

COMPENSATION GRANTED TO VICTIMS IN THE CASE OF TRAFFIC ACCIDENTS

Lawrentzia Beatrice Denisa VASILESCU¹

Abstract: *The present article aims to bring to the attention of the public the compensations granted to people injured as a result of traffic accidents. In the lives of each of us, tragic events remind everyone of the importance of abiding by the traffic rules and paying more attention to the road both as drivers and as pedestrians. Car drivers are urged to be cautious, adapt speed to road conditions and avoid reckless behaviour in traffic. Also, pedestrians must know and respect the traffic rules. Practically, these are simple measures that make the difference between life and death, between a happy life and one in which traumas affect the state of well-being, of normality, in similar emergency situations.*

Key words: *traffic, accidents, victims.*

1. Introduction

Motorization has improved the lives of many individuals and societies, but the benefits have come with a price. Although the number of lives lost in road accidents in high-income countries have indicated a downward trend in recent decades, for most of the world's population, the burden of road-traffic injury—in terms of societal and economic costs— has been rising substantially (Ameratunga, Hajar and Norton, 2006, p. 1534).

Road traffic injuries (RTIs) are the leading cause of unintentional injuries, accounting for the greatest proportion of deaths from unintentional injuries. In 2010, global efforts to reduce the burden of road safety injuries received a major boost when the United Nations (UN) General Assembly launched the Decade of Action for Road Safety 2011–2020, with a goal of saving 5 million lives worldwide by 2020 (United Nations Road Safety Collaboration, 2010).

Since then, awareness of road safety and its close relationships to economic and social development has grown significantly, and activities that promote road safety at international and national levels have gained new momentum.

¹ Transilvania University of Braşov, vasilescu.denisa@yahoo.com, corresponding author".

2. Protecting the injured person based on objective criteria in view of the establishment of some material compensation to mitigate the suffering of the victims following traffic accidents

Each day, more than 3,400 people die on the world's roads (1.25 million people each year), making RTIs the ninth leading cause of death globally (World Health Organization, 2014). After a car crash, an individual might struggle to recover from significant injuries. Your car might be totaled, and your life completely turned upside down. Unfortunately, not all car accident victims can collect compensation after a car accident.

In general, accident victims can seek to claim compensation for both economic and non-economic damages.

Economic damages include anything easy to quantify (Cartas and Harutyunyan, 2017, p. 55). They're based on financial losses and evidence, such as receipts and bills, including medical expenses, car repairs, and lost wages. Injured accident victims are eligible to receive compensation for their current and anticipated medical expenses, including additional corrective surgeries or ongoing medication. A lawyer will talk to the doctor treating the injured person to determine how expensive the medical costs are, both now and in the future. Accident victims are eligible to recover money for any lost wages they suffered as a result of the accident. It is assumed that the injury will prevent the injured person from working full-time or that he has suffered a permanent disability. In this case, the person has the right to recover the loss of all future wages that at the time of the injury he cannot earn due to the accident.

Non-economic damages include anything that is not easy to quantify, resulting in damages, including pain and suffering and decreased quality of life (Cartas and Harutyunyan, 2017, p. 56).

After an accident, the injured person has the right to seek compensation for pain and suffering. This could be money to compensate for mental anguish, PTSD (Post-traumatic stress disorder), depression and physical pain. It can be challenging to put a dollar value on pain and suffering, and insurance companies work hard to limit the amount of non-economic damages they pay.

Loss of consortium refers to the loss of married life or parental benefits. When a person suffers serious and life-changing injuries in an accident, it can rob the accident victim and their spouse of valuable marital time (Rechtsanwalt, 2000, p. 2). The injured person may not be able to express their condition in the same ways as before the accident. In addition, any injuries may prevent them from being a part of their children's lives and parenting as they would have before the accident.

The Guarantee Fund for Compulsory Insurance against Damage (FGAO) compensates the victims of road accidents. The fund intervenes when the person responsible for the accident or his insurer cannot compensate the victim. That is the case if the person responsible for the accident is not identified, if they are not insured or if their insurer is insolvent. The FGAO's intervention is subject to certain conditions. The claim for compensation must be made in accordance with a specific procedure (Directorate for Legal and Administrative Information, 2021, p. 2).

The FGAO operates only under certain conditions, all of which must be met, such as,

the traffic accident must have occurred on a public road in France or in the European Economic Area (EEA) and the traffic accident must be caused by one of the following:

- Driver of a land motor vehicle (car or motorcycle) travelling on public roads
- Person travelling on public roads with or without gear (pedestrians, cyclists, skiers, skate-rollers, etc.)
- Pets or wild animals

Therefore, collecting compensation depends mainly on the type of insurance the injured person carries, the insurance of the other driver involved, and who is responsible for the accident.

3. Establishing some Reasonable Terms for Granting these Compensations

Motor vehicle accidents can be shocking and traumatic experiences even if they do not lead to any serious long-term injuries or losses. In the event that a roadway collision does leave one or more people severely hurt, the repercussions of this single incident could last for months or even years afterwards. Recovering comprehensively from such damage through civil litigation is often an immensely complex endeavor.

According to Britannica Dictionary, the plaintiff is the party who brings a legal action or in whose name it is brought—as opposed to the defendant, the party who is being sued and the defendant is a person who is being sued or accused of a crime in a court of law. When a person is involved in an accident (“the plaintiff”), he may file a personal injury claim against the party who caused the accident (“the defendant”) if the former had sustained injuries as a result of the accident (Ferrari and Klar, 2014, p. 151).

After the accident, it is necessary to correctly manage the victim's situation both medically and psychologically, as well as legally, both levels having a major impact in shaping the victim's future. The injured person is thus forced to make quick decisions that can significantly influence their life in the next period or forever. Regardless of the nature of the case, i.e. criminal or civil, the victim asserts their right to compensation based on the civil legislation in the field and on that specific to CLI/comprehensive car insurances, if the culprit was driving, at the time of the accident, a vehicle for which the legislation requires the conclusion of the civil liability insurance for car owners.

According to the Guidelines of the Association of Victims of Traffic Accidents (2020) in Romania, the injured person has the right to full compensation, both in terms of material and moral damages. Since the term “full” cannot take on an unlimited form in the assessment of moral damages, it should be known that the legislation in the field of CLI establishes a ceiling of compensation within the limits of which the insurer must pay, and the principles of law and the jurisprudence of the ECHR (European Court of Human Rights) and the HCCJR (High Court of Cassation and Justice of Romania) bring into question the fairness and reasonableness of the compensation, by reference to the particularities of the case. Hence, the value of the damage is concretely assessed, in terms of the consequences, severity and duration, of the way in which it affects the victim's personal, social, professional, medical life, the needs for adaptation and the efforts made by the victim are analyzed as well as their life, and the effective possibilities of healing and recovery.

After filing the preliminary complaint, the victim benefits from all the rights provided for by the criminal procedure, of which we point out: (1) the right to request the criminal investigation body to issue an order to order a forensic medical evaluation in order to obtain an expert report in this regard; (2) the right to establish objectives for the designated expert (forensic/legal technical); in the case of a forensic medical report, it is necessary to establish objectives that highlight the impact of the traumatic event on the life of the victim (eg: the existence of functional deficit, degree of impairment of adaptive capacity and work capacity, degree of disability). Landmarks such as "days of medical care", "endangering life", etc. do not reflect what must be known and appreciated by the court, these being medico-legal phrases used strictly for the purpose of the legal framing of the act; and (3) the right to a party expert, the right to formulate objections. The victim has the right to directly sue the insurance company liable for compensation.

According to the same Guide of the Association of Victims of Traffic Accidents (2020), the obligations of a victim of a road accident consist of the following: (1) to respect a period of 3 months within which a preliminary complaint can be filed as follows - according to art. 296 Criminal Procedure Code (1) The preliminary complaint must be filed within 3 months from the day the injured person learned about the commission of the act; (2) to respect a term of 30 days from the accident to request the territorially competent forensic unit, to carry out a specialized finding in order to identify the injuries suffered. If this term is exceeded, the injured person has the right to be forensically examined, but only at the request of the criminal investigation body or with the approval of the court; and (3) To respect the deadlines set for the submission of some documents (complaint against an ordinance, objections to a certain report, etc.).

It should also be known that the amount of moral damages requested cannot be assessed without a rigorous documentation of the specifics of the case, in terms of the impact of the traumatic event on the life of the victim (pain, functional deficit, impairment of family, social, professional life, etc.). In this sense, any promise of legal support from people who offer legal solutions and promises of compensation without knowing, in detail, the specifics of the case, should be treated with caution. There is also the possibility of requesting from insurers the payment of sums in advance, for urgent medical expenses, under certain conditions, and there is also the possibility of concluding an amicable agreement with the insurance companies, but it is useful to have a rigorous analysis of the new needs as well as of the pain experienced by the victim, in order to limit the risk of such settlements resulting in the payment of unfair compensations, which do not cover the real needs occasioned by the accident for the victims.

In conclusion, each case is unique, each victim is affected in a particular way, as compared to all the other victims of accidents, therefore they must be treated carefully and starting from the need for a complex understanding of the problems that have arisen, of the needs, of their extent over time, in order to take better care of them, to outline, explain and claim their due rights.

4. Comparative Analysis of Compensation for Victims of National Traffic Accidents, with the same Types of Compensation from other States of the European Union

The need to ensure a more coherent legal framework for the compensation of personal injury resulting from cross-border road traffic accidents has been raised within the broader initiative on the harmonisation of the legal framework for non-contractual obligations in Europe, and particularly in the debate on the so-called “Rome II” regulation, now subject to second reading at the European Parliament. Even more generally (Zweigert & Kotz, 1998, p. 10), the idea of achieving further harmonisation (or, as was authoritatively defined, “Europeanisation”) of European private law – even culminating in proposals to create a European Civil Code² – has ranked high on the agenda since the 1980 Rome Convention on the law applicable to contract law disputes.

Considering the difficulty of assessing fair material compensations for the various types of non-pecuniary damage suffered by people as a result of vehicle accidents, it was considered that the study of the solutions applied to such cases in other European states (Greceanu & Necrelescu, 2012, p. 31) would provide a better perspective on the current situation in Romania, a useful frame of reference and, perhaps, even a source of inspiration for future developments, solutions and paths of evolution in the field, at the local level.

In the following, the legislative solutions of four other European states in the case of bodily injuries and in case of death will be analyzed. Thus in the first analyzed country, **Austria**, moral damages in the case of bodily injuries assume that in the case of bodily injury or health damage, pursuant to art. 13, point 4 of the RCA Mandatory Act (in Austria it is Eisenbahn- und Kraftfahrzeughaftpflichtgesetz – EKHG - i.e. the Mandatory Civil Liability Act for Rail and Vehicle Transport), the injured party must also be paid appropriate non-pecuniary damages. He has the same right under art. 1325 Austrian Civil Code (ABGB – Allgemeines Bürgerliches Gesetzbuch).

According to Austrian jurisprudence, the following criteria will be taken into account for the determination of moral damages: the type and severity of the injury, the intensity, duration and type of pain, the duration of the health condition, as well as the inconveniences associated with them. While, in principle, the degree of fault of the tortfeasor must be taken into account, pursuant to art. 1034 of the Civil Code, when calculating the amount of moral damage, the joint fault of the injured party must also be taken into account, by subtracting a certain quota. In this sense, an important role is played by the rules regarding the use of safety belts and protective helmets; if these rules are not respected, joint fault can be assessed up to 25% (Supreme Court in the Review for Transport Law - ZVR 1995/6).

If the victim of a road accident dies, according to Austrian law, moral damages are granted for family members, if following the death of a close relative, a person suffers an emotional disturbance caused by the accident (e.g. depression), the so-called shock damages. In case of the death of a family member, the sums granted as compensation for suffering are approximately 15,000 euro in the event of the death of a child or spouse, and approximately 10,000 euro in case of death of parents. These compensations are due only in case of serious fault of the guilty person or in case of proven intention.

In the **Czech Republic**, the injured party, if physically injured, can request compensation for pain and suffering, only if the bodily injuries suffered are not minor. In case of permanent disability, the injured person will be paid compensation for the fact that they can no longer participate in social life as before the accident. The compensation is calculated based on a tabular system, where the total amount is evaluated in points. One point is currently worth 120 CZK (CZK = Czech crown), which equates to almost 5 euro per point. If the amounts calculated on the basis of the tabular system, through the evaluation in points, carried out by a doctor, are considered insufficient, then only the court can grant higher amounts and only in exceptional, justified cases. Moral damages are due only to the direct victim, i.e. only to the injured person, as they are not transmissible and, therefore, cannot be inherited.

In the Czech Republic, in the event of the death of the victim of a road accident, the surviving relatives may be granted compensation/fixed compensation in the form of a lump sum for non-property damages. Regarding compensation for moral damages suffered by indirect victims in case of death, for accidents occurring after May 1, 2004, the amounts that can be awarded are provided and strictly regulated in the Civil Code. The sums awarded to indirect victims in case of death start from 85,000 CZK (approx. 3,300 euro) in the case of the loss of a conceived and yet unborn child and can reach up to 240,000 CZK (approx. 9,200 euro) in the case of the death of a born person. The moral damages for accepted indirect victims, depending on their relationship with the deceased person, are as follows: husband/wife 9,200 euro, child 9,200 euro, each parent 9,200 euro (in case of death of a born child) and 3,300 euro in case of loss/death of a conceived and yet unborn child, 6,700 euro to each sister/brother and 9,200 euro to each person who lived in a consensual union (cohabitation) with the deceased person, at the time of the accident that caused the death.

On the other hand, in **Greece**, the legal basis for awarding moral damages, which are rarely awarded in the appropriate amount outside the court, is art. 932 of the Civil Code. The compensation for the moral damages suffered is due both in cases of injuries caused by fault and in cases of objective liability. The criteria for establishing the amount of moral damages are, among others, the type and extent of the injuries, the duration of the treatment necessary for healing and the duration of the incapacity for work, the age of the injured party, the degree of guilt, as well as the economic and social relations of the tortfeasor and the injured party. Depending on the case, a possible permanent disability or a possible aesthetic damage can also be taken into account.

In the case of the death of close people, the court can award moral damages to relatives, close people who suffer as a result of the death. Pursuant to art. 1537, 1555 of the Civil Code, the following persons have the right to compensation for moral damages: spouses, children, grandparents and brothers/sisters and only under certain conditions also the spouses/wives of brothers/sisters (brothers-in-law) and parents' brothers/sisters (uncles). In order to establish the amount of compensation for suffering, the personal and emotional ties between the two are decisive, in addition to the degree of kinship and the age of the deceased and the one requesting the compensation (Ulf, 2008, p. 56).

The fourth European country analyzed is **Great Britain**. In this country, moral damages, in the broadest sense, are granted both for the pain and suffering caused (and for the future) - pain and suffering, as well as for the damage to leisure (loss of amenities) and, if necessary, for the reduction of life expectancy (loss of life expectancy). When assessing compensation for pain and suffering in case of bodily injury, the type and extent of the injuries, the intensity of the pain, the duration of the treatment necessary for healing, as well as the predictable permanent damages/injuries are taken into account. The amount of compensation for recreational damage may depend, for example, on the impairment of the possibility of carrying out social or sports activities, on the reduction of the chances of marriage due to the disfigurement suffered or on other similar criteria. When calculating the damage for the shortening of life expectancy, the age of the injured party, the severity of the injuries suffered and his professional activity are decisive, among others.

The close family members of a person directly injured or deceased due to injuries suffered in an accident can be granted compensation established by law (so-called bereavement compensation, called "bereavement"). For the widow or widower of a deceased spouse or for parents of unmarried children up to the age of 18, who until the accident had the same domicile as the deceased person, a lump-sum compensation of 10,000 pounds is granted (Fatal Accident Act 1976 and Law Reform Act 1934).

Through the comparative analysis of the legislation and the practice of other European states in this case, a notable observation must be made with reference to the form. Thus, it was found that some states prefer tabular systems with points, or even the legislation of concrete flat-rate compensation values (the Czech Republic, in case of death) or tabular (Spain, both in case of death and in case of injury, Slovakia only for injuries, etc.), and others summing up to the centralization of judicial practice, but common to all of them is the need to identify as objective criteria as possible regarding the estimation/establishment of pecuniary/patrimonial compensations, for non-patrimonial damages. Therefore, by simply comparing the actual amounts awarded on average as compensation for the non-pecuniary damage suffered, the practice of the courts in Romania places us among the first countries in Europe from this point of view, ahead of others such as Austria, Great Britain, Czech Republic. Despite the disproportions found throughout the comparative analysis of the European practice, I considered that the national judicial practice is the one that directly represents the economic and social reality in Romania. A role of maximum importance, in my opinion, is played by education in general and in particular, in the present case, road education. I believe that it is necessary to introduce traffic education into the school curriculum, as a mandatory discipline, both in Romania and in the other member states of the European Union. This training of young people can lead to the awareness of the consequences in case of non-compliance with traffic rules, to the reduction of the number of road accidents and implicitly to the reduction of the number of victims of traffic accidents. The importance of prevention and prudence are essential and they must be supported by knowledge in this field. Also, within this discipline, emphasis can be placed on training young people in order to provide first aid in case of need and especially in the case of road accidents, until the arrival of the intervention crews.

In this way, the degree of suffering of injured people can be reduced, and in certain cases, lives can be saved.

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