

## LEGAL UPDATE

### **Own fault, if a cyclist is hit while holding a mobile phone in their hand?**

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Since 1 July 2019, cyclists have not been allowed to app or phone while riding their bikes. Nor may they simply hold a mobile phone in their hand. This can result in a criminal fine of € 95.00. And what does holding a phone mean in civil cases when the cyclist (or a pedestrian) is involved in a road traffic accident? In a judgment of the [Amsterdam District Court](#) of 8 October 2020, in which a cyclist was hit while holding her mobile phone, the Amsterdam District Court determined when a cyclist's own fault does or does not play a part in the accident. What was this all about?

In 2016, a cyclist was hit by a car when crossing the road. The car driver had not seen the cyclist and had wrongly failed to give priority to the cyclist. The cyclist claimed compensation from the car driver's motor liability insurer. The insurer, however, took the view that not all the damage was liable to be compensated, pleading contributory negligence on the cyclist's part. According to the insurer, the cyclist should bear 25% of the damage herself because she was on her mobile phone at the time of the accident. According to the insurer, the cyclist would probably have been able to react more quickly had she not had her phone in her hand. According to the insurer, at that time too, when cycling while holding a phone was not yet prohibited, it was common knowledge that cycling while holding a phone was dangerous and not smart.

The Amsterdam District Court did not go along with the insurer's reasoning. According to the District Court, it had been insufficiently explained how holding the phone or 'being busy' on the phone had contributed to the accident and consequently to the damage. Even if holding the phone in the hand is to be regarded as a road traffic error by the cyclist, because the danger of doing so was generally known, contributory negligence can only be assumed where that error has contributed to the damage, according to the Court. Especially in view of the fact that the car hit the cyclist and not the other way around, there was no indication that the cyclist could have braked on time, but failed to do so. The insurer therefore had to compensate the cyclist in full.

At the time of the road traffic accident at issue in this case before the Amsterdam District Court, cycling while holding a phone in your hand was not yet prohibited. It is now. In civil cases, however, the prohibition will not lead to a different test. For road traffic accidents after 1 July 2019 too, successful reliance on contributory negligence will depend on whether the use or the holding of the phone contributed to causing the accident and consequently the damage.

This is a Legal Update by Nikki Nuijten.

For more information, please contact:

Nikki Nuijten  
+31 30 25 95 726  
[nikkinuijten@vbk.nl](mailto:nikkinuijten@vbk.nl)