

France

1. Actions to take immediately after road traffic accidents

The police must be notified if people have died or been injured in the traffic accident (phone 17 or 112). The police will then draw up an official report. The police are not obliged to do this if only material damage has been incurred. One copy of the official report is sent to the Public Prosecutions Department, and a second copy to Trans P.V., which in turn will send the copy to the relevant insurers. Requests for the issuing of an official report are made via the insurer handling the case or the district court.

After an accident, the names and addresses of all the parties involved in the accident and those of any witnesses must be taken down. The insurance details of the parties involved must also be taken down. Insurance details are given on a sticker placed on the inside of the car's windscreen. It is advisable to use the European claim form (*constat amiable*) in these cases. 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

If the accident involves a motor vehicle and a pedestrian/cyclist/passenger, then the holder of the vehicle is liable for all damage caused as a result of the involvement of the vehicle in the accident, where a claim of *force majeure* has not been permitted. This is laid down in the Act of 5 July 1985. Pedestrians, cyclists and passengers will be fully compensated for physical injuries sustained in an accident. Pedestrians, cyclists and passengers younger than 16 or older than 70 and people who are more than 80% disabled will also receive compensation for damage to their property.

Compensation in the case of traffic accidents where only motor vehicles are involved is determined according to fault liability. The person responsible for the accident is liable for the damage caused as a result of the accident.

Criminal proceedings

The official police report is sent to the Public Prosecutions Department, which will investigate the facts of the accident. Once the investigation has been completed, the Public Prosecutions Department can make the following decisions:

- to dismiss the case (if the person who caused the accident has died or if it is not sufficiently clear who is at fault);
- to institute criminal proceedings, in which case the person who caused the accident will be summoned to appear before the court (depending on the severity of the traffic offence: the *Tribunal de Police* or the *Tribunal Correctionnel*).

The victim himself can also report a traffic offence; the Public Prosecutions Department will then also institute an investigation.

If criminal proceedings are instituted, the victim may join the proceedings as a plaintiff claiming damages. This is a very common procedure in France. The Public Prosecutions Department will send the victim an *avis à plaignant/avis à victime*. This is a notification to the complainant (the victim) to submit his claim as a plaintiff claiming damages. If the claim for compensation is not too high, the victim himself or his lawyer may submit a written claim, substantiated with documentary proof, directly to the court within a period of 24 hours. The victim can also enter his claim directly during the hearing (with the necessary documentary proof).

No new claims may be submitted during appeal proceedings. The court will give judgement on both the criminal proceedings and the civil action.

If the perpetrator is acquitted, the court may give judgement in favour of the plaintiff claiming damages. In principle, the civil court is bound by the judgement given in the criminal proceedings. It is recommended that you make use of the services of a lawyer.

Civil proceedings

If it is not possible to claim damages as a plaintiff in the criminal proceedings, because the Public Prosecutions Department has dismissed the criminal proceedings or because the person responsible for causing the damage has died for example, it is possible to institute civil proceedings in order to get compensation. The case will be brought before the *Tribunal d'Instance* or the *Tribunal de Grande Instance*, depending on the amount of the claim.

3. Compensation for damages/time limits

Claims for compensation can be submitted directly to the other party's insurer. If the person who caused the damage is not insured or has not been identified, then the claim can be submitted to the *Fonds de Garantie Automobile*. If the damage involves injury or death, the insurer of the person who caused the damage must make a final offer for claim settlement within 8 months of the day on which the accident took place. If the insurer is not informed about consolidation of the injury within 3 months, the offer will be regarded as a provisional offer. The amount of the offer must as far as possible correspond with the anticipated extent of the damage. In such a case, the insurer must make a final offer within 5 months of consolidation. There is no obligation to accept the offer. An offer that has been accepted may be withdrawn within 15 days. If the offer is not accepted, you have to negotiate with the insurer or institute legal proceedings.

NB: if the offer is accepted, claiming damages as a plaintiff in the criminal proceedings becomes superfluous. If the insurer's offer is clearly inadequate, the victim can refuse the offer by means of a registered letter with acknowledgement of receipt. A different settlement can then be requested or legal proceedings can be instituted. In such a case, assistance by a lawyer is compulsory and the court will determine the amount of the damages. An insurer that fails to make an offer, does not adhere to the deadlines for making an offer or makes an offer that is too low, may be ordered by the court to pay twice the statutory interest.

A victim must substantiate his claim as far as possible by means of witnesses, receipts, assessor's reports and suchlike. In the case of bodily injury, a medical report by a French doctor is necessary.

Time limits

Criminal proceedings

The time limit for traffic violations is 1 year and for criminal offences, 3 years.

Civil proceedings

The time limit for claims determined according to fault-based liability is 30 years. Claims based on the Act of 5 July 1985 (traffic accidents involving pedestrians/cyclists/passengers) have a time limit of 10 years. The time limit for direct claims against the motor insurer is also 10 years.

In cases where the victim has joined the criminal proceedings as a plaintiff claiming damages, the applicable time limits are those of the underlying criminal case. This is 1 year in the case of traffic violations and 3 years in the case of criminal offences.

4. Damages to be compensated

The medical costs of doctors, hospitals and suchlike will qualify for compensation, unless the victim's own health insurance will pay these.

Where the victim has suffered an injury, it is advisable to consult a doctor who will draw up a medical report on the injury. The basis for compensation in the case of bodily injury is very complex and can generally only be specified once a medical report has been submitted.

If the victim has become occupationally disabled as a result of the traffic accident, a distinction is made between temporary occupational disability and permanent occupational disability. Compensation in the case of temporary occupational disability relates to the concrete financial loss suffered by the victim for the time during which he was temporarily occupationally disabled. The loss comprises the financial loss caused by the occupational disability and the psychological consequences of the injury to physical integrity. In order to determine the extent of the permanent occupational disability as well as the economic loss resulting from this, an objective calculation method based on the medical tables linked to a standardised point system is used. The percentage of occupational disability, which is determined by a doctor, forms the point of departure for calculating the loss caused by the permanent occupational disability.

Victims who were not in paid employment at the time of the accident, such as housewives, students, children etc., are normally entitled to fixed compensation on the basis of the French statutory minimum wage.

A victim is entitled to compensation for immaterial damage. This consists of the actual damages for pain and suffering, plus compensation for loss on account of mutilation and loss of joy of life. The amount of the damages for pain and suffering depends on the severity of the injury. The criteria vary from minor to very serious injuries.

If the victim dies or becomes severely disabled as a result of the accident, his next of kin can claim damages for pain and suffering. The degree of relation determines the amount of the damages

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

- Police: telephone 112 or 17

Association des Familles des Victimes des Accidents de la Route (AFVAC)
23 place Foire le Roi F-37000 Tours
Tel: +33 247370735 Fax: +33 247470007 e-mail: marc.sanglier@wanadoo.fr

Ligue contre la violence routière
15, rue Jobbé-Duval F-75015 Paris e-mail: lcvr.paris@wanadoo.fr
Site: www.violenceroutiere.org

- Fonds de Garantie Automobile; 64, Rue DeFrance; F - 94307 VINCENNES Cedex
- InformationCentre;

- AGIRA
11, rue de la Rochefoucault - F 75431 Cedex 09

- Bureau d'information: www.bcf.asso.fr