

TRAUMA & REHABILITATION

JUDICIAL AND INSURANCE PATHWAY AFTER SEVERE ROAD INJURY

The REHABILAID study

REHABILAID is an EU funded project involving an observational, longitudinal, multi-centre study on people sustaining severe injuries in road traffic crashes. It was carried out in three European countries: Greece, Germany, and Italy. A total of seven public hospitals were involved in the study: five in Greece (Region of Crete), one in Italy (Pavia) and one in Germany (Hannover). Participating centres enrolled all patients who were admitted due to road accident involvement in the intensive care units of the selected hospitals over a year (2013-2014). Physical, psychological and financial costs were evaluated at baseline at 6 and 12 months.

Project team



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REHABILAID - GERM



Consequences of severe injury in road traffic accidents

A large number of road users involved in traffic accidents recover from their injuries, but some of them never recover fully and suffer from some kind of permanent disability. Those aged between 15 and 44 years, figures heavily in road traffic injuries.

Physical health consequences of road traffic accidents are huge. Serious injuries will require significant amounts of long-term care, including multiple hospitalizations, outpatient appointments, surgical procedures, district nurse services, medication and the provision of medical equipment. Persistent pain may cause various difficulties in living a normal life. Post-traumatic stress, depression and anxiety are also common after a serious road crash, and victims as well as their families often need ongoing psychological care to achieve good mental health. In addition to physical and psychological health consequences, road accidents carry many other consequences to the survivors such as job loss or unfavorable job changes, legal implications, economic burden, home and vehicle adaptations.

Victims' family may also face significant changes in their life such as significant amounts of time spent in providing practical long-term care to the injured at home, time spent away from home to care for the injured at the hospital, to accompany them during outpatient appointments, or to emotionally support the injured in coping with the psychological distress caused by the accident. It is also common for families to make changes to their home, car and lifestyle to accommodate the injured person's needs. Most importantly, some parents never recover from the trauma of a sudden death of a child caused by a road accident. They may face feelings of guilt and a high risk of post-traumatic stress themselves, while a family breakdown is also a potential outcome.

When people involve in road traffic accidents, they are usually overwhelmed with negative emotions due to the resulting injuries, property damages and other unexpected consequences. However, there are important things to do at the scene of the accident and soon afterward, which people need to have in mind in order to easily resolve issues while avoiding legal pitfalls. In fact, most injury cases are settled without ever going to trial, because of delays in taking action or out of ignorance of important action needed. Below is a list of things to do after an accident. Print this information and store it in your car.

DO's AND DONT's IN ROAD TRAFFIC ACCIDENTS

AT THE ACCIDENT SCENE

BEHAVE Never leave the accident scene until it's appropriate to do so. It is possible that there are people involved in the accident who are injured or killed. By leaving the scene you can face serious criminal penalties. Try to be tranquil, polite and cooperative. Do not lose your temper.

AVOID ADMITTING RESPONSIBILITY At the time of the accident it is not easy to understand whose fault was it. Sometimes we feel sure about having the greatest part of the responsibility regarding the accident. This may be right but the other drivers may also have done serious violations that will be identified by the experts later on. Therefore, it is important to avoid saying anything indicating that you are responsible for the accident as this may mean that you are admitting legal liability for what happened.

ASSESS & MANAGE HEALTH Assess the physical condition of any people traveling with you. Make sure everyone is okay. Mind that people don't always realize they've been injured until several hours after the accident, when they get more calm. Sometimes seemingly minor injuries later develop into serious and permanent problems. Remember that you can claim a dawn payment from the insurance company for your everyday expenses until recovery. If there are people unconscious or sustaining neck or back pain, call an ambulance (Number 166) and do not remove them until medical help arrives. Make sure that they are safe at the scene of the accident until they are moved to hospital. Make sure that you record the plate numbers of the ambulance carrying the injured and information on the hospital/medical unit they are transferred to.

CALL THE POLICE It is important to call the police (Number 100) when there are property damages or people who died or sustained injuries. They can document everything in the police report, which will be used in court. Remember to obtain the name and badge numbers of the responding officers. Obtain and review the report filled by the police. If something is missing you could request an amendment.

CALL YOUR INSURANCE COMPANY Promptly tell your insurance company you've been in an accident. You only have 8 days to do so, according to the Greek law. Be sincere with your insurer and tell them the truth about what happened and the extent of your injuries. Obtain and review the report filled by the insurance company, so you can point out who was at fault and have your point of view recorded. Be aware that it is for the benefit of the insurance companies to delay payment of any damages.

COLLECT EVIDENCE AT THE ACCIDENT SCENE Collect information from drivers, passengers and witnesses. Get the names, addresses, drivers' license numbers, license plate numbers and insurance information from all the drivers involved in the accident. Collect similar information from all the passengers as well as from witnesses either passing nearby the accident scene or shop owners/workers close by. Ask witnesses to tell you what they saw. This information may be useful in court later on. If you are injured and cannot get this information yourself, ask a bystander to do it for you. Collect evidence from the damage. Take dated photographs of your vehicle to show the extent of the damage. Photos may be helpful in court as well as for your insurance company to determine the damage and compensation.

AFTER LEAVING THE ACCIDENT SCENE

DOCUMENT YOUR INJURIES AND THE TREATMENT RECEIVED Seek immediate medical attention for your injuries, even if they are minor. Keep a detailed account of the treatments or medications you receive (medical reports and receipts) as these help you prove your medical expenses later. All costs not covered by social insurance could be claimed. Special diet should be noted on medical records to be able to claim this cost as well. If we need to stay in bed for a certain period, we need to document this in written in our medical record to seek for compensation for any family member spending time in assisting us for that period.

OBTAIN YOUR INSURANCE COMPANY'S DAMAGE EVALUATION If you aren't satisfied with how your insurance company has valued your property damage you can always seek for independent repair estimates or replacement quotes. If consensus is not reached on your car's value, consider mediation an attorney.

RECORD INDIRECT COST OF INJURY Keep information on missed workdays due to the injury, either yours or of other family members serving as informal carers. Keep records of pain and suffering and how this impacted your daily life.

YOU CAN CLAIM COMPENSATION FOR

PERSONAL INJURIES

- transportation to medical centre
- hospital fees, medication, private nurse
- physiotherapy
- home health care
- future hospitalization and surgery.

MATERIAL DAMAGES

- Seek an expert to evaluate damage on the following:
- the vehicle (e.g. car, motorbike)
 - the equipment (e.g. radio, alarm)
 - personal objects (e.g. glasses)
 - other destroyed objects.

MORAL DAMAGE

- loss of items of high emotional value (e.g. damaged vehicle or other property)
- loss of functionality or damaged appearance.

LOSS OF INCOME

- Any amount -asserted by the insurance company - which is not compensated by any state/private labor organization, trade union, pension fund can be claimed
- lost income in case of professional use of the vehicle (e.g. taxi, truck)
- Allotment of wife/child support in case of divorce either after or before the injury.

DISABILITY AFTER ROAD TRAFFIC ACCIDENTS

In road traffic accidents, it is common for individuals to sustain brain, neck or spinal injuries or even suffer from post traumatic stress disorder. These and many other injury types can take a very long time to heal and can cause a significant permanent or long-term limitations on people's ability to move, function and work. In these cases, it is crucial that the injured party clearly understands his or her right to Social Insurance benefits as it pertains to their specific situation. Many people seem to ignore their rights or they feel helpless when they are confronted with the necessary procedures to claim them. The extent of the injury and the time that one will be physically unable to work will likely determine the level of benefits available. Age, educational level and work history over the past 15 years will also be considered in making this determination. If you live in Greece and you have suffered an injury from a road traffic accident and you are interested in receiving disability pension or benefits, consider the following information and procedures.



DISABILITY PENSION

The following types of invalidity pensions are provided by the Greek Social Insurance organizations, on certain conditions:

- Invalidity pension due to non-occupational disease.
- Invalidity pension due to an accident at work or occupational disease.
- Invalidity pension due to a non-work-related accident.
- Old-age pension for disabled persons.

REQUIREMENTS

- If you have covered the required insurance period* and you have been deemed disabled by the Centre for Certifying Invalidity (KEPA) with a degree of disability of at least 50%, in case you are insured for the first time after 1 January 1993.
- If you have covered the required insurance period* and you have been deemed disabled by the KEPA with a degree of disability of at least 67%, in case you were insured for the first time before 31 December 1992.
- If you are depend-ant you are entitled to an additional amount per month, on certain conditions.

**The "required insurance period" defers according to the type of invalidity pension. In most types of invalidity pensions, the amount of insurance days accumulated, the period of time they were accumulated and the current age of the applicant are determinants of eligibility. In the case of the old-age pension for disabled persons, applicants have to be totally blind or suffer from certain illnesses, regardless of their age.*

DISABILITY BENEFITS

The following types of invalidity benefits are provided by the Greek Social Insurance organizations, on certain conditions:

- Non-institutional care benefit.
- Pensioners' Social Solidarity Benefit (EKAS).
- Total invalidity benefit.

Non-institutional care benefit: This benefit is provided to insured persons and pensioners receiving invalidity, old-age or survivor's pensions, and to the members of their families who suffer from specific diseases, on the condition that they do not receive the total invalidity benefit. Christmas, Easter and summer holiday allowances are provided.

REQUIREMENTS

- You must have been diagnosed as having a degree of disability of at least 67%.
- You must not be hospitalized in an asylum-like institution*.

**Payment of the benefit is suspended if the beneficiary is hospitalised in an asylum-like institution for more than 30 days.*

Pensioners' Social Solidarity Benefit (EKAS): This is a supplementary benefit granted following an investigation into assets and income sources in specific categories of persons. It is a non-contributory benefit that concerns public-sector pensioners and generally pensioners whose pensions are subject to public-sector provisions, as well as pensioners receiving old-age, invalidity and survivor's pensions from social insurance organisations, excepting the Agricultural Insurance Organisation (OGA).

REQUIREMENTS

- If you meet certain annual income criteria (total annual net income from salaries and pensions, personal taxable income, annual family taxable income).
- If you are a pensioners on old-age, invalidity or survivor's pensions and you have turned 65 years of age you are entitled to the EKAS benefit.
- The age requirement of 65 years does not apply to you if you are children receiving a pension due to the death of an insured parent or parent on pension, or if you are disabled pensioner on old-age, invalidity or survivor's pensions, who have a degree of disability of at least 80%, provided that you also meet the income criteria.

**To receive this benefit, you must submit to your insurance institution an application in hard copy and your income tax return for the previous fiscal year.*

Total invalidity benefit: This benefit is provided to invalidity and old-age pensioners who are blind, provided their condition requires constant supervision and support from a third person (total invalidity).

IMPORTANT POINTS ABOUT DISABILITY PENSIONS

- The amount of the invalidity pension is determined based on the degree of disability and the beneficiary's earnings in the five years prior to the filing of the application for a pension; only in certain cases is the type of disease taken into account.
- According to the degree of disability, severe invalidity receives full pension, 67% invalidity receives a pension reduced by 25% and 50% invalidity receives a pension reduced by 50%.
- The amount of the basic invalidity pension increases in the event that there are dependent children, in which case a monthly increase is provided, which corresponds to 8% of the pension for one child, 10% of the pension for two children and 12% of the pension for three or more children.
- Those registered with the insurance organisation before 1 January 1993 also receive a monthly increase for their spouses.
- Mothers and spouses of people with disability with 80% or over, are entitled with early retirement, with 25 working years, regardless of age.
- People with severe disability are entitled to their parent's pension after their death.
- Pensions paid to persons with a degree of disability of at least 80% are exempt from tax.

IMPORTANT POINTS ABOUT DISABILITY PENSIONS & BENEFITS

- Beneficiaries of Disability Pensions and Disability Benefits are required to be re-examined by KEPA, unless the duration of their invalidity has been deemed indefinite. The former need to apply for re-evaluation 3 months before expiration of the duration of their invalidity. In a potential delay of re-evaluation -not caused by the applicant-, the pension is provided for 6 more months.
- Some conditions meeting certain strict medical criteria are described in the List of Impairments (43 conditions). These conditions are presumed to be disabling and no further evaluation of the claim is necessary. Most of the listed impairments are permanent or expected to result in death, or the listing includes a specific statement of duration, which in any case is expected to include a continuous period of at least twelve (12) months.
- People with invalidity over 67% are entitled to a number of benefits in the sectors of Education, Labour, Health, Social Welfare, Finance, Transportation and Communication. Some indicative benefits are the following:
 - Welfare monthly benefits for uninsured people.
 - Free medication and medical care for uninsured people.
 - Free or reduced public transportation fees.
 - Reduced telecommunication and electricity fees.
 - Special posts for disabled in the public sector.
 - Exemption from military service obligation.
 - Access to higher education without examinations.
 - Exemption or reduced income taxation.
 - Special posts for disabled in unemployment skill-building programs or posts in the private sector.
 - Facilitated entertainment (e.g. book purchase, summer vacation, theatre, etc.)
 - Driver's license and training for disabled drivers (only one centre in Greece offers this possibility, the "Iniohos Centre" (Greek term "HNIOXOΣ") (KYA 47919/5195/6-8-2003) .

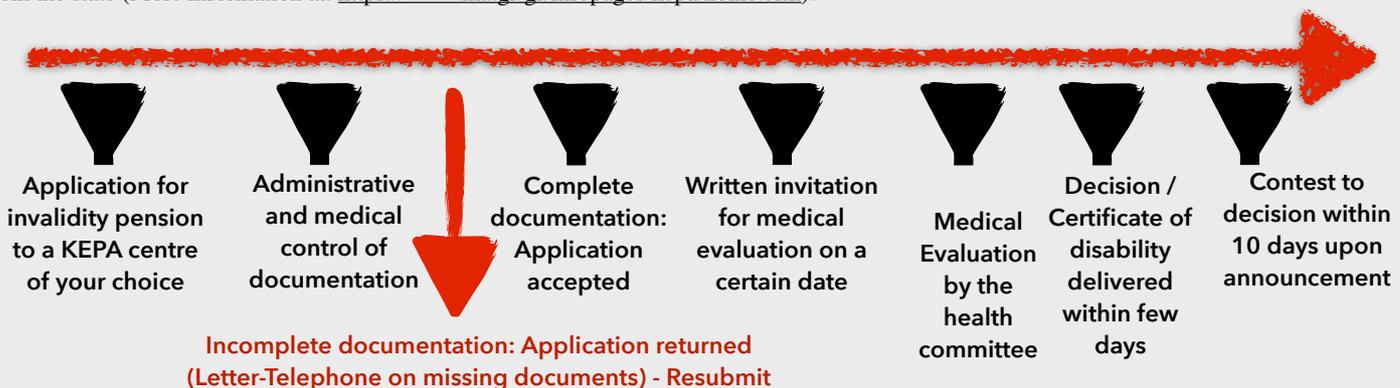
To calculate the amount of your pension based on your earnings and insurance years use the basic pension calculator at http://www.ika.gr/gr/infopages/pensioncalc/calculation_step1.cfm

ENTITLEMENT

To qualify for **Disability Pension** or **Disability Benefits** a person must meet the Social Insurance definition of disability as follows:
"An insured person is considered to suffer from severe disability if – as a result of damage, disease or physical/mental debilitation occurring or deteriorating after becoming insured – the person is unable to earn more than 1/5 of the average earnings of an employee in his field for at least one year. An insured person who is unable to earn more than 1/3 receives 75% of the pension, while a person who is unable to earn more than 1/2 receives 50% of the pension.

PROCEDURES TO CERTIFY DISABILITY

The Centre for Certifying Invalidity (Greek acronym KEPA) is a uniform institution operating since September 1st 2011 (Law 3863/2010) that is responsible for ensuring uniform health assessment in terms of determining the degree of disability of persons insured with all insurance organisations, including civil servants, and that of uninsured persons, who require certification of their invalidity. This new establishment does not include military, mariner, aviation and police, who have individual health committees to certify invalidity. In particular, the task of KEPA Health Committees is to determine the degree of invalidity for old-age pension purposes, to classify persons as being disabled, and to determine the degree of disability for all social and financial benefits or facilities, which require a disability certificate and which disabled persons are entitled to receive from the state (More information at: <https://www.ika.gr/gr/infopages/kepa/home.cfm>).



COMPENSATION AFTER ROAD ACCIDENT: The judicial pathway

Victims of road traffic accidents are often entitled to compensation from the liable driver as well as from the respective insurance company of the liable vehicle. In case of injury or death, a civil claim for compensation can be brought in Civil Courts against any person who by an act or omission has caused the injury or the death. In case the wrongful act, omission or behavior that caused injury or death criminal charges are brought in Criminal Courts against the responsible person. It is very important for the victims to seek for a trustful and skillful lawyer as early as possible to be sure that their rights are respected and avoid missing important deadlines in the judicial system. The following information aims to inform victims on procedural issues and guide them within the judicial system.

LIABILITY

Road Traffic Accidents:

"strict liability of the driver, the owner and possessor of a motor-vehicle towards personal injury victims (Law Γ N/ 1911). Such strict-liability is limited to the value of the motor-vehicle.

Additional information:

- Insurance of motor vehicles for civil liability to third parties is compulsory in Greece (P.D. 237/1986)
- The insurance company and the driver who caused the road traffic accident are jointly liable.
- An action can be brought by the road accident victim directly against the insurance company.
- In case that a vehicle that caused a road traffic accident has no insurance coverage or its insurance expired, a claim can be brought against the "Auxiliary Fund for the Insurance of Liability Arising from Road Traffic Accidents" operating in Greece.
- In hit and run cases, a claim can be brought against the "Auxiliary Fund for the Insurance of Liability Arising from Road Traffic Accidents".

CLAIMS/REMEDIES

Non-fatal Road Traffic Accidents:

- (a) compensation for material damage, medical expenses, loss of earnings, expected future expenses (article 929 GCC).
- (b) compensation for moral damage caused by physical damage due to loss of physical integrity) (article 932 GCC).
- (c) Compensation for invalidity or disfigurement that has been caused to the injured person (article 931 GCC)

Fatal Road Traffic Accidents:

- (a) compensation for material damage (e.g. funeral expenses, compensation for the daily needs of persons who had a legal right) (article 928 GCC).
- (b) compensation for moral damage caused to family members including children, spouses, brothers, (grand)parents, etc. (article 932 GCC).

LIMITATION OF CLAIMS

General rule: "Any claim deriving from a wrongful act is prescribed after lapse of 5 years from the date the claimant has acquired knowledge of the damage and the party liable to pay compensation; in any event the claim is prescribed after the lapse of 20 years from the date the wrongful act was committed. If the wrongful act is also an act that is punishable under the penal law and under that law the prescription is longer, then this longer prescription is also applicable for the claim for compensation" (art. 937 GCC).

COSTS TO PROCEED WITH CLAIMS

- Judicial Stamp / Duty (paid in advance of the Court hearing and are calculated as an amount of compensation claimed).
- Lawyer's Fees* (Law 4194/2013).
- Other Litigation Costs (e.g. Court fees, experts' involvement fees, witnesses' fees). Litigation costs and fees can be claimed.

**It is common for cases involving injury or death to be assigned on contingency agreement basis (e.g. lawyer's fee being a percentage of the compensation finally awarded.*

LABOUR ROAD TRAFFIC ACCIDENTS

"Compensation of Laborers and Employees Suffering Accidents in the Course of their Employment" (Law 551/1915).

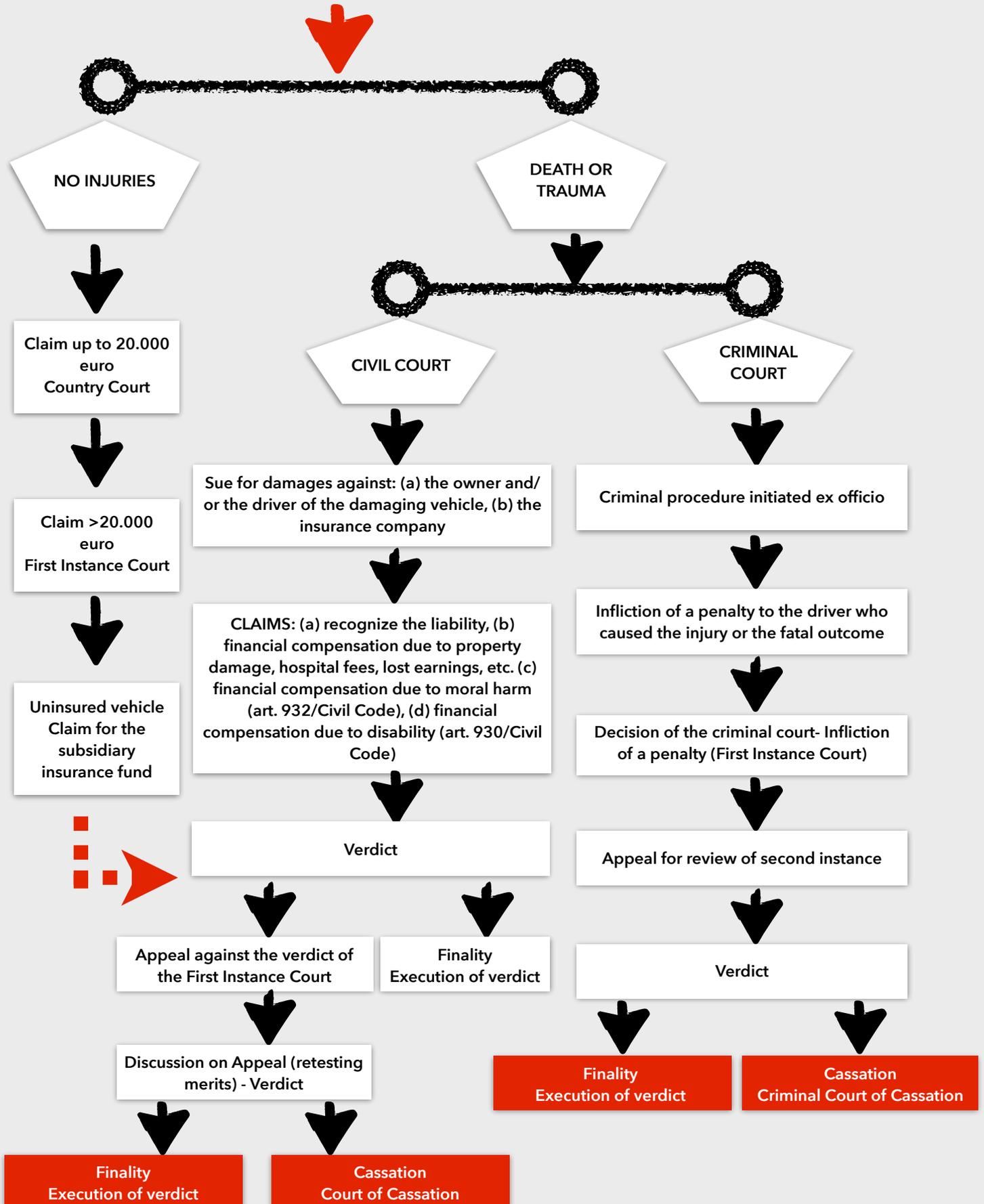
- Liability of employers for personal injuries or death that has been a result of a "violent incident" that took place in the course or by the occasion of the employment.
- Irrespectively of any wrongdoing on the part of the employer (strict liability).
- If a third person caused the incident they are also liable to pay compensation.
- If a violation of safety rules/conditions has caused or contributed to the injury or death, the employer is liable for payment of full compensation.

Judicial pathway after road traffic accidents

The case of Greece



ROAD TRAFFIC ACCIDENT



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