASES)

Largo Chão Loureiro - 1100-145 LISBON

Telephone:	218	883	535
Fax:	218	883	767
e-mail: lis-arbitragem@ip.pt			