

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 13 September 2010 — Churchill Insurance Company Limited, Tracy Evans v Benjamin Wilkinson, by his father and litigation friend Steven Wilkinson, Equity Claims Limited

(Case C-442/10)

(2010/C 346/47)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicants: Churchill Insurance Company Limited, Tracy Evans

Defendants: Benjamin Wilkinson, by his father and litigation friend Steven Wilkinson, Equity Claims Limited

Questions referred

1. Are Articles 12(1) and 13(1) of the 2009 Directive ⁽¹⁾ to be interpreted as precluding national provisions the effect of which, as a matter of the relevant national law, is to exclude from the benefit of insurance a victim of a road traffic accident, in circumstances where:

- (a) that accident was caused by an uninsured driver; and
- (b) that uninsured driver had been given permission to drive the vehicle by the victim; and
- (c) that victim was a passenger in the vehicle at the time of the accident; and
- (d) that victim was insured to drive the vehicle in question?

In particular:

- (i) is such a national provision one which 'excludes from insurance' within the meaning of Article 13(1) of the 2009 Directive?
- (ii) in circumstances such as arising in the present case, is permission given by the insurer to the non-insured 'express or implied authorization' within the meaning of Article 13(1)(a) of the 2009 Directive?
- (iii) is the answer to this question affected by the fact that, pursuant to Article 10 of the 2009 Directive national bodies charged with providing compensation in the case of damage caused by unidentified or uninsured vehicles may exclude the payment of compensation in respect of persons who voluntarily enter the vehicle which caused

the damage or injury when the body can prove that those persons know that the vehicle was uninsured?

- 2. Does the answer to question 1 depend on whether the permission in question (a) was based on actual knowledge that the driver in question was uninsured or (b) was based on a belief that the driver was insured or (c) where the permission in question was granted by the insured person who had not turned his/her mind to the issue?

⁽¹⁾ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (Text with EEA relevance)
OJ L 263, p. 11

Action brought on 17 September 2010 — European Commission v Grand Duchy of Luxembourg

(Case C-458/10)

(2010/C 346/48)

Language of the case: French

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and O. Beynet, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that by failing to transpose fully and correctly Article 9(3)(b),(c) and (e) of Directive 98/83/EC, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 9(3)(b),(c) and (e) of Directive 98/83/EC;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Commission bases its action on two grounds of complaint.

By its first ground of complaint, the Commission maintains that the transposition of points (b) and (c) of Article 9(3) of Directive 98/83 ⁽¹⁾ is incomplete. The national legislation does not provide that the derogation must contain 'previous relevant monitoring results' and does not refer to 'the quantity of water supplied each day', 'the population concerned' and 'whether or not any relevant food-production undertaking would be affected'.