

CIRCULAR N. 407 D: ROAD TRAFFIC AND COMPENSATION FOR DAMAGE TO FOREIGNERS

ISVAP often receives complaints about compensation for damage resulting from road accidents involving foreign citizens.

In these cases specific problems connected to the *an* and *quantum debeatur* vis-à-vis non-EU injured parties arise more and more frequently.

The cases studied have shown that insurance companies frequently refer to article 16 of the preliminary provisions of the Civil Code. Under such rule insurance companies, on the basis of the principle of reciprocity, offer inadequate compensation to foreigners, even regularly resident in Italy, since they pay the victim the same amount that would be paid to an Italian citizen, for the same event, in the foreigner's country of origin.

In this regard it must be stated first of all that the so-called principle of reciprocity envisaged by article 16 of the preliminary provisions, which some insurance companies generally plead, refers only to the fulfilment of the condition that the foreigner's homeland recognises the civil rights connected to compensation for damage and the legal institution of insurance, without any discrimination for the Italian citizen.

Given the above considerations it is necessary to make a few remarks especially in view of recent regulations which have substantially changed the matter at issue. First of all reference should be made to article 62 of Act N. 218 of 31 May 1995 "Reform of the Italian legal system of private international law" which reads: "Liability for an illegal act is regulated by the law of the country where the event occurred". Therefore the law applicable to any accident occurred on the national territory is the Italian law (*lex loci*).

Moreover the Italian legislator has specifically and systematically studied the status of foreigners with Act N. 40 of 6 March 1998, subsequently incorporated in the consolidation act approved with legislative decree N. 286 of 25 July 1998, and with the following rules for the enforcement of the consolidation act, issued with presidential decree N. 394 of 31 August 1999 (published in the Official Journal of 3 November 1999). More precisely article 2, par. 2 of Legislative decree 286/1998 lays down that "the foreigner regularly resident on the Italian territory has the same civil rights acknowledged to the Italian citizen, except when differently established by international agreements in force in Italy or by the present consolidation act. In those cases where this consolidation act or international agreements envisage the condition of reciprocity, this is ascertained on the basis of the methods and terms established by the enforcement rules". As it can be seen, the subject-matter of reciprocity is also indirectly modified.

With the enforcement rules (the afore-cited presidential decree 394/1999) the reform of immigration laws can be considered complete. In fact art. 1, par. II establishes that the check of reciprocity is neither required for foreign citizens who hold a residence card nor for foreigners who hold a residence permit for subordinate or non-subordinate employment, for running an individual concern and for relatives having their residence papers in order. The residual role played by the principle can also be inferred from art. 1, par. I, where it is envisaged that the persons listed therein (notaries and those responsible for the administrative procedure through which the foreigner is granted civil rights) require that the Ministry of Foreign Affairs ascertains this condition only in the cases envisaged by the consolidation act on immigration and the condition of foreigners as well as in those cases where international agreements envisage reciprocity.

So it is evident that the problem of compensation for damage to foreign citizens can be considered solved on account of present regulations in this field, which have likened the non-EU citizen who regularly resides on the national territory exactly to the Italian one as regards the enjoyment of the fundamental rights. So the limitation contained in the principle stated in art. 16 of the preliminary provisions is solved, and in the above situation the latter can apply only where it is expressly envisaged by the said consolidation act or by international agreements (art. 2, par. II of legislative decree n° 286 of 25/7/1998).

On the other hand a restrictive interpretation of art. 16, which excludes its enforceability in relation to a person's fundamental rights, is first of all justified by the obligation to abide by the constitutional principles, which acknowledge these rights without any limitation or discrimination. From this viewpoint a different treatment between non-EU citizens residing legally or illegally in Italy would not even be fair, since any situation of illegal residence lies within the competence of the Police and does not affect the entitlement to damages. In fact art. 2 of the Italian Constitution does not draw a distinction between Italian citizens and foreigners when it acknowledges inviolable human rights.

Having said this it is necessary to verify whether the protection recognised to non-EU citizens can include compensation for biological damage. The answer can only be positive, for biological damage is a violation of the right to health, which is protected by articles 2 and 32 of the Constitution. Therefore the possibility to pay this damage must anyhow be acknowledged, since the right to the psycho-physical integrity must be considered a fundamental human right protected by international law, according to which the foreign citizen (in this case the non-EU one) must be likened to the Italian one. Of course, in line with the decisions of the Courts, this loss component must be ascertained and quantified taking account of the place where the unjust economic damage caused by someone else's offence concretely produces its effects. Therefore the real amount of damage must be calculated in relation to the place where the person lives and carries on its activity; hence the economic data necessary for a complete calculation and settlement of damage must be drawn from the economic reality of the country where the injured party actually resides. This must be reasonably taken into account depending on whether the foreign citizen resides in our country on a regular basis or not.

We therefore invite all insurance companies to comply with the above regulations and avoid any discrimination of non-EU citizens due to an improper application of the principle of reciprocity.

Finally we believe that the above considerations, just like the general principles, should apply not only to motor vehicle liability insurance, a sector for which we have received some complaints, but more in general to all the fields of civil liability in all the cases where the injured party is a non-EU citizen.