

FERNANDO SCORNIK GERSTEIN

SOLICITORS & ABOGADOS | Registered with the Solicitors Regulation Authority | Registered with the Madrid Bar

PERSONAL INJURY DEPARTMENT

- RTAs in Spain -

Road Traffic Accidents (4th & 5th Directives, and Rome II)

Compensation Fund (for victims where vehicles have false or no registration plates)

Statutory Period - Should I interrupt the statutory limitation period in Spain?

Police & Medical Reports, and Post-accident Investigations

JUNE 2011

Our Firm counts with a department of experts in the subject of Personal Injury and all related fields. Our staff approaches the said matters with the required understanding attitude and rigour, providing efficient, continuous and comprehensive professional service to the client.

ROAD TRAFFIC ACCIDENTS (4th & 5th Directive, and Rome II)

The 4th Directive was introduced mainly to make it easier for those injured in accidents whilst visiting another EU state allowing the injured party a direct right of action against the insurer and requiring the insurer to nominate a representative in the injured party's own country who has sufficient powers to settle the claim. It also requires there to be an Information Centre who can identify the insurer of the other party from the registration plate, and ensures that there is a compensation body to pay the claim in the event that the insurer cannot be identified or is manifestly dilatory in settling a claim.

The 5th EU Motor Insurance Directive establishes compensation for victims where vehicles have false or no registration plates and for victims where the vehicle was not required to be conventionally insured, as well as increasing the minimum legal cover for third party personal injury and property damage insurance. It also allows claims for property damage in cases of unidentified vehicles causing significant personal injury.

EU Regulation known as Rome II creates a harmonized set of rules within the European Union to govern choice of law in civil and commercial matters (subject to certain exclusions) concerning non-contractual obligations. It clarifies that the law applicable to a non-contractual obligation arising out of a tort shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur. However, where the person claimed to be liable

and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply. Aside from this, where it is clear from all the circumstances of the case that the tort is manifestly more closely connected with a country, the law of that other country shall apply (a manifestly closer connection with another country might be based in particular on a preexisting relationship between the parties). All these measures compliment the arrangements of the Green Card system which ensures the ready settlement of claims in the injured party's own country where the other party comes from a different country.

COMPENSATION FUND (FOR VICTIMS WHERE VEHICLES HAVE FALSE OR NO REGISTRATION PLATES)

In the event of an accident where a vehicle have a false or cannot be identified by its registration plate, you may not be able to identify a liable insurer. In such case the guarantee fund in the country of the accident will meet the claim - if the accident occurs in Spain, this will be the Spanish compensation fund (Consortio de Compensación de Seguros). As opposed to the provisions and guidelines of the EU regulations, you will need to submit the claim in Spain before the Consorcio de Compensación de Seguros.

STATUTORY PERIOD

Although the applicable law shall be the law of the country in which the damage occurs, it might be sensible to interrupt the statutory limitation period for an accident occurred in Spain whenever the case is not likely to be successful before the English Courts. For example, regulations in Spain regarding Health & Safety differ from English HSE regulations, and a case that could be disregarded in England could have a favourable outcome in Spain due to interpretation.

The limitation period in Spain for civil proceedings is one year in tort, running from the date of the accident or the date when full prognosis is available, or the date when the damages are known to the victim, whichever the later. Under English law a minor has an indefeasible right to bring an action for personal injuries at any time before the age of 21, under Spanish law there is no difference whatsoever between minors and adults (that is, the parents or caretakers have the duty to protect and represent the interest of the minor until the age of 18).

POLICE & MEDICAL REPORTS, AND POST-ACCIDENT INVESTIGATIONS

Where you are pursuing in England a claim for personal injury of an accident that took place in Spain, you might need to obtain the police and medical reports, or might need to obtain in-depth information about the circumstances in which that accident occurred. Our firm will also be glad to assist you with this.

OUR LONDON OFFICE

The London office of Fernando Scornik Gerstein - established in 1985 - has continuously provided advice on Personal Injury cases in Spain.

Should you require further information or should you like to make an appointment, please contact london@scornik-gerstein.co.uk.

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IURISPAN

Our firm also forms part of the Spanish network of Law Firms IURISPAN - which covers most of the major Spanish cities.

DISCLAIMER

We do not intend to render advice on any particular matter but to bring a general description of certain Personal Injury matters currently in force.

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