

**LIABILITY OF GREEK LOCAL AUTHORITIES
FOR ROAD INFRASTRUCTURE**

 Pan-European Organisation of Personal Injury Lawyers

PEOPIL RTA & WHIPLASH EEG
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Law 3155/1955 on Construction & Maintenance of Roads
Categorization of Roads

National Roads (Defined as such by legal instruments)



- Main traffic routes connecting significant towns with biggest ports or airports or train stations
- Main traffic routes connecting the country with coterminous states
- Roads serving routes of exceptional tourist interest
- Roads serving national security

Provincial Roads (Defined as such by legal instruments)



- Provincial Roads are all roads that are neither National nor Municipal or Communal

Municipal or Communal Roads



- Roads serving the needs of a Municipality or a Local Community falling within its administrative territory

Law 3155/1955 on Construction & Maintenance of Roads
Responsibility for Construction & Maintenance



- National Roads → State
- Provincial Roads → Prefectures
- Municipal or Communal Roads → Municipalities – Local Community Governments



Article 5, Law 679/1977 (as amended by Law 1418/1984)

- Statutory Authorization for the issuance of Presidential Decrees for the establishment of "Special Offices of Public Works" (SOPW) for the execution of projects of major importance
- SOPWs fall directly under the Ministry of Public Works
- Since 1977 more than 100 PDs have been issued on the basis of Law 679/1977 establishing, amending or extending the duration of SOPWs for various construction works of major national importance, including road infrastructures (notably for all Greek highways and all major avenues of Attica)

The Basis of Liability of Public Authorities for Road Infrastructure

Introductory Law of the Greek Civil Code - Articles 105 & 106

Article 105: "For illegal acts or omissions of the organs of the state in the exercise of public powers entrusted to them, the state is liable for compensation, unless the act or omission was in infringement of a provision that exists for the shake of the general interest. The responsible person is jointly liable along with the State, subject to the specific provisions on liability of Ministers."

Article 106: "The provisions of the two preceding articles apply to the liability of the municipalities or other public legal entities for the acts and omissions of the organs in their service."

The Nature and Extent of the Liability of Public Authorities

Strict Liability

- The liability of the State or the Local Authorities or the Public Legal Entities is strict, i.e. does not depend on the existence of fault on the part of the organ that caused the damage (Supreme Court 266/1982, Supreme Court Plenary 382/2001, Council of State 1413/2006).

No Need for Violation of Specific Law

- The public authorities are liable not only in case an act or omission has been in violation of a specific provision of law, but also when the public organs omitted specific tasks and obligations peculiar to their service, imposed by the general legislation and regulations, or the common experience and the principles of good faith (Council of State 2796/2006, 2741/2007, 1019/2008).

The Nature and Extent of the Liability of Public Authorities

Causal Link

- "A necessary, however, prerequisite for the award of compensation is, inter alia, the existence of a causal link between the unlawful act or omission or material action or omission of a material act of public bodies and the loss suffered. A causal link exists when, according to common experience, the act or omission has been sufficiently capable (adequate), in the normal course of events, to lead to injury." (Council of State 1024/2005, 1749/2003, 1223/2002).

The Nature and Extent of the Liability of Public Authorities
Available Remedies

Pecuniary Damages	<ul style="list-style-type: none"> • Compensation of all past, present and future losses.
Non-pecuniary Damages	<ul style="list-style-type: none"> • In case of personal injury: moral damages for the pain and suffering of the injured party. • In case of death: moral damages for the grief and sorrow to the family of the deceased.
Special Compensation of Article 931 Greek Civil Code	<ul style="list-style-type: none"> • “The invalidity or disfigurement that has been caused to the injured person is particularly taken into consideration for the award of the compensation, if this affects his future”. • Establishes a <u>separate and independent head of compensation</u> in personal injury cases where there is some sort of physical deformation and impairment that has adverse effects to the personal, social and economic development of the injured party, which although not specifically quantifiable in terms of economic loss, should be compensated.

The Nature and Extent of the Liability of Public Authorities
Concurrent Compensation

Greek Civil Code Article 930 para. 3	<ul style="list-style-type: none"> • “The claim for compensation shall not be excluded for the reason that another person is liable to pay compensation or to provide for the upkeep of the victim.”
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Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
Accident Circumstances

- **Date & Time:** April 13, 2002 – 06.05 a.m.
- **Location:** 2nd km of Koropi – Vari Avenue, a two-way avenue (one lane per direction) falling within the administrative boundaries of the Municipality of Koropi
- **Victim - Vehicle:** M.K., a 48 y.o. aircraft technician of Olympic Airways, was riding his motorbike (wearing a helmet) to his home after finishing his night shift at Eleftherios Venizelos airport
- **Weather Conditions:** rainy weather
- **Lighting:** no sufficient physical light (early in the morning), no technical lighting (street lights out of order)

**Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
Accident Circumstances**

- **Road conditions:** at the scene of the accident (direction from Koropi to Vari) there was a pothole 3,30 m. long, 1,20 m. wide and 0,10 m. deep
 - **Signaling / Warnings found on the scene:** (a) orange traffic cone fallen into the pothole, (b) a broken non-reflective sign "Public Works – Municipality of Koropi", (c) a "No entry for vehicular traffic" sign which was presumed to have been attached to the public works sign
- ➔ M.K. fell into the pothole, lost control of his motorbike; the motorbike fell on the side, slid across the road in the opposite direction lane, collided with a car coming in the opposite direction, and after the collision further slid for some 24 more meters. M.K. died instantly.

**Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
"The Lawsuit"**

- **Five plaintiffs:**
 - a. wife of M.K. acting for herself, as well as in the name and as a guardian of her two minor children, and
 - b. parents of M.K..
- **Three defendants:**
 - a. Municipality of Koropi,
 - b. Prefecture of East Attica, and
 - c. Greek State.
- Each one of the defendants made an objection of lack of "*légitimation passive*", i.e. claimed that they could not have the capacity of a defendant in the dispute, on the ground that each one of them did not have "jurisdiction" over the specific part of the avenue.

**Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
"The Responsibility over the Infrastructure of the Avenue"**

- Min.Dec. ΔΜΕΟ/ε/ο266/1995: characterized Vari – Koropi Avenue as a "provincial road".
➔ Responsible for construction and maintenance: Prefecture of East Attica
- P.D. 159/2000: established a "Special Office of Public Works for the Design and Construction of Special Transportation Projects for Attica" (SOPW/STPA), which had the responsibility for, inter alia, the "Traffic Route Vari – Koropi" (upgrade / improvement).
➔ Responsible for construction and maintenance: Ministry of Public Works
- However, article 1, para. 4 , of P.D. 159/2000 provided that "*For the traffic routes for which works are carried out by the SOPW/STPA, the competency for maintenance and slight improvements remains with the competent, pursuant to the relevant legal provisions is force at any given time, Public Technical Departments.*"
➔ Some responsibility remained with the Local Authorities

Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
“The Responsibility over the Infrastructure of the Avenue”

- P.D. 151/2001: established a “Special Office of Public Works Free Avenue Elefsina – Stavros – Spata Airport and West Peripheral Route Ymittos – Rion – Antirio Bridge”(SOPW/SE.RA.), which was , inter alia, responsible for the re-installation of asphalt and the road stripping of the Vari – Koropi Avenue., as well as for the improvement of the artificial lighting of the avenue.
- ➔ Responsible for asphalt, road stripping and maintenance: Ministry of Public Works

Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
Athens Admin. Court of First Instance Dec. No. 1933/2005

- Factual findings:
 - The pothole had been opened by the Municipality of Koropi for the replacement of a water pipe.
 - The SOPW/STPA had not commenced any construction works or projects at the Koropi-Vari Avenue since its establishment.
 - The re-installation of asphalt works by the SOPW/SE.RA. at the avenue had been completed, but the Prefecture had not accepted / taken delivery of the works at the time of the accident.
 - Lighting works were underway by the SOPW/SE.RA. at the time of the accident; the lights at the specific part of the avenue were out of order due to a damage that had not been repaired.

Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
Athens Admin. Court of First Instance Dec. No. 1933/2005

- Responsibility: all three defendants jointly liable
 - Municipality: the pothole had been created by its servants in the course of water works; the Municipality was in breach of its obligation on the one hand to repair and reinstate the damaged asphalt, and on the other to at least put sufficient warning signals for the danger created, as prescribed the Greek Highway Code.
 - Prefecture: irrespectively of the fact that certain works and responsibilities were undertaken by the SOPWs, the responsibility for the maintenance of the avenue remained with the Prefecture; the Prefecture was in breach of its obligations to: (a) repair and reinstate the damaged asphalt, (b) to at least put sufficient warning signals for the danger as prescribed the Greek Highway Code, and (c) to repair the damaged lighting.

**Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
Athens Admin. Court of First Instance Dec. No. 1933/2005**

- Responsibility: all three defendants jointly liable
 - The Court dismissed the claim of the Prefecture that it was not in a position to execute any of the above duties due to lack of funding, on the grounds that the claim was put forward against the general principle of “Competent Administration” and that its’ liability towards the family of M.K. was “strict”.
- State: the SOPW/SE.RA. had failed to repair the damage to the lighting of the avenue.

**Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
Athens Admin. Court of First Instance Dec. No. 1933/2005**

- Awards:
 - Moral Damages: €280.000
 - €60.000 to wife
 - €60.000 to each one of the children
 - €50.000 to each one of the parents
 - Funeral costs (after deducting an amount paid as funeral costs by the social security organization of the deceased) .
 - Loss of Maintenance: to the younger of the children (the loss of maintenance for the older of the children was rejected for procedural reasons).

**Case 1: Fatal RTA - 2nd km Koropi-Vari Avenue
Athens Admin Court of Appeal Dec. No. 3519/2006**

- Rejected appeals of Municipality, Prefecture and Greek State
- Found partly admissible the appeal of the family and awarded:
 - Moral Damages: €320.000
 - €70.000 to wife
 - €70.000 to each one of the children
 - €55.000 to each one of the parents
- Prefecture and Greek State filed an appeal on legal issues (interpretation of laws on their liability) before the Council of State
 - Council of State Dec. No. 150/2013: rejected both appeals and upheld the decision of the Court of Appeal

Case 2: Fatal RTA – Katehaki Avenue, February 2002
Accident Circumstances

- **Date & Time:** February 12, 2002 – 03.45 a.m.
- **Location:** Katehaki Avenue (direction from Athens to Kareas), a two-way avenue (three lanes per direction) falling within the administrative boundaries of the Municipality of Papagou
- **Victims - Vehicle:** (a) Driver of car (D): a 33 y.o. civil engineer (deceased), (b) a 22 y.o. female passenger in co-driver’s seat (seriously injured) – none of them had his seat belt on – Citroen Saxo 1600cc
- **Weather Conditions:** rainy and foggy weather
- **Lighting:** no physical light, insufficient technical lighting
- **Speed limit:** 50 km/h

Case 2: Fatal RTA – Katehaki Avenue, February 2002
Accident Circumstances

- D was driving his car at the left lane (out of three lanes) with direction to Kareas at a speed of at least 80 – 100 km/h. D lost control of his vehicle, the vehicle slid to the right, hit on the concrete base of an illuminating advertising billboard situated at the right hand side pavement of the avenue (at that stage the doors of the vehicle opened due to the impact), made a 180° turn, D and P were thrown out of the car, and the car eventually came to a stop at the right lane of the opposite direction. D died instantly and P. was seriously injured.
- The illuminated advertising billboard had been placed at the pavement since 1997 on the basis of a contract between the Municipality and a private advertising company.

Case 2: Fatal RTA – Katehaki Avenue, February 2002
“The Initial Lawsuit before the Administrative Courts”

- **One Plaintiff:**
Father of D.
- **Five defendants:**
 - a. Municipality of Papagou,
 - b. Greek State,
 - c. Advertising Company,
 - d. Electricity Supplier Company,
 - e. Citroen Hellas S.A..
- **Claim:**
€14.673.514,30 as moral damages for the death of his son.

Case 2: Fatal RTA – Katehaki Avenue, February 2002
Athens Admin. Court of First Instance Dec. No. 3167/2003

- Lawsuit rejected:
 - a. Incompetency of Administrative Courts for private defendants – private entities (i.e. for Advertising Company, Electricity Supplier Company, Car Manufacturer).
 - b. Greek Code on Administrative Procedure did not allow at the time filing a joint lawsuit against the two defendants

- New lawsuit before Civil Courts against the three private entities – Athens Court of First Instance Dec. No. 4018/2003:
 - Lawsuit rejected against Citroen Hellas S.A. - not liable.
 - Deceased driver 20% liable for accident.
 - Advertising Company and Electricity Supplier Company jointly liable to pay as moral damages to father €352.164,30.

Case 2: Fatal RTA – Katehaki Avenue, February 2002
“New Separate Lawsuits before the Administrative Courts”

- A. Lawsuit Against Municipality of Papagos:
 - Plaintiff: Father of D
 - Defendant: Municipality of Papagou,
 - Claim: 14.673.514,30 as moral damages for the death of his son.

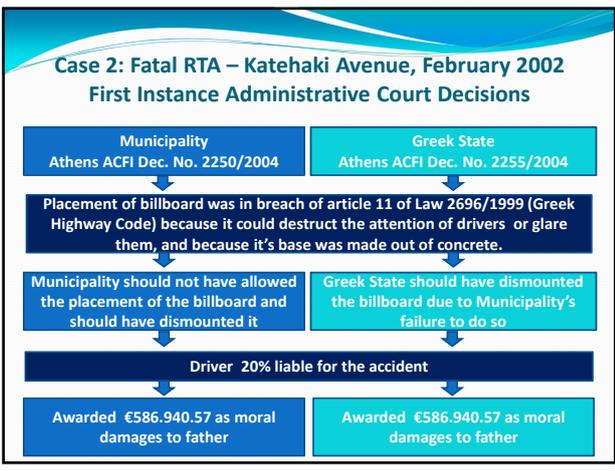
- B. Lawsuit Against Greek State:
 - Plaintiff: Father of D.
 - Defendant: Municipality of Papagou,
 - Claim: 14.673.514,30 as moral damages for the death of his son.

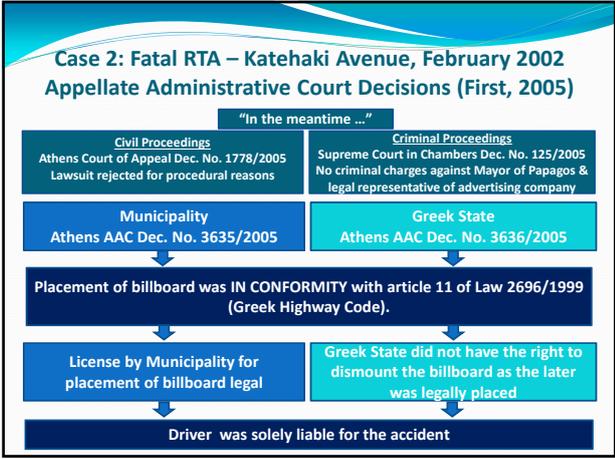
Case 2: Fatal RTA – Katehaki Avenue, February 2002
Article 11 of Greek Highway Code (as in force in 2002)

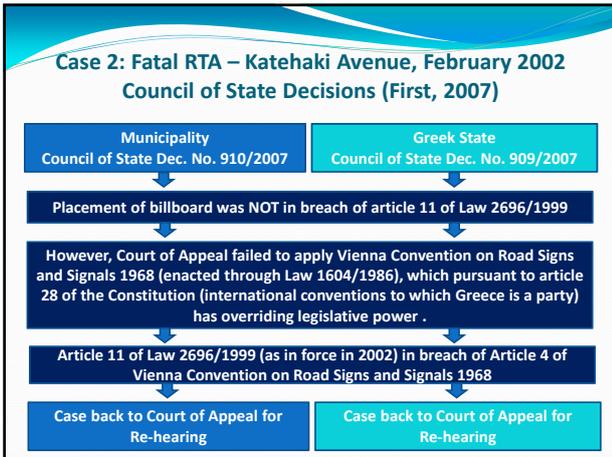
1. Any type of advertisement, visible by road users, via any means or way, is prohibited at a zone of up to 150 meters of both sides of non-residential parts of roads that have been characterized as national or provincial. The above prohibition zone is limited to 40 meters of both sides of the national or provincial roads, for parts passing through residential areas if the speed limit is above 70 km/h. For roads passing through residential areas and the speed limit is 70 km/h or lower, advertising is allowed, subject to the prohibitions set below, at the area of the road and up to the property line.
2. The placement of signposts or advertisements or the installation of any sign, poster, lining, or appliance at a location or in a way that may have any negative impact to the road users or may in any way influence the traffic is prohibited. Especially, it is prohibited to place or install the above in such positions that obstruct the sight of vertical plates signage or of traffic lights, that create a confusion over the signage plates or the traffic striping or other traffic regulation device, or make them less visible or effective, or cause glare to road users and generally distract their attention in a way that may have an adverse effect on road safety in general.

Case 2: Fatal RTA – Katehaki Avenue, February 2002
Article 11 of Greek Highway Code (as in force in 2002)

- Article 18, para. 3 of Law 2130/1993: imposes an obligation to Municipalities to remove or dismount illegal signposts and advertisements.
- Article 11, para. 8 of Greek Highway Code: imposes an obligation to the General Secretariat of Public Works (falls under the respective Ministry) to remove or dismount illegal signposts and advertisements in case the Article 18, para. 3 of Law 2130/1993 bodies or the entities that have installed them fail to remove or dismount them.







Case 2: Fatal RTA – Katehaki Avenue, February 2002
Council of State Decisions (First, 2007)

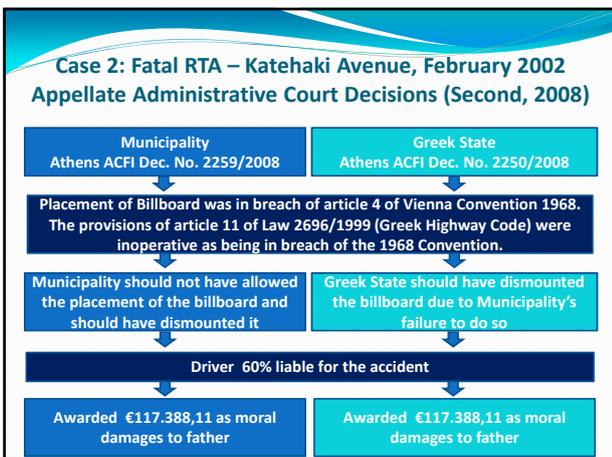
Vienna Convention on Road Signs and Signals 1968
(enacted through Law 1604/1986)

Article 4

The Contracting Parties undertake that it shall be prohibited:

(a) To affix to a sign, to its support or to any other traffic control device anything not related to the purpose of such sign or device; if, however, Contracting Parties or sub-divisions thereof authorize a non-profit-making association to install informative signs, they may permit the emblem of that association to appear on the sign or on its support provided this does not make it less easy to understand the sign;

(b) To install any board, notice, marking or device which might be confused with signs or other traffic control devices, might render them less visible or effective, or might dazzle road-users or distract their attention in a way prejudicial to traffic safety.



Other Indicative Examples (Case Law) of Liability of Local Authorities for Road Infrastructure

Athens Admin.
Court of Appeal
177/2011

- Municipality liable for RTA caused by oil spill on municipal road

Athens Admin.
Court of Appeal
3806/2008

- Greek State liable for RTA caused by oil spill on highway
- Strict liability: no need for knowledge of the existence of spillage by RT Police or competent bodies

Council of State
3809/2001

- Greek State liable for RTA caused by rocks that had fallen on national road – failure of the state to properly maintain the national road

Council of State
4331/2000

- Municipality liable for damage caused by fallen tree
- Municipality should have taken precautionary measures to make sure that tree was healthy and strong so as not to fell by winds

Examples (Case Law) of Awards by Greek Administrative Courts against Local Authorities for RTAs

Mesologi Admin.
Court of First
Instance
104/2010

- Prefecture 60% liable for death of 27 y.o. motorcyclist due to improper maintenance of safety side rails
- Moral damages: €300.000 (€60.000 to each one of the parents, €40.000 to each one of the three siblings, €15.000 to fiancée)

Athens Admin.
Court of First
Instance
4835/2011

- Prefecture liable for death of 18 y.o. passenger (back seat) of vehicle that collided with illegally placed billboard.
- Moral damages: €900.000 (€250.000 to each one of the parents, €200.000 to sister, €100.000 to each one of the grandparents)

Athens Admin.
Court of Appeal
176/2005

- Greek State 50% liable for serious injury (left tibial amputation) of car driver due to improper maintenance of safety side rails
- Court awarded: (a) €50.000 for pecuniary (past) damage, (b) €120.000 as moral damages, and (c) €88.000 as special compensation of article 931 GCC

Athens Admin.
Court of First
Instance
5271/2009

- Municipality 20% liable for serious injury (67% disability for 4 years) of a 34 y.o. worker who fell with his motorbike into a 0,50 m. ditch of a municipal road under construction
- Court awarded: (a) €31.920 for pecuniary damages – lost income, (b) €33.530 for pecuniary damage – future special care & physiotherapy, (c) €25.000 as special compensation of article 931 GCC, and (d) €100.000 as moral damages.

Thank you for your attention.
Ευχαριστώ για την προσοχή σας.



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