

Indemnity law in Germany, Belgium and the Netherlands

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- Contents -

- I. Introduction**
- II. Bases of liability**
- III. Compensation of material damage in Germany, Belgium and the Netherlands**
- IV. Compensation of bodily injury in Germany, Belgium and the Netherlands**
- V. Recourse of social security providers**
- VI. Private international law**
- VII. Practical impact of international claims settlement**

I. Introduction

In my outline of German, Belgian and Dutch law of damages I will try to illustrate the aspects which are most important for Turkish motorists and their motor insurers.

Despite the geographic closeness of these three countries, and their membership in the European Union, you will find that their legal systems with regard to the law of damages show significant differences.

While in the European Union legal harmonisation makes good progress and about 80% of, for instance, the Member States' commercial law provisions are now based on European legislation, some legal areas fall within the competence of the national legislator. Tort law is one of the areas which are dominated by national legal tradition. This is why both the bases for compensation and the amount of damages awarded may differ considerably.

In contrast, the insurance law aspects in claims regulation are very much influenced by supranational – that is – by European legislation. Following the Motor Insurance Directives of the European Union the injured party has a direct claim and a direct right of action against the responsible motor insurer in all countries of the European Union. Also, minimum standards apply to insurance cover sums across the European Union. Since the Fifth Motor Insurance Directive will have to be implemented by May 2007, the step-by-step introduction of minimum cover sums of €1m per claim for property damage and in the case of personal injury a minimum amount of cover of €1.000.000 per victim or €5.000.000 per claim whatever the number of victims, compared to €350,000 now, is mandatory for the Member States. With regard to the Green Card system, the Motor Insurance Directives resulted in the abolition of the Green Card for vehicles registered in the EU.

In addition, a person suffering damage in an international accident enjoys double protection.

The Green Card system covers accidents occurring in the home country involving foreign parties enabling the injured party to claim against the foreign insurer's correspondent in the home country, and, if applicable, take legal action as though the accident had involved a fellow citizen.

The Fourth Motor Insurance Directive, which was implemented across the whole EU, provides protection for injured party following an accident abroad. In such cases the

injured party can claim damages after returning home through the representative of the foreign insurer. This is possible, since all motor insurers in the EU have agreed to nominate such representatives in all EU countries. The difficulty, however, is that in most cases that the law of the accident country must be applied which in some cases considerably differs from the law of the injured party's country.

II. Bases of liability

1. Bases for the German indemnity law

In Germany, the entitlement to damages following a motoring accident can be based either on the fault of the party responsible, or on the hazard inherent to the operation of the vehicle.

The underlying legal provision is § 823 of the German Civil Code which stipulates that a person who, wilfully or negligently, injures the life, body, health, freedom, property or other right of another, is required to compensate for any damage arising.

In addition to this general Civil Code rule, another important legal basis for motoring accidents are the strict liability rules of the German Road Traffic Act.

Strict liability of the vehicle owner is defined in § 7 of the German Road Traffic Act. This section stipulates that the owner of a vehicle shall be liable for any damage caused during the operation of the vehicle. Such operation can be construed to include both stationary and moving vehicles where they have an impact on the traffic situation.

Under § 7 section 2 of the German Road Traffic Act the duty to compensate is excluded where the accident was caused by force majeure.

The owner of a vehicle can avoid liability in the event of an accident involving several vehicles by proving inevitability under § 17 section 3 of the German Road Traffic Act. An incident is deemed inevitable, where both the owner of the vehicle and the driver acted with reasonable care under the circumstances ("ideal driver").

A similar rule relating to the driver's duty to compensate is contained in § 18 of the German Road Traffic Act.

When assessing the extent of liability a potential contributory liability of the other party must be considered which might arise under §§ 9 and 17 of the German Road Traffic Act. The duty to compensate and the amount of compensation depend on the circumstances, including the extent to which the damage was predominantly caused by one party or the other party.

Another important aspect is that minors of or under 10 years of age are liable for their behaviour and any damage caused only if this was done intentionally (§ 828 paragraph 2 of the German Civil Code).

2. Bases for the Belgian indemnity law

The basis for compensation lies in Art. 1382 etc. of the “Code Civil”. Liability is principally established by proving that the accident was caused by negligence.

Negligence of the registered user, however, is assumed if the responsible motor vehicle was technically defective. The assumption can only be refuted if the registered user proves that the accident was not due to the technical defect of the motor vehicle but to another cause.

Besides this liability can only be defended on the basis that the accident was caused by an Act of God, third parties or the victim himself. If the defendant pleads an Act of God it must have been the exclusive cause of the accident (in cases of minor negligence the defence of an Act of God is excluded). Acts/negligence of third parties or the victim may limit liability completely or partly.

From 1 January 1995, as amended on 1 July 1995 and 19 January 2001, claims for bodily injuries, sustained by so called weak road users i.e. pedestrians, cyclists or passengers in motor vehicles as a consequence of motor accidents, are only denied full compensation in the event of intentional acts (“intentional misconduct”: e.g. a pedestrian throwing himself before a vehicle in an attempt of suicide).

3. Bases for the Dutch indemnity law

The basis for compensation claims resulting from traffic accidents is liability arising from negligence according to the Civil Law Code (Art. 6:162 Burgerlijk Wetboek).

Art. 185 of the Road Traffic Act (Wegenverkeerswet) contains a legal presumption of strict liability (in order to protect those injured parties who are no motorised road

users) against the registered user of a vehicle, which extends the principle of liability arising from negligence according to the Civil Law Code. Only Acts of God or deliberate acts or gross negligence on the part of the non-motorised road user would exclude liability. If the victim is a pedestrian or a cyclist over 14 years the minimum liability that will attach to the registered user will be 50%. With children under 14 years the registered user is fully liable for the loss.

III. Property damage

Following the above basic remarks, let me now give you an overview of the major heads of damage which are compensable under German, Belgian and Dutch law beginning with the property damage. Compared to other countries German law provides more heads of damage than most other legal systems as far as property damage is concerned. Therefore I will try to present these aspects of German law in a more detailed way and presenting the situation in Belgium and the Netherlands only briefly.

1. German Law

1.1. Repair costs

To assess the amount of repairs, German proven practice uses either the cost estimate of a garage or –where major damage (above €1.500) is involved- an expert's opinion.

1.2. Repair or no repair

The injured party can either opt for repair or compensation of the damage on the basis of an expert's opinion or cost estimate provided by the garage. This option is laid down in § 249 section 2 sentence 2 of the German Civil Code which also rules out the refund of value added tax in the event of fictional settlement (the case in which no repair invoice is presented).

1.3. Constructive total loss

The constructive total loss has long been a hot issue in German legislation and practical settlement. However, some higher court decisions culminating in a Supreme Court ruling have formed a prevailing opinion in that a vehicle is considered a constructive total loss where the actual repair assessed by an expert would cost

more than reselling the property minus salvage value (replacement cost). In this situation the injured party may choose one of the options provided under § 249 of the German Civil Code.

The first option is to claim the vehicle's replacement value minus salvage value from the insurer of the party responsible for the damage. This is the normal course of action. Normally, the expert gives the contact data of private persons or companies that have offered a salvage value for the damaged vehicle. The injured party can then contact such persons or companies and sell the vehicle and realize the salvage value.

The second option is that injured parties keep their vehicle (for instance because they are used to it and feel safe in their car) and have it repaired despite the extensive damage.

Practical handling takes account of the interest which injured parties have in the above integrity in that they are entitled to be refunded the repair costs incurred up to 130% of the replacement value. The salvage value is not deducted in this case.

Where the repair costs exceed this threshold, it is not allowed to split the compensation into an amount up to 130%, which is refunded, and the excess to be paid by the injured party. The injured party can only claim the replacement value and in this case the salvage value is not deducted.

This has been a controversial issue. In view of the above court rulings, however, prevailing opinion now has it that in the event of constructive total loss the injured party can claim the 130% threshold only if the repair costs were actually paid or actual repairs exceeded the replacement value. This is generally deemed to be the case where repair costs amount to about 70% of the replacement value.

1.2. Expert's fees

The fees for obtaining an expert's opinion are based on a defined fee schedule. They normally amount to around €250 - €500 and are part of the reimbursable damage.

1.3. Depreciation

The depreciation value is determined by expert opinion and constitutes a reimbursable head of damage in its two forms, the mercantile or technical

depreciation.

Mercantile depreciation is based on the fact that the vehicle has suffered damage by way of the accident and despite proper repair generally sells for less than without accident.

Technical depreciation applies in the event that the vehicle after repair has objectively noticeable defects which cannot be removed or were inevitable in view of the type of repair selected.

Not in all European countries mercantile depreciation is as clearly reimbursable as in Germany which is also due to the fact that according to German law the seller of a car is obliged to inform the buyer about possible accidents with the car and the consequent damages.

1.4. Towing costs

The injured party can claim refund of towing costs incurred for transporting the vehicle to the nearest garage.

1.5. Disbursements

Another regular German head of damage is the accident disbursements flat rate. This flat rate is generally awarded to the injured party to cover costs such as postage, telephone and the like without being required to specify the actual amounts incurred. As a rule, a regionally variable sum of between €15 and €30 is claimed and awarded.

1.6. Rental car costs

The German rental car cost refund is regularly met with surprise by non-German colleagues and clients.

At the expense of the party who caused the damage, the injured party can use a rental car until replacement is obtained or for the duration of the repair of the immobilized or unroadworthy vehicle. This includes a two-day period granted to consider how to proceed. Two basic conditions must be met by the injured party.

Under the first condition, the injured party is required to inquire rates from at least a number of rental car companies in his vicinity. The second condition suggests to rent

a lower class vehicle to avoid a later deduction for not wearing down the own vehicle which would have been used by the injured party had it not been unavailable due to the accident.

Up to this point, the facts and legal circumstances pose no major problems to all parties involved, but not so for the practice.

In most international accident cases, the injured party briefs a lawyer to handle the claims. From his long-standing practice such lawyer will generally cooperate with a regular rental car or expert. But if they are aware that an insurer is involved in the accident settlement, their approach is quite different.

Instead of the customary rental car rate, the so-called accident replacement rate is applied which may considerably exceed the customary rental car rates.

For instance, an accident replacement rate of €150 and €170 per day may be charged for a standard VW Golf which hires at normally between €50 and €60 per day.

Rental car companies explain this excessively higher rate, which foreign insurers find difficult to understand, with the high economic risk involved. The facts and legal situation were first unclear and, by involving another foreign insurer, additional delay would occur.

This expensive practice has been confirmed by the courts until last year. All attempts to find a different court approach failed.

Only last year the Düsseldorf Higher Regional Court ruled that stricter requirements were to apply to the accident replacement rate. The German Supreme Court upheld this ruling and required the injured party and hence the rental car company to prove that application of the accident replacement rate was indeed necessary.

As things are now, rental car companies are required to adequately justify the application of the accident replacement rate focusing on the economic necessity of such rate. Valid arguments include the risk of long-term prefinancing of rental car costs, the related loss of interest, or the risk of being unable to recover the claim where the insurer is not liable.

Let us wait and see the further developments in practical handling and legislation. In

a ruling of 25 October 2005 the German Supreme suggested a flat surcharge on the normal rate as a viable solution, underlining at the same time the trial judge's full discretion in verifying the necessity of such rate.

In view of the above rulings we are certainly on the onset of a long-term process; the development as such, however, is welcome by the insurance industry.

1.7. Loss of use

As an alternative to a rental car, the injured party may claim loss of use.

The amount awarded in Germany for loss of use is based on dedicated tables providing a daily rate for each vehicle type and model. Every vehicle type and model is classified into a certain group. These groups range from "Group A" (e. g. DACIA Logan; daily rate €27 to "Group L" (e. g.: Mercedes-Benz S-Class; daily rate €99,--). Less or even no loss of use generally applies to vehicles that were built more than five years ago, since they have a lower value in view of their long service life. To such vehicles the cost of maintaining a replacement vehicle is refunded which provides a considerably lower daily rate.

If the injured party opts not to use a rental car, he or she can claim the relevant daily rate for the duration of the repair.

1.8. Lawyer's fees

The recovery of fees when retaining a lawyer to assert the claims is acknowledged by Supreme Court rulings. At the early stage of filing the claims notice, the injured party is entitled to retain a lawyer, since in most cases the extent and the quantum of the claim cannot be conclusively determined without sufficient legal knowledge.

Lawyer's fees are based on the new German Law for the Computation of Lawyer's Fees. This law certainly makes it easier for a lawyer to earn a fee, and after about two years of its application, we certainly notice that the average earned fee is higher than before. On the other hand, this law is a major contribution to making fee regulations more transparent.

2. Belgian and Dutch law

As mentioned above, in Belgium and the Netherlands a vehicle damage following an accident does not provide as many heads of damage in the course of claims regulation as in Germany.

In both countries the repair costs are generally being assessed on the basis of a repair invoice and / or an expert's report obtained by the responsible party or his motor liability insurer. While in Belgium costs of experts engaged by the damaged party are generally not reimbursable in the course of out of court claims regulation I the Netherlands such costs have to be paid by the responsible insurer in the case of damages above €600.

In both countries in the case of total loss the "130-per-cent" rule applied in Germany and described above does not exist. Consequently the injured party only receives compensation equivalent to the replacement value minus the salvage value instead of compensation for repair costs.

In both countries compensation for reduction in value (depreciation) is handled more restrictively than in Germany, e. g. in the Netherlands only compensated in the case of very serious damage on relatively new cars (generally not elder than 1 year).

Contrary to the generous practice in German law in both countries hire car costs and loss of use are compensated if the injured party depends on the car for particular business or private reasons. In the Netherlands the compensation for loss of use is limited to commercially used vehicles (e. g. taxi). Loss of use according to the Belgian table issued by Union Royale des Juges de Paix et des Juges de Police amount to e. g. cars €19,83, taxis €45,86 per day.

In both countries compensation for lawyers' costs is much more restrictive than in Germany. While in Belgian practice and court rulings compensation for lawyers costs were totally excluded a high court ruling dated 02.09.2004 changed this general attitude favouring compensation for lawyer's costs. In the Netherlands lawyers costs which are particularly high in that country are mostly only for a minor part subject to compensation.

IV. Personal injury

The pan-European comparison shows that the differences are even greater for the compensation of personal injury, especially where non-material damage is concerned, than is the case for property damage.

The countries have adopted two different approaches to compensate for personal injury. Some countries categorise non-material personal injury using defined medical criteria, and award damages on the basis of specified schemes/compensation tables.

Other countries centre on the discretion of the judge, and damages are awarded according to the legal practise.

The first – let us call them "compensation table countries" – include for instance Spain, France, Belgium, Italy and Czech Republic. The second– let us call them "case law" Countries – include Germany, Switzerland, Austria, the Netherlands, Poland. It is worth mentioning that in Spain and the Czech Republic binding compensation schemes are established by law, and in Belgium, France and Italy the courts have developed tabular systems. The problem is of relevance from a constitutional point of view, since the question is whether the law-making competence falls to the legislator or to the judiciary.

Apart from the great number of differences in detail, we must also bear in mind that, depending on the country, different social security systems apply to road victims, and the law of damages must cover up for loopholes in social security law.

Structural differences are evident in the treatment of the heirs of deceased accident victims, especially damages for pain and suffering for close family, if the injured party dies. While in Germany no such compensation is awarded, this head of damage plays a role e.g. in Italy, Spain or Switzerland.

Since the German and the Dutch systems for compensating bodily injury are quite close, I would first like to illustrate the legal situation in Belgium, which is a "compensation table country".

1. Belgium

Under Belgian law, a road victim suffering personal injury is eligible to receive the following compensation:

- refund of the costs incurred;
- compensation of damage incurred during temporary incapacity for work;
- compensation for potential permanent invalidity or final incapacity for work;
- moral compensation of the heirs of a deceased road victim and material compensation for loss of income and funeral costs.

1.1. Costs of medical treatment, nursing and care costs

Compensation is paid for the actual cost of medical treatment. Social security or

private sickness insurers can reclaim accidental benefits from the compensator or his motor liability insurer. Nursing and care costs are usually compensated in full. Compensation is also paid for nursing costs even if they did not actually arise. In that case the notional damage is compensated. Where the social security or private sickness insurer disburses the cost they are entitled to a recovery from the compensator or his motor liability insurer.

1.2. Eligibility to compensation of damage incurred during temporary incapacity for work

The injured party is eligible to be compensated both for any property damage and for the moral, i.e. non-material, damage incurred prior to consolidation, i.e. the point in time the injured party's medical condition has stabilised (with any further treatment having no impact whatsoever).

1.2.1. Non-material damages for temporary incapacity for work

For so-called moral damage a one-off compensation is awarded for customary pain and suffering of the victim as a result of the injury:

- €31 per day of hospitalisation
- €25 per day 100% incapacity for work
- €19 per day 75% incapacity for work
- €13 per day 50% incapacity for work

For extraordinary pain additional damages for pain and suffering are awarded in the form of the so-called pretium doloris assessed on a scale of 1-7 degrees.

1.2.2. Material damages – loss of earnings – until consolidation

Loss of earnings is calculated precisely for the period until recovery is reached on the basis of the previous gross income deducting tax and social security contributions. If a housewife can no longer run the family household due to accidental injuries compensation is payable irrespective of whether a domestic help is employed to replace her. The loss is not calculated precisely but on a lump sum basis. It depends on the number of children who need services and their age.

1.3. Compensation for potential permanent invalidity or final incapacity for work

Non-material and material damage is compensated for the period of permanent invalidity or incapacity for work.

1.3.1. Non-material damages for permanent incapacity for work

For the purpose of assessing the amount of compensation, the Association of Police Judges designed a table based on the age of the victim and the percentage of invalidity or incapacity for work:

- Person of or under 10 years: €3,300 per percentage of invalidity
- Person of or under 35 years: €2,425 per percentage of invalidity
- Person of or under 64 years: €1,410 per percentage of invalidity

The sums indicated in the table are not imperative and variable at the judge's discretion (in line with the type and severity of the injury, the age and particular circumstances of the victim).

1.3.2. Material damages for permanent incapacity for work

It is important to identify whether, and to what extent, material damage can be assessed.

For minor permanent incapacity for work (under 15%), or difficulties to assess such incapacity, lump sums are awarded as outlined below:

- Person of or under 10 years: €2,000 per percentage of invalidity
- Person of or under 35 years: €1,750 per percentage of invalidity
- Person of or under 64 years: €900 per percentage of invalidity

Where concrete evidence is available to determine the extent of the damage, the capitalisation method is used: The quantum of damages is calculated on the basis of the average net earnings during the previous 12 months, multiplied by the percentage of incapacity for work and a coefficient expressing the duration of gainful employment of the injured party and considering the premature payment of the

compensation.

1.3.3. Additional non-material damages

In addition, the following impairments are eligible for compensation:

- Aesthetic damage: degree 1 – 7
 - Degree 1: between €250 and €750
 - Degree 4: between €2,250 and €8,700
 - Degree 5: €8,700 and over
 - Degree 7: €24,800 and over
 - e.g. pupil, 16 years, hideous scars in the face (Pol. Luttich, 2001)
€18,600
- Loss of enjoyment of life
- Sexual damage
- Affective damage
- Assistance by third party

1.4. Moral compensation of the heirs of a deceased road victim and material compensation for loss of income and funeral costs.

The heirs and family of the injured party are eligible to be awarded non-material and material damages:

- Compensation in the event of death:
 - Moral indemnification (tables as per degree of relationship)
 - Loss of spouse: €10.000
 - Loss of parent: €17,500 each
 - Loss of child: €10,000
 - Loss of support
 - Expenses (including funeral costs)

2. Germany and the Netherlands

In both countries recoverable personal injury claims include compensation for material damages and compensation for pain and suffering.

In German law for instance § 253 section 2 of the German Civil Code provides that "...for an injury to the body or health, ..., a reasonable compensation in money may be demanded for any damage that is not financial damage".

2.1. Costs of medical treatment, nursing and care costs

In both countries compensation is paid for the cost of medical treatment as far as it has actually been incurred. Regarding the cost of medical treatment the social security and the private sickness insurers have a right of recovery against the person liable or his motor liability insurer.

2.2. Compensation for pain and suffering

Bearing in mind the German Supreme Court rulings, the compensation for pain and suffering has two purposes. First, such compensation is aimed at offering the injured party a reasonable recompense for the pain suffered and the lost social pleasure and enjoyment. In addition, it is intended as a satisfaction. The latter, however, plays a secondary role in the case of accidents but has a major impact where intentional bodily injury or libel is concerned.

The injured party qualifies to be compensated for pain and suffering both under tort and strict liability. This, however, requires that one of the above injuries occurred and was caused by the preceding action.

With slight differences in detail the legal structure in The Netherlands is similar.

In both countries, the quantum assessed for non-material damage is at the discretion of the judge. Usually, compensation is awarded in line with rulings in similar cases.

Examples Netherlands:

Previous court decisions have established the following guidelines for the assessment of compensation for pain and suffering based upon the type of injury

suffered:

- external injuries (one week of incapacity for work): €100 - €500
- concussion (two weeks of incapacity for work): €300 - €1,000
- Max. stay in hospital 1 week, min. 6 weeks
incapacity for work, complete recovery: €1,600
- Min. 6 weeks in hospital and several months'
incapacity for work, no complete recovery: up to €4,150
- single broken arm uncomplicated healing: €600 - €2,000
- single broken leg, uncomplicated healing: €1,250 - €3,500
- loss of one arm, below elbow: €15,000 - €20,000
- loss of one arm, above elbow: €20,000 - €25,000
- loss of one leg, below knee: €15,000 - €20,000
- loss of one leg, above knee: €20,000 - €25,000
- loss of vision in one eye: €15,000 - €25,000
- paralysis resulting from spinal injury: over €50,000
- HIV infection: €192,000

Court decisions;

- Man, concussion, external injuries, hospitalized for one day (LC Zutphen) €265,-
- Man, ankle ligament torn, 6 weeks incapacity for work (LC Rotterdam) €560,-
- Man, broken thoracic vertebra, hospitalized for 3 weeks, incapacity for work for 4 months, shoulder pain for 10 months after the accident (LC Zwolle): €2,100
- Man, whiplash trauma, persistent pain in back of head, neck and upper left arm, 3% incapacity for work (LC Utrecht): €4,700
- Man, 19 years, broken upper leg left and right, in hospital 40 days, several med. operations, 2 months 100% incapacity for work, 2 years 50% incapacity for work, no complete recovery (LC 's-Hertogenbosch): €10.400,-

- Man, severe hand injury, 80-100% employment disability (LC Utrecht): €12,000
- Woman, leg shortened by 3cm, scars measuring 4, 12 and 14cm, postponement of studies (LG The Hague): €14,500
- Man, loss of right eye, incapable of working for 2 years, 15% employment disability (LC The Hague): €20,000

Examples Germany:

- Broken arm €1,000 – €12,500

Example: upper arm of student broken near the joint, no complications (Limburg Regional Court) → €1,000

Distal humerus fracture, 30% loss of earning capacity due to wrong treatment (Oldenburg Higher Regional Court) → €12,500

- Broken leg €2,500 - €12,500

Example: tibia plateau fracture, pensioner (Hamm Higher Regional Court) → €3,750

comminuted fracture of the left knee, sports coach (Augsburg Regional Court) → €12,500

- Loss of eye €12,000 and over; including pension

Example: Total loss of eye after shooting fireworks, loss of earning capacity: 25% → €13,500€

Infant going blind after serious medical malpractice
→ €30,000 and monthly pension of €200

- Paraplegia €12,000 and over, including pension

Example: Paraplegia C1 cervical, infant three years and six months, permanent care required (Kiel Regional Court)
→ €500,000 and of monthly pension €500

In Germany especially for whiplash injuries the question of causation continues to keep the courts occupied with usually long-term and costly cases.

Prevailing opinion over the past years has it that whiplash injury can only occur in a front or rear collision. This at least excludes cases where side collision was the cause of the accident. On the other hand, some judges held that whiplash injury might be a likely consequence even in low speed impacts of 10kph.

2.3. Impairment of working capacity

This head of damage applies if the injured party is impaired in his or her working capacity due to the injury and has suffered a concrete financial loss.

This does not only include lower earnings, but all economic impairments which are a consequence of the impaired working capacity, for instance

- the loss of savings for own labour of a home builder
- higher health insurance rates due to an increase in risk
- the refund of the net wages for skilled help.

The decisive factor for assessing the financial loss incurred is the overall personal and financial situation of the injured party.

2.4. Loss of earnings

In the case of working incapacity the injured party can claim for loss of earnings. The basis of the compensation claim is the net income earned prior to the accident. The claim is individually calculated according to the actual absence from work. Social security insurers can recover their outlays from the responsible party or from his motor liability insurer. Private employers have a legal right of recovery, as well. Self-employed persons are required to submit tax returns/statements, accounting documents, etc. as evidence of lost earnings.

If due to the accident a housewife can no longer run the family household as before she also has a claim for compensation (for the loss of her contribution to the family maintenance). The amount of the claim depends on the work required and the cost of employing a substitute. It does not matter whether or not a substitute is actually

employed.

V. Recourse of social security providers

The recourse of social security providers at European level is governed by Regulation No 1408/71, and specifically by the conflict of laws rule provided in Article 93 thereof. The Member States are required to acknowledge the claim of the recipient of services against a third party, which by way of *cessio legis* is transferred to the responsible provider. In practical terms, this means that social security recourse is governed by the law of the country to which the social security provider belongs.

VI. Private International Law

In view of the above legal differences, in the settlement of international claims it is important to find out which national law to apply.

Often however, the rules of private international law are not taken into consideration. In all legal systems, these are the rules determining the applicable law in cases with international relevance. Judges in all countries first check their jurisdiction on the basis of these rules, and then find out which national law to apply.

1. Germany

In Germany, these are the rules of Art. 40 and following of the Introductory Law to the German Civil Code:

Lex loci delicti commissi principle Art. 40 paragraph 1

Tort liability is based on the law of the country where the liable person has committed the harmful event“. „ The injured party may require the application of the law of the country where the harmful event resulted in damage.

Exception from the lex loci delicti commissi principle:

Art. 40 paragraph 2 – common habitual residence

„If the liable person and the injured party at the time the event occurred had their

habitual residence in the same State, the law of such State shall apply“.

Another consequence of this principle is that in the event of an accident involving two Turkish citizens in Istanbul who had their permanent residence in Germany, claims settlement in Germany is based on German law even though the accident occurred Turkey.

2. Situation in Belgium and the Netherlands:

Hague Convention on the Law applicable to Traffic Accidents of 1971

Signatories:

Belgium, France, Yugoslavia, Croatia, Luxembourg, the Netherlands, Austria, Switzerland, Slovakia, Slovenia, Spain, Czech Republic

Principle: *lex loci delicti commissi* (Art. 3)

Art. 4 – 6 law of the country of registration or where the vehicle is normally based

- Involvement of a vehicle (claims of passengers)
- Several vehicles (all registered in the same State)
- Involvement of persons outside the vehicle (all persons with habitual residence in the country of registration)

VII. Practical impact on the settlement of international claims

- Requirements for the correspondents in Green Card cases: thorough knowledge of the own legal system, knowledge of international law, knowledge of the law in the country of the mandating insurer;

- Functioning communication between the correspondent and the mandating insurer: this requires the understanding of the other's legal system and mentality

- The basis for functioning communication at international level: language skills

- Fast settlement through dedicated operational processes and technology

- Advantage of networked organisation in several countries