

SPAIN

1. Actions to take immediately after road traffic accidents

In the event of an accident involving personal injury, the police must be alerted on 091, 092 or 112. All parties involved must remain at the scene of the accident until the police arrive. A proper police report is very important. The Guardia Civil or the Policia Municipal should draw up such reports. The rights of the victims and defendants must be specified.

If a victim is admitted to hospital for treatment, the hospital must draw up a report on the condition of the victim and send the report to the Court handling the proceedings against the person responsible for the accident. The Court uses both reports to determine if criminal proceedings will be brought. It is essential to notify the insurance companies concerned about the accident within 7 days of the accident

In criminal, civil and administrative proceedings, you must consider the possibility of having to pay court costs. Be careful of the documents you sign, and particularly of the renunciation of your rights which they may imply.

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

Risk liability applies to traffic accidents involving personal injury. Statutory amounts for cover have been set. If the personal injury damages exceed the statutory amount, the difference is compensated on the basis of fault liability. Fault liability is also the basis used for determining damages when no personal injury is involved.

The procedure that follows after an accident varies from case to case: criminal, civil or administrative proceedings, as the case may demand.

Criminal proceedings

If the accident involves a traffic violation or criminal offence on the part of the person responsible, criminal proceedings must be brought. The degree

of negligence determines whether the act is to be considered a criminal offence or a violation, and therefore the severity of the penalty.

The procedure for criminal offences is the “procedimiento abreviado” and for violations the “juicio de faltas”. In both procedures, victims must submit a declaration to allow the court to determine, in part, the amount of the civil claim. In criminal proceedings, the judge has the authority to set the amounts of compensation to be paid. If, in criminal proceedings, the judge does not wish to give a decision on civil liability, an “auto ejecutivo” is delivered. This is an executory title that can be used in civil proceedings.

General rules with possible exceptions for specific cases

1. If a personal injury case caused by a motor vehicle is to be brought before the court, the injury must have been treated medically. Optional first aid is not sufficient.
2. The competent Court is the court where the accident took place.
3. It is necessary to distinguish criminal offences from violations.
4. Violations are adjudicated by the “*Tribunal de instrucción*” according to a specific procedure. Severe criminal offences are adjudicated by the “*Audiencia Provincial*” and less severe offences by the “*Juzgados de lo Penal*”.
5. During criminal proceedings, motor insurance companies have the possibility of contesting the claim.
6. Reports are of the utmost importance and have to be drawn up very carefully.
7. Everyone can lodge a complaint. Therefore, even if you are not a victim, you can bear witness to an act you consider to be criminal.

Legal assistance

For the proceedings for violations (juicio de faltas), the presence of a solicitor is not mandatory. This reduces the expense of the proceedings. It is however advisable to request legal assistance and to be represented by a solicitor.

Civil proceedings

If criminal proceedings are dismissed, or the civil liability can not be fully determined or the judge does not wish to give a ruling about the civil liability in the criminal proceedings, or the plaintiff claiming damages has reserved the right to bring the claim in the civil court, civil proceedings are possible.

According to the amount involved, there are two applicable procedures: the “Juicio Ordinario” (ordinary proceedings) and “Juicio Verbal” (the verbal proceedings).

Legal assistance

- Concerning defending your interests, you may nominate a lawyer of your choice, even if you are covered by insurance.

- It is advisable to ask your lawyer for a bill, indicating any commissions and fees for each action.

Administrative proceedings

In certain cases, the Public Administration can be held responsible, for example, if the accident was caused by bad conditions of the road, defective or ambiguous signposting, non-indicated road works, etc.

Before bringing a complaint to the Administrative Litigation Courts, it is necessary to complain to the Administration responsible for the damage and to request a corresponding indemnity.

3. Compensation for damages/time limits

In Spain, compensation is fixed according to a legal scale. Each lost working day corresponds to a precise indemnity. There are correction factors for the loss of earnings. In certain duly justified cases, it is possible to obtain compensation above the scale. Civil law will indemnify material or bodily damage, according to these legal scales.

If the victim is also responsible for the accident, there is a reduction of all the indemnities (including medical, hospital and funeral expenses). A reduction of the indemnities for permanent impairment for pre-existing disabilities or disabilities independent of the accident also applies. In addition, there are also factors that increase the indemnities for permanent impairment in the case of competing or pre-existing disabilities.

It is possible to agree upon or to decide legally on the total or partial substitution of the fixed indemnity by a life annuity in favour of the victim, or a provisional pension, in order to care for the victim or the persons supported by him/her.

Time limits

Criminal proceedings

The time limit for the submission of a declaration for criminal proceedings arising from a criminal offence is 5 years. The time limit for the submission of a declaration for criminal proceedings arising from a violation is 2 months.

Civil proceedings

Regarding personal injury, the time limit for submitting the request, made exclusively through civil proceedings is one year from the date of the accident. In the case of bodily or psychological harm, this period begins after recovery or the determination of the impairment.

After the ruling of the court in criminal proceedings, the time limit for civil proceedings is one year in the event of discharge. If the ruling of the court is the imposition of a sentence, you have 15 years to initiate civil proceedings. When there are only material damages, the time limit for initiating civil proceedings is one year from the date of the accident or the date of the last judicial intervention in the form of a ruling or dismissal.

In general, insurance companies have the obligation to pay the indemnities to the victims within a maximum period of three months from the accident. If this time limit is not observed, interest of up to 20% per year may be levied in administrative proceedings.

Administrative proceedings

In the case of bodily or psychological harm, this period begins after recovery or the determination of the impairment.

The right to claim compensation always expires one year after the date of the accident. In the event of physical or psychological injury this period begins at the date that the impairment is recognised.

4. Damages to be compensated

Death, permanent damage (with or without invalidity), and temporary disability are compensated. In order to obtain a fair indemnity, it is necessary for victims to produce a precise medical diagnosis on the development of the injury and the possible permanent damage, in addition – and most importantly - the diagnoses of the forensic scientists of the Court. Such compensation is paid out in accordance with a legal scale. Injuries and disabilities can be subject to medical examinations and evaluations.

In the case of disabilities, the expenses of adapting housing or vehicles are compensated. Lost working days are also compensated. In addition, compensation is paid out for medical and hospitalisation expenses, and death and funeral expenses.

The indemnity for moral harm is the same for all the victims except in certain circumstances.

For the calculation of the total indemnity, the personal, familial and economic situation are also taken into account.

Heirs do not have an independent right to compensation for pain and suffering. They do, however, have recourse to a benefit if the deceased was killed in the accident, regardless of whether a loss of earnings is involved.

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

- a. Emergency services telephone numbers: police and SAMUR (ambulances) 112 or 092; fire brigade 080
- b. STOP- ACCIDENTES www.stopaccidentes.org
Gran via de les Cortes Ctalanes 736
Tel: +34 932450952 Fax: +34 981610733
- a. PAT – Prevention d'Accidents de Traffic,
Rambla Catalunya 29, 4, 1a 08007 Barcelona
Tel: +34 933013778 Fax: +34 30119322
thorson@ysi.es

- b. Information Centre:

Consorsio de Compensación de Seguros

C/ Serrano n° 69

E 28006 Madrid

Tel.: 00 34 91 339 56 80

e-mail: iccs@consorseguros.es;

website: <http://www.consorseguros.es> .

(For claims for damages caused by an unknown, stolen or uninsured motor vehicle)

- e. Ministry of Internal Affairs: <http://www.mir.es>
- f. Ministry of Justice: <http://www.mju.es>