

SWITZERLAND

1. Actions to take immediately after road traffic accidents

The police must be notified if people have died or been injured in the accident. In such a case the police are obliged to draw up an official report. The telephone number is 117. It is also recommended that you contact the police even if only minor injuries have been sustained. A copy of the police report can be requested against payment. It is normally sent out within 10 days. It is not necessary to contact the police in cases involving only damage to property. The police can however be contacted if the parties involved in the accident are experiencing problems in taking down the details of the accident.

If it is not necessary to contact the police, 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

According to Swiss law, the person in control of a vehicle is liable for damage caused as a result of the car being 'in operation', regardless of the question of who is at fault. This is referred to as strict liability. The person in control of the car is not liable if he can prove that the accident was caused as a result of *force majeure* or circumstances that can be imputed to the victim or a third party.

The person in control of a vehicle may also be held liable for the consequences of the traffic accident even if the car is not 'in operation'. This is the case if he is to blame for the accident or if a fault in the car caused the accident. Such a case constitutes a combination of fault liability and strict liability.

Fault liability applies for all other types of accidents, for example, if the car is not 'in operation'.

Criminal proceedings

Criminal proceedings are automatically instituted in the case of serious injury or death. In the case of minor injuries, criminal proceedings will only be instituted if a complaint – for instance by the victim - has been lodged within 3 months of the accident.

If criminal proceedings have been instituted and the claim for damages is directly associated with the traffic offence, the victim may join the proceedings as a plaintiff claiming damages. The claim for damages will then be dealt with at the same time as the criminal proceedings. Prerequisites are that the civil claim must not be too complicated and the court must be able

to judge the claim without too many difficulties. As a result, this type of action brought by a plaintiff claiming damages as part of criminal proceedings is not very common in practice and does not play an important role in compensation for damages. Compensation must in general be claimed via the civil court.

Civil proceedings

Claims for compensation must be submitted to the insurer of the party responsible for the damage. In the majority of cases, the insurer will make a proposal which is open to negotiation. If an agreement is not reached, the case can be brought before the civil court. The civil court is also the designated court if it is not possible to submit a claim in criminal proceedings, which is normally the case.

In Switzerland, every canton has its own procedural law. This means that there are 26 different judiciary systems, each with its own judicial authority and procedures.

In civil proceedings, the victim bears the burden of proof.

Legal assistance

The issue of compulsory representation in proceedings is also handled differently from canton to canton. For example, in some cantons it is not necessary for the victim to be represented by a lawyer.

It is, however, advisable to be represented by a lawyer in judicial proceedings.

3. Compensation for damages/time limits

Claims can be submitted directly to the other party's insurer. The amount and extent of the damage must normally be proven. Proof of the extent of the damage can, for example, be provided in the form of witnesses, invoices from doctors and/or hospitals and (medical) experts' reports.

In the case of circumstances which can be imputed to the victim, the amount of compensation may be reduced by the percentage of blame which can be attributed to the victim.

If the person responsible for the damage is uninsured or cannot be identified, a claim may be made against the Swiss guarantee fund. This is, however, only possible if the victim is resident in Switzerland. Foreigners have recourse to the guarantee fund only if there is a reciprocal agreement between their 'own' guarantee fund and the Swiss guarantee fund. This is not the case for all countries.

Time limits

Criminal proceedings

If the claim is based on an offence, the time limit valid for criminal proceedings will apply if this time limit is longer than the civil time limit. In the case of traffic offences, the time limit is 5 years and in the case of traffic violations it is 1 year.

Civil proceedings

Claims for compensation as a result of accidents with cars, mopeds or bicycles have a time limit of 2 years. In any event, the claim will become statute-barred after 10 years from the day of the accident.

4. Damages to be compensated

Medical costs such as nursing costs, hospitalization etc. will qualify for compensation if these costs are not covered by the victim's own health insurance. Lost income as a result of full or partial occupational disability will also qualify for compensation. This relates to actual economic loss, in terms of which the following are important when determining the amount of compensation: the degree of occupational disability, the duration of the occupational disability and the expected income had the accident not taken place. If, at the time of the court ruling, the consequences of the injury cannot be determined with certainty, a reservation with regard to the claim may be made in the court ruling.

The victim is entitled to damages for pain and suffering or a '*Genugtuung*'. The following are circumstances to be taken into account when determining if and to what amount damages for pain and suffering are to be awarded: the severity and degree of the pain, the duration of the recovery, the necessity of operations, the loss (of function) of organs, disability and the extent to which the injury affects the victim's work and social life.

In the case of death, compensation will be paid for the funeral costs. The next of kin who were dependent on the deceased are entitled to compensation for cost of living expenses. This also applies to unmarried partners. A requirement for this is that the cost of living expenses must actually have been incurred.

Where a family member dies or is seriously injured, the next of kin are entitled to damages for pain and suffering. The amount of the compensation depends on the degree of relation.

5. Useful addresses

Roadcross: Office address: Stiftung RoadCross, Zweierstrasse 22, 8004 Zürich, Switzerland
Tel: +41-44 737 4829, e-mail: info@roadcross.ch

Website: www.roadcross.ch

- a. Centre de Consultation LAVI (Loi sur l'aide aux victimes d'infraction)
Rue du Stand 40
CH 1204 Geneva
Switzerland
Tel. +41-22-3200102
- b. Information number for the police in Geneva: +41-22-4278111