



Reports of Cases

OPINION OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 11 July 2013¹

Case C-22/12

Katarína Haasová

v

Rastislav Petrík and Blanka Holingová

(Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia))

Case C-277/12

Vitālijs Drozdovs, represented by Valentīna Balakireva

v

AAS Baltikums

(Request for a preliminary ruling from the Augstākās tiesas Senāts (Latvia))

(Approximation of laws — Compulsory insurance against civil liability in respect of the use of motor vehicles — Damage covered by that insurance — Directive 72/166/EEC — Article 3(1) — Directive 84/5/EEC — Article 1(1) and (2) — Directive 90/232/EEC — Article 1 — Concept of ‘personal injuries’ — Inclusion of non-material damage — Compensation for non-material damage caused by the death of a next of kin in a road traffic accident — Minimum guarantees)

I – Introduction

1. The two cases which will form the subject-matter of this Opinion concern possible compensation, in accordance with compulsory insurance against civil liability in respect of the use of motor vehicles, for damage caused by the death of a next of kin in a road traffic accident.² Having regard to the points in common between those cases, and in particular the fact that the main legal question raised by them is identical, it is appropriate to deliver a single Opinion on them, even though, in the absence of a real connection between them, the Court has not sought to join them.

2. The first case, registered as Case C-22/12 (*Haasová*), relates to the request for a preliminary ruling made by the Krajský súd v Prešove (Slovakia) regarding the interpretation of Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability³ (‘the First Directive’), and of the first subparagraph of Article 1 of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles⁴ (‘the Third Directive’).

¹ — Original language: French.

² — The closeness to that person, who is the direct victim of the accident, may be inferred, in some legal systems, not just from a family relationship, as applies in the present cases, but also from close ties of affection which have arisen, in particular, by cohabiting. In order to take account of this, the terminology used in this Opinion will not be limited to family members only.

³ — OJ 1972 L 103, p. 1.

⁴ — OJ 1990 L 129, p. 33.

3. The second case, Case C-277/12 (*Drozдовs*), concerns a request for a preliminary ruling made by the Augstākās tiesas Senāts (Latvia), also for the purposes of interpreting Article 3 of the First Directive, as well as Article 1(1) and (2) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles⁵ ('the Second Directive').

4. A combined reading of the questions referred to the Court in *Haasová* and *Drozдовs* reveals three issues.

5. First, the main issue, which is common to both cases, is whether Article 3(1) of the First Directive, Article 1(1) and (2) of the Second Directive and the first subparagraph of Article 1 of the Third Directive⁶ must be interpreted as meaning that non-material damage⁷ such as that arising from the death of a parent or a spouse in a road traffic accident, forms part of the damage which must be covered by compulsory insurance against civil liability in respect of the use of motor vehicles. That means, in particular, defining the scope of the concept of 'personal injuries' contained in the last two provisions in order to determine whether it may include non-material damage suffered by the next of kin of a person who has died in a road traffic accident who were not directly involved in the accident.

6. Second, by the second question referred in *Drozдовs*, the Court is called upon to establish whether, where Member States are required to take appropriate measures so that compensation for such damage is covered by the compulsory insurance laid down in Article 3(1) of the First Directive and Article 1(1) and (2) of the Second Directive, they have the discretion to adopt legislation which establishes a limit for the reimbursement of that compensation by the insurer which is at a substantially lower level than the minimum guarantees laid down in those directives.

7. Third, the second question referred in *Haasová* concerns, essentially, the opposite situation to *Drozдовs*, thus whether national legislation which does not provide for compensation for the damage concerned should be considered to be compatible with Article 3(1) of the First Directive and the first subparagraph of Article 1 of the Third Directive. The Court is called on to determine whether a court in a Member State may therefore interpret that legislation in the light of those provisions of European Union law with the result that it grants compensation of that kind despite wording to the contrary in the applicable national law.

5 — OJ 1984 L 8, p. 17.

6 — The three directives concerned were repealed, with others, by 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 (OJ 2009 L 263, p. 11), which consolidated them.

7 — Since both referring courts, and the national legislation and legal literature use terms such as '*préjudice extrapatrimonial*' (non-financial damage) or '*préjudice moral*' (non-material damage) alternately, which are liable to vary in scope, I have decided to opt for the expression '*préjudice non matériel*' (non-material damage) which to me seems more neutral.

II – Legal framework

A – *European Union law*⁸

1. The First Directive

8. Recitals 1 to 3 in the preamble to the First Directive state, on the one hand, that the only purpose of frontier controls of compulsory insurance cover against civil liability in respect of the use of motor vehicles is to safeguard the interests of persons who may be the victims of accidents caused by such vehicles and, on the other, that disparities between national requirements in this field are such as may impede the free movement of motor vehicles and persons within the European Community and, consequently, they have a direct effect on the establishment and functioning of the common market.

9. Article 1(2) of that directive states that ‘injured party’ means ‘any person entitled to compensation in respect of any loss or injury caused by vehicles’.

10. Article 3(1) of that directive provides that ‘[e]ach Member State shall ... take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance. The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures.’

2. The Second Directive

11. Pursuant to recital 3 in the preamble to the Second Directive, major disparities which continue to exist between the laws of the different Member States concerning the extent of this obligation of insurance cover have a direct effect upon the establishment and the operation of the common market.

12. Recitals 4 and 5 in the preamble to that directive add ‘in particular, the extension of the obligation of insurance cover to include liability incurred in respect of damage to property is justified’ and that ‘the amounts in respect of which insurance is compulsory must in any event guarantee victims adequate compensation irrespective of the Member State in which the accident occurred’.

13. Article 1(1) and (2) of that directive provide:

‘1. The insurance referred to in Article 3(1) of [the First Directive] shall cover compulsorily both damage to property and personal injuries.

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require that the amounts for which such insurance is compulsory are at least:

- in the case of personal injury, 350 000 ECU where there is only one victim; where more than one victim is involved in a single claim, this amount shall be multiplied by the number of victims,
- in the case of damage to property 100 000 ECU per claim, whatever the number of victims.

⁸ — With regard to the developments in European Union law in this field, see the Opinion of Advocate General Trstenjak in Case C-300/10 *Marques Almeida* [2012] ECR, point 5 et seq., and the legal literature cited therein.

Member States may, in place of the above minimum amounts, provide for a minimum amount of 500 000 ECU for personal injury where more than one victim is involved in a single claim or, in the case of personal injury and damage to property, a minimum overall amount of 600 000 ECU per claim whatever the number of victims or the nature of the damage.’⁹

3. The Third Directive

14. Recital 4 in the preamble to the Third Directive states that ‘motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur’. Recital 5 in the preamble to that directive states ‘there are, in particular, gaps in the compulsory insurance cover of motor vehicle passengers in certain Member States [and], to protect this particularly vulnerable category of potential victims, such gaps should be filled’.

15. Article 1 of the Third Directive provides, *inter alia*, that ‘the insurance referred to in Article 3(1) of [the First Directive] shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle’.

B – National law

1. Czech law (Haasová)

16. Although the questions referred for a preliminary ruling in *Haasová* refer to provisions of Czech law and to provisions of Slovak law,¹⁰ only the provisions of Czech law will be mentioned here, since they are applicable *ratione materiae* with regard to the civil liability created by the accident concerned, in accordance with the Convention on the law applicable to traffic accidents, concluded in the Hague on 4 May 1971¹¹ (the ‘1971 Hague Convention’), it being specified, however, that that does not prejudice the law applicable, in any case, to the insurance contract.¹²

a) The Czech Civil Code

17. Article 11 of Law No 40/1964¹³ on the Civil Code (‘the Czech Civil Code’) provides, *inter alia*, that ‘all natural persons are entitled to the protection of their person, particularly their life’.

18. Under Article 13 of the Czech Civil Code:

‘1) Natural persons have in particular the right to require that others desist from unlawful conduct damaging to their personal rights, that the consequences of such conduct be eliminated and that adequate compensation be given.

9 — Paragraph 2 was revised by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ 2005 L 149, p. 14, with a time limit laid down for implementation of 11 June 2007), so that the amounts provided for were raised to a minimum amount of cover of EUR 1 000 000 per victim or EUR 5 000 000 per claim, irrespective of the number of victims, and in the case of damage to property, EUR 1 000 000 per claim, irrespective of the number of victims.

10 — In particular Article 4 of Slovak Law No 381/2001 on compulsory contractual insurance against civil liability for damage caused by the use of a motor vehicle (‘Slovak Law on compulsory insurance’).

11 — Text available on the website of the Hague Conference on Private International Law (www.hcch.net).

12 — In this connection, see points 48 et seq. of this Opinion.

13 — Law promulgated on 26 February 1964.

2) Where adequate compensation within the meaning of paragraph (1) is not possible, particularly where the honour or social prestige of a natural person has been seriously affected, the latter is also entitled to financial compensation for non-material damage.

3) The amount of the compensation under paragraph (2) shall be determined by the court with reference to the seriousness of the non-material damage and the circumstances in which the unlawfulness occurred’.

19. Article 444(3)(a) of the Czech Civil Code provides that, in the event of death, survivors are entitled to compensation of a lump sum of CZK 240 000 (Czech Koruny), thus approximately EUR 9 300, regarding the loss of a spouse.

b) Czech Law on Compulsory Insurance

20. Article 6(1) of Law No 168/1999 on insurance against civil liability in respect of the use of a motor vehicle¹⁴ (‘Czech Law on Compulsory Insurance’) provides, inter alia, that that insurance ‘covers any person responsible for damage caused by the use of a vehicle referred to in the insurance contract’.

21. Article 6(2) states that, save where that Law provides otherwise, ‘the insured person is entitled to expect that the insurer will meet on his behalf, within the scope and amount laid down by the Civil Code, claims arising from [inter alia] personal injury or death ... provided that the injured party has asserted and enforced his claim, and provided the damaging event for which the insurer is responsible occurred within the period of validity of the liability insurance, save for the period of its interruption’.

2. Latvian Law (Drozdovs)

a) Latvian Law on Compulsory Insurance

22. The Latvian Law on compulsory civil liability insurance for the owners of motor vehicles, known as the ‘OCTA Law’¹⁵ (‘Latvian Law on Compulsory Insurance’) has transposed, inter alia, the First, Second and Third Directives. The wording of the following provisions is that in force at the material time.

23. Pursuant to Article 15 of that Law, entitled ‘Limit of the insurer’s liability’:

‘(1) When an insured event occurs, the insurer with whom the owner of the vehicle which caused the damage effected civil liability insurance ... shall cover the losses in an amount not exceeding the insurer’s liability limit determined as follows:

1. in respect of compensation for personal injury: up to LVL 250 000 for each victim;
2. in respect of compensation for material damage: up to LVL 70 000, regardless of the number of third party victims;

(2) Third parties shall be entitled to compensation for damage not qualifying for compensation under the present Law or which exceeds the insurer’s liability.’

14 — Zákon č 168/1999 Sb. Law promulgated on 30 July 1999.

15 — Sauszemes transportlīdzekļu īpašnieku civiltiesiskās atbildības obligātās apdrošināšanas likums, *Latvijas Vēstnesis* (Latvian Official Journal) No 65 (3013).

24. Article 19 of that Law draws up the list of material and non-material damage resulting from a road traffic accident caused to victims which falls within the scope of the Law. Non-material damage is defined as ‘damage causing the victim pain and psychological suffering’. Article 19(2)(3) mentions, inter alia, ‘death of the family’s economic provider, a dependant or a spouse’. Article 19(3) states that ‘the Council of Ministers shall determine the amount of the insurance compensation and the detailed arrangements for calculating it in the case of material and non-material personal damage’.

25. Article 23(1)(a) of the Latvian Law on Compulsory Insurance provides that children; until they reach the age of majority, including those who are adopted, are entitled to insurance compensation in the event of the death of the person upon whom they depend.

b) Latvian Decree No 331

26. Council of Ministers’ Decree No 331 of 17 May 2005 on the amount and method of calculating insurance compensation for non-material damage caused to persons¹⁶ (‘Latvian Decree No 331’) was adopted for the purposes of implementing Article 19(3) of the Latvian Law on Compulsory Insurance.

27. Article 7 and 10 of that decree set out the amount of insurance compensation to be paid for pain and psychological suffering caused by the death of the family’s economic provider as LVL 100 for each applicant and per person, within the group of persons mentioned in Article 23(1) of the Latvian Law on Compulsory Insurance, and that the total amount of insurance compensation is not to exceed LVL 1 000 for each road traffic accident victim where compensation has been paid for all the damage mentioned in Articles 3, 6, 7 and 8 of the decree.

III – The main proceedings, the questions referred for a preliminary ruling and the procedures before the Court of Justice

A – *Haasová*¹⁷

28. On 7 August 2008, Mr Haas was killed in the Czech Republic in a road traffic accident caused by Mr Petrík. The latter was driving a vehicle which was registered and insured in Slovakia and belonged to Mrs Holingová. Mr Haas was the passenger of the vehicle which collided with a heavy goods vehicle registered in the Czech Republic. He was married to Mrs Haasová and had a daughter, born on 22 April 1999; they were not involved in the accident. All of the interested parties were or are of Slovak nationality and resident in Slovakia.

29. In a judgment in criminal proceedings by the Okresný súd Vranov nad Topľou (Slovakia), Mr Petrík, found guilty, inter alia, of the offence of homicide caused by negligence, was given a two-year suspended prison sentence and a two-year probation period. In accordance with the Slovak Criminal Code and the Slovak Code of Criminal Procedure, he was also required to pay compensation, during that period and in accordance with his means, for the damage caused, including the damage suffered by Mrs Haasová, which was fixed at EUR 1 057.86.

16 — Noteikumi par apdrošināšanas atlīdzības apmēru un aprēķināšanas kārtību par personai nodarītajiem nemateriālajiem zaudējumiem, *Latvijas Vēstnesis* No 80 (3238), of 20 May 2005.

17 — The account of the facts of this dispute is from evidence in the decision to refer the matter and clarification by the referring court at the Court’s request.

30. In civil proceedings, Mrs Haasová, acting in her own name and that of her daughter, who is a minor, sued Mr Petrík and Mrs Holingová for compensation for the ‘non-material’ damage arising as a result of the loss of their husband and father, in accordance with Article 13(2) and (3) of the Slovak Civil Code. In proceedings before the court at first instance, the driver and the owner of the vehicle were ordered to pay Mrs Haasová compensation of EUR 15 000 for that damage.

31. All the parties appealed before the Krajský súd v Prešově. That court states that, as an intervener in those proceedings, Mrs Holingová’s insurer, Allianz-Slovenská poisťovňa a.s., has refused to pay compensation for the damage at issue on the ground that the right to compensation invoked is not covered by the insurance contract under the Czech and Slovak laws on compulsory insurance against civil liability in respect of the use of a motor vehicle.

32. According to the referring court, in the light of the facts of the main proceedings, Czech substantive law should be applied, in accordance with Article 3 of the 1971 Hague Convention, and in particular Article 444(3) of the Czech Civil Code, which, unlike the Slovak Civil Code, provides expressly for compensation for non-material damage within the context of compensation for damage caused to surviving relations for the amounts laid down in the Law, and in particular a lump sum of CZK 240 000, thus approximately EUR 9 300, for the loss of a spouse.

33. Moreover, that court considers, on the one hand, that the right to compensation for non-material damage must be derived from the right to compensation for damage covered by the compulsory insurance contract and, on the other hand, that Mrs Haasová’s claims are based on a right which should derive from the victim of the road traffic accident, since the life of the deceased Mr Haas was protected by Article 11 of the Czech Civil Code.

34. Notwithstanding those considerations, the Krajský súd v Prešově is unsure as to whether the compensation at issue is adequate under European Union law, since the decisions of the Slovak courts contain views which are incompatible in this field having regard to provisions of Slovak national law. It adds that the Court’s response will be conclusive in assessing the lawfulness of the insurer’s intervention in the main proceedings and, therefore, in establishing the obligations imposed on it by the decision to be made in those proceedings.

35. In those circumstances, the Krajský súd v Prešově decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘1) Must Article 1(1) of [the Third Directive] in combination with Article 3(1) of [the First Directive] be interpreted as precluding a provision of national law (such as [Article] 4 of [the Slovak Law on Compulsory Insurance] ^[18] or [Article] 6 of [the Czech Law on Compulsory Insurance]), according to which civil liability arising from the use of a motor vehicle does not cover non-material damage, expressed in financial form, caused to the survivors of the victims of a road accident caused by the use of a motor vehicle?
- 2) If the answer to the first question is that the abovementioned rule of national law does not conflict with [European Union] law, must the provisions of [Article] 4(1), (2) and (4) of [the Slovak Law on Compulsory Insurance] and [Article] 6(1) to (3) of [the Czech Law on Compulsory Insurance] be interpreted as not precluding the national court, in conformity with Article 1(1) of [the Third Directive] in combination with Article 3(1) of [the First Directive], from allowing a claim for non-material damage caused to the survivors of the victims of a road accident caused by the use of a motor vehicle, in the capacity of injured parties and in financial form?’

18 — In the clarification provided subsequently, at the Court’s request, the referring court stated that the substantive law of the Czech Republic should be applied to the main proceedings. In this regard, see point 48 et seq of this Opinion.

36. Written observations have been submitted to the Court by the Slovak, German and Estonian Governments and the European Commission.¹⁹ No hearing has been held.

B – *Drozdovs*

37. On 14 February 2006, the parents of Vitālijs Drozdovs, born on 25 August 1995, died in a road traffic accident in Riga (Latvia). Being a minor, the child was placed under the guardianship of his grandmother, Mrs Balakireva ('the guardian').

38. The accident was caused by the driver of a motor vehicle insured by the company AAS Baltikums ('Baltikums'). By a judgment in criminal proceedings, upheld on appeal, the driver was sentenced to six years' imprisonment and the forfeiture of his driving licence for five years.²⁰

39. On 13 December 2006, the guardian informed the insurer of the accident and requested compensation for Vitālijs Drozdovs for, inter alia, the 'non-material' damage he had suffered, estimated at LVL 200 000. On 29 January 2007, pursuant to Article 7 of Latvian Decree No 331, Baltikums paid compensation of LVL 200 in respect of the child's psychological suffering,²¹ and compensation of LVL 4 497.47 in respect of damage to property, which is not contested.

40. On 13 September 2007, the guardian brought an action against Baltikums claiming payment of compensation of LVL 200 000 for the non-material damage suffered by Vitālijs Drozdovs owing to the death of his parents at his young age, based on Article 15(1)(1), Article 19(2)(3) and Article 39(1) and (6) of the Latvian Law on Compulsory Insurance and Article 1(2) of the Second Directive.

41. The action and the appeal brought by the guardian were dismissed by judgments of 27 November 2008 and 16 November 2010 respectively, on the ground that Baltikums had complied with the amount set in Article 7 of Latvian Decree No 331.

42. The guardian filed an appeal in cassation before the Augstākās tiesas Senāts requesting that the judgment of the court of appeal be set aside and that the matter be referred back to that court for re-examination. She submitted that the appeal court had misapplied Article 15(1)(1) of the Latvian Law on Compulsory Insurance since that provision should have been interpreted in accordance with, inter alia, the First and Second Directives. However, under those directives, a Member State cannot lay down limitations on the compensation payable which are lower than the minimum amounts laid down in European Union law. Accordingly, Article 7 of Latvian Decree No 331 is contrary to the limits laid down in that provision of the Latvian Law on Compulsory Insurance and in the abovementioned directives, which that law transposes.

43. In those circumstances, the Augstākās tiesas Senāts decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is compensation for non-material damage included in the amount of compulsory protection for personal injuries laid down in Article 3 of [the First Directive] and in [Article 1(1) and (2)] [²²] of [the Second Directive]?

19 — The observations of Mrs Haasová have not been put in the file since they were submitted after the expiry of the time-limit.

20 — It being specified that at the material time, the person responsible for the accident was under the influence of alcohol, driving at excessive speed and carrying out a dangerous overtaking manoeuvre in a vehicle which was missing a winter tyre.

21 — Namely LVL 100 for each of the deceased persons on whom the interested party was dependant.

22 — The referring court mentioned 'Articles 1 and 2' ('1. un 2.pantā') of the Second Directive. Since the concept of 'personal injuries', which forms the subject-matter of the question, is included in Article 1, in particular in paragraphs 1 and 2, and not in Article 2 of that directive, that clerical error must, in my opinion, be corrected by citing 'Article 1(1) and (2)'.

- (2) If the first question is answered in the affirmative, must Article 3 of [the First Directive] and [Article 1(1) and (2)] [²³] of [the Second Directive] be interpreted as meaning that those provisions preclude legislation of a Member State whereby civil liability applicable in that State – the maximum amount of compensation for non-material damage – is limited by the establishment of a limit that is substantially lower than the limit laid down for the insurer's liability in the directives and in national law?

44. Written observations have been submitted to the Court by the guardian of Vitālijs Drozdovs, Baltikums, the Latvian, German and Lithuanian Governments and the Commission.

45. At the hearing on 20 March 2013, the guardian of Vitālijs Drozdovs, Baltikums, the Latvian and German Governments and the Commission were all represented.

IV – Analysis

A – Preliminary observations on the applicable law

46. Identification of the law applicable to a cross-border dispute precedes any analysis in terms of substantive law. It is particularly important in the present case given the disparities which exist between the laws of the Member States regarding compensation on the basis of compulsory insurance against civil liability in respect of the use of motor vehicles.²⁴

47. This does not present any difficulties in *Drozдовs* since it is not apparent from the evidence in the file that a foreign dimension could lead to the situation at issue being linked to a Member State other than the Republic of Latvia.

48. However, that issue may arise in *Haasová*, in view of the factual circumstances of the road traffic accident which is the source of the dispute in the main proceedings brought before a Slovak court. The accident occurred in the territory of the Czech Republic and one of the vehicles materially involved is registered there, whereas the other connecting factors, namely the place of registration of the vehicle in which the direct victim was travelling, and the nationality and place of residence of the persons concerned, link the dispute to the Slovak Republic.

49. Article 28(1) and (2) of Regulation (EC) No 864/2007²⁵ provides that this is not to prejudice the application of international conventions which lay down conflict-of-law rules relating to non-contractual obligations and to which one or more Member States are party at the time of its adoption, whereas that regulation is to, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by that legislation.

50. With regard to civil non-contractual liability arising from a road traffic accident, the conflict-of-law rules contained in the 1971 Hague Convention, which, when that regulation was adopted, related to both Member States and third States, must take precedence over the provisions of the regulation in all of the States that ratified that convention, which is the case for the Slovak Republic in particular.²⁶

23 — Ibid.

24 — See, inter alia, the studies in comparative law cited by Y. Lamber-Faivre and L. Leveneur, *Droit des assurances*, Dalloz, Paris, 12th Edition, 2005, p. 511, footnote 1.

25 — Regulation of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II'), (OJ 2007 L 199, p. 40).

26 — That convention was ratified by Czechoslovakia. On 28 January 1993 and 15 March 1993, the Czech Republic and the Slovak Republic declared that they considered themselves to be bound by the convention – including the reservations and declarations made by Czechoslovakia – from 1 January 1993, the date on which that country was divided.

51. In accordance with Article 3 of the 1971 Hague Convention, the applicable law in that regard²⁷ is, in principle, the internal law of the State where the accident occurred. Accordingly, in *Haasová*, the referring court rightly took the view that that provision pointed to Czech law.²⁸ I would point out that derogations to the application of the *lex loci delicti*, in favour of the law of the State of registration, are provided for in Article 4 of that convention. In particular, Article 4(b) addresses the case where various vehicles are involved in an accident and all are registered in the same State. However, that final condition does not appear to have been satisfied in the main proceedings.²⁹

52. It must be pointed out that those considerations regarding the application of Czech national law to the non-contractual civil liability resulting from the accident at issue are without prejudice to determining the law that must govern the rights and obligations arising from the motor insurance contract in a situation where there is a conflict of laws.³⁰

B – The inclusion of compensation for non-material damage to an indirect victim in the scope of compulsory insurance against civil liability in respect of the use of motor vehicles (first questions in Haasová and Drozdovs)

53. In *Haasová*, by its first question, the referring court is essentially asking the Court to determine whether Article 3(1) of the First Directive and Article 1 of the Third Directive must be interpreted as precluding a provision of national law leading to financial compensation for non-material damage suffered by the survivors of a victim of a road traffic accident not being covered by the compulsory insurance taken out by the person who is liable under civil law.

54. The first question referred in *Drozdovs* is connected, given that it is asked in similar circumstances,³¹ even though the provisions cited and the words used are not completely identical, since the referring court wishes to ascertain whether Article 3 of the First Directive and Article 1(1) and (2) of the Second Directive must be interpreted as meaning that compulsory protection for personal injuries also includes the non-material damage provided for in national law.

55. Since they are essentially close, these questions will be dealt with together in this Opinion, with the result that the interpretation proposed will combine the aforementioned provisions of the First, Second and Third Directives.

27 — Article 8 of the convention sets out the areas covered by the law declared to be applicable, which include determining, in particular, the basis and the extent of liability, the existence and kinds of injury or damage which may have to be compensated, the question whether a right to damages may be assigned or inherited and the persons who have suffered damage and who may claim damages in their own right.

28 — I point out that the referring Slovak court, namely the Krajský súd v Prešove, stated that, on the basis of Article 3 of the 1971 Hague Convention, Czech substantive law had to be applied since the personal injury took place on 7 August 2008 and in conjunction with a motor vehicle being driven on the territory of the Czech Republic.

29 — Indeed, the referring court has stated that the vehicle which caused the accident was registered in Slovakia whereas the vehicle that was hit was registered in the Czech Republic.

30 — That law must be determined in accordance with Article 7 of Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ 1988 L 172, p. 1) or, for contracts concluded after 17 December 2009, Article 7 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).

31 — Both of the main proceedings concern compensation for non-material damage caused by a fatal road traffic accident, in *Haasová*, the death of a man whose wife and daughter are claiming compensation for that damage, and in *Drozdovs* the death of a couple whose child is making the same claim, it being specified that these applicants were not personally involved in the accidents at issue.

56. The opinions expressed on this matter, in the observations submitted to the Court, vary. The guardian of Vitālijs Drozdovs and the Commission consider that those provisions require that non-material damage suffered by a person whose next of kin has died in a road traffic accident must fall within the scope of compulsory insurance against civil liability provided for by that legislation, in contrast to *Baltikums* and the governments which intervened, namely the Slovak, German and Estonian Governments in *Haasová* and the Latvian, German and Lithuanian Governments in *Drozдовs*.

57. Although some responses may be identified easily from the case-law which will be set out below, two aspects of the issue raised here are more unusual and, in my opinion, require separate examination. These are, on the one hand, the inclusion of non-material damage in the compulsory insurance scheme provided for by those directives and, on the other, the extension of that inclusion to persons not personally involved in the road traffic accident which caused such damage.

1. General considerations taken from case-law

58. I will say at the outset that, in my view, in the present cases, it is necessary to refer not only to the case-law of the Court of Justice of the European Union, but also to that of the Court of the European Free Trade Association³² ('EFTA Court'), one of whose judgments³³ ('judgment of the EFTA Court in *Nguyen*'), mentioned widely by the parties and interveners in these proceedings, concerns the issues which arise here.³⁴

59. As the Court has repeatedly highlighted, the preambles to the First, Second and Third Directives state that they are intended, on the one hand,³⁵ to ensure the free movement of vehicles normally based in the territory of the European Union and persons travelling in them and, on the other hand,³⁶ to guarantee that the victims of accidents caused by those vehicles will receive comparable treatment irrespective of where in the territory the accident occurs,³⁷ in order to attain the common market.

60. The Court has inferred from those provisions that the First Directive, as amplified and supplemented by the Second and Third Directives, requires the Member States to ensure that civil liability in respect of the use of vehicles normally based in their territory is covered by insurance, and specifies, *inter alia*, the types of loss or injury and the third-party victims to be covered by that insurance.³⁸

61. It has noted, however, that the obligation to provide insurance cover against civil liability for damage caused to third parties by motor vehicles is distinct from the extent of the compensation to be afforded to them on the basis of the civil liability of the insured person. Indeed, whereas the former is guaranteed and defined by European Union legislation, the latter is essentially governed by national law.³⁹

32 — In accordance with the principle of homogeneity provided for in European Economic Area ('EEA') law.

33 — Judgment of the EFTA Court of 20 June 2008 in Case E-8/07 between *Celina Nguyen* and *The Norwegian State*, available at www.eftacourt.lu. Summary of the judgment published in OJ 2008 C 263, p. 4.

34 — That judgment concerns the interpretation of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) and, in particular, the inclusion of compensation for non-material damage within the scope of the measures referred to in Annex IX to that Agreement, which are the First, Second and Third Directives relating to insurance against civil liability in respect of the use of motor vehicles.

35 — See, in particular, recitals 1 to 3 in the preamble to the First Directive.

36 — See recital 5 in the preamble to the Second Directive and recital 4 in the preamble to the Third Directive.

37 — Case C-537/03 *Candolin and Others* [2005] ECR I-5745, paragraph 17, and *Marques Almeida*, paragraph 26 and the case-law cited. See also the judgment of the EFTA Court in *Nguyen*, paragraph 23 and the case-law cited.

38 — Judgment in *Marques Almeida*, paragraph 27 and the case-law cited.

39 — Judgment in *Marques Almeida*, paragraph 28 and the case-law cited.

62. In that regard, the Court has already held that it is apparent from the aim of the First, Second and Third Directives, and from their wording, that they do not seek to harmonise the rules of the Member States governing civil liability and that, as European Union law stands at present, the Member States remain free to determine the rules of civil liability applicable to road accidents.⁴⁰

63. It has stated that, none the less, Member States are obliged to ensure that the civil liability in respect of the use of motor vehicles arising under their domestic law is covered by insurance which complies with the provisions of the three abovementioned directives.⁴¹

64. Finally, it is apparent from the case-law of the Court of Justice that the Member States must exercise their powers in that field in compliance with European Union law and that the national provisions which govern compensation for road accidents may not deprive the First, Second and Third Directives of their effectiveness.⁴²

65. However, for the reasons which will be set out below, those directives would, in my opinion, be deprived of their effectiveness if the right to compensation for damage such as that at issue in the main proceedings⁴³ was affected by the national provisions with regard to insurance which limit the cover against civil liability in respect of the use of motor vehicles. By contrast, that would not be the case if the right to compensation at issue was limited as a result, not of provisions regarding insurance, but of provisions relating to national law on civil liability applicable to road traffic accidents.⁴⁴

2. The inclusion of non-material damage in the compulsory insurance scheme laid down in the First, Second and Third Directives

66. In its judgment in *Nguyen*, the EFTA Court was called upon to answer a question concerning the compatibility with the First, Second and Third Directives of national legislation, in that case Norwegian national law,⁴⁵ excepting compensation for non-material damage⁴⁶ ('pain and suffering' or '*pretium doloris*') from the compulsory insurance scheme under national law. It interpreted those directives as meaning that such exception is not compatible with those provisions, since compensation for non-material damage is a form of civil liability.⁴⁷

67. The EFTA Court based that decision not only on the general considerations taken from the precedents in case-law set out above, but also on the following grounds, which also form my opinion on all points.

68. First, the EFTA Court correctly noted that those directives do not contain any explicit provision excepting compensation for non-material damage from their scope. In that regard, it noted that Article 1(2) of the First Directive, which defines the concept of 'injured party', refers to 'any loss or injury caused by vehicles'. Article 1(1) of the Second Directive and Article 1 of the Third Directive

40 — Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711, paragraph 23, and *Marques Almeida*, paragraph 29 and the case-law cited. See also the judgment of the EFTA Court in *Nguyen*, paragraph 24.

41 — Case C-356/05 *Farrell* [2007] ECR I-3067, paragraph 33 and the case-law cited and *Marques Almeida*, paragraph 30 and the case-law cited. See also the judgment of the EFTA Court in *Nguyen*, paragraph 25.

42 — *Candolin and Others*, paragraphs 27 and 28, and *Marques Almeida*, paragraph 31 and the case-law cited. See also the judgment of the EFTA Court in *Nguyen*, paragraph 24.

43 — Namely the non-material damage suffered by persons who are indirect victims of a road traffic accident in which a next of kin has died.

44 — In *Marques Almeida*, the Court established a clear distinction in that regard and noted that the national legislation at issue in the main proceedings, which governed the compensation due in accordance with the civil liability of the insured person and not that which might be payable by the insurer, was not compatible with European Union law provided that it did not affect the obligation under European Union law to ensure that civil liability arising under national law is covered by insurance which complies with the First, Second and Third Directives.

45 — Judgment of the EFTA Court in *Nguyen*, in particular paragraphs 7 and 11.

46 — In the original version of the judgment, drafted in English, the EFTA Court defined the damage at issue as 'non-economic injury', whereas I have opted for this different definition as it is more neutral and consistent with the foregoing.

47 — *Nguyen*, paragraph 29.

refer, in particular, to ‘personal injuries’ or ‘dommages corporels’ in the French version,⁴⁸ in defining what is to be subject to compulsory insurance. The EFTA Court found that the above wording encompasses any type of damage, irrespective of whether it is material or non-material and does not therefore support the finding that the latter falls outside the scope of those directives.⁴⁹

69. The EFTA Court deduced from the foregoing that Article 3(1) of the First Directive, read in conjunction with Article 1(1) and (2) of the Second Directive and Article 1 of the Third Directive, must be interpreted as covering both material damage and non-material damage, including psychological pain and suffering. A different interpretation would run counter to the aim of those directives, which is to ensure free movement and to guarantee victims comparable treatment irrespective of where within the EEA the accidents occur.⁵⁰

70. The EFTA Court rightly adds that redress such as the one at issue in the main proceedings by its nature gives a person the right to obtain compensation from another person and as such constitutes a form of civil liability. Moreover, it follows from the abovementioned case-law⁵¹ that, although the directives concerned are not intended to require the adoption of a particular type of liability, they require that all civil liability in respect of the use of motor vehicles be covered by insurance, irrespective of whether that liability is based on fault or risk. Indeed, any other interpretation would deprive Article 3(1) of the First Directive, as developed and amended by the Second and the Third Directives, of its intended effect to protect the victims of road traffic accidents by means of compulsory civil liability insurance.⁵²

71. In my opinion, the response to the questions referred in *Hassová* and *Drozdovs* should be similar, having regard to both the wording and aims and to the practical effect of the directives concerned, so it would be found that the compensation for non-material damage falls under the scheme of compulsory insurance against civil liability in respect of the use of motor vehicles which is laid down in the First, Second and Third Directives.

72. I note that, in *Drozdovs*, the referring court wishes to ascertain in particular whether compulsory insurance for ‘personal injuries’, required in particular in Article 1 of the Second Directive, may include non-material damage. In that regard, I stress the fact that the concept of ‘*dommages corporels*’ used, *inter alia*,⁵³ in the French version of the Second and Third Directives cannot per se constitute an obstacle to the broad view proposed here.

73. Indeed, the expression chosen in several other language versions⁵⁴ allows, in my opinion, reference to be made to a broader concept, which encompasses not only injuries to the body, thus to the physical integrity of the victim, but also any damage of a ‘personal’ nature, in other words, non-material, which includes both physical and psychological suffering.⁵⁵ In my view, this should follow from, on the one

48 — I wish to point out at this juncture the significant difference between the French version of that expression and its English version, the language of procedure of the EFTA Court, the former appearing narrower than the latter.

49 — Judgment of the EFTA Court in *Nguyen*, paragraph 26.

50 — *Ibid.*, paragraph 27.

51 — In that regard, the EFTA Court refers to *Mendes Ferreira and Delgado Correia Ferreira*, and the Order of the Court in Case C-166/02 *Messejana Viegas* [2003] ECR I-7871, paragraphs 21 and 22.

52 — Judgment of the EFTA Court in *Nguyen*, paragraph 28.

53 — See also the Greek (‘σωματικές βλάβες’), Spanish (‘daños corporales’), Dutch (‘lichamelijk letsel’) and Portuguese (‘danos corporais’) language versions.

54 — See, in particular the expressions ‘personskade’, ‘Personenschäden’, ‘personal injury’, ‘danni alle persone’, ‘henkilövahingot’ et ‘personskador’, which are used in the Danish, German, English, Italian, Finnish and Swedish language versions respectively.

55 — Moreover, that terminology is not understood in the restrictive sense even in French law, since ‘*préjudices extra-patrimoniaux ... des victimes indirectes en cas de décès de la victime directe*’ (non-material damage ... to indirect victims in the event of the death of the direct victim) appear in the ‘*préjudices corporels des victimes indirectes*’ (*bodily injuries of indirect victims*) (emphasis added) in the nomenclature of bodily injuries proposed, in July 2005, by the report of the working group tasked with drawing up that nomenclature under the leadership of J.-P. Dintilhac (report available at: http://www.ladocumentationfrancaise.fr/var/storage/rapports_publics/064000217/0000.pdf in French).

hand, the contrast which is made, particularly in Article 1 of the Second Directive, between that type of damage and ‘damage to property’, thus damage to the assets or property of the person concerned,⁵⁶ and, on the other hand, the concern to strengthen victim protection which clearly marked the evolution of that article.⁵⁷

74. The first part of the answer is therefore fairly easy, subject to the Court agreeing, as I propose it does, to follow the line of its earlier case-law and to subscribe to the similar line of reasoning of the EFTA Court in its judgment in *Nguyen*.

75. However, although, in my opinion, those precedents in case-law state that the provisions of the directives concerned must be interpreted in the sense that the compulsory insurance against civil liability in respect of the use of motor vehicles provided for therein must cover the non-material damage suffered by a person involved in a road traffic accident, as was the case in the proceedings giving rise to the judgment in *Nguyen*,⁵⁸ it remains to be determined whether that approach also applies to victims who were not directly affected, as is the case in the disputes which led to the proceedings in *Haasová* and *Drozdovs*.

3. The extension of the inclusion of non-material damage to indirect victims of a road traffic accident

76. In the main proceedings, the non-material damage invoked by the applicants has been suffered by persons who were not personally involved in the accidents at issue, namely, the wife and daughter of the man who was the direct victim of the accident (*Haasová*) and the child of the married couple who were the direct victims of the accident (*Drozdovs*). The death of a person, particularly in such circumstances, causes undeniable upheaval in the way of life and the emotional balance of the persons who were genuinely close to them. In order to determine whether such damage may fall within the scope of the provisions of the directives set out in the questions referred for a preliminary ruling, I consider that the factors for assessment accepted previously should be transposed by following an interpretation which is literal, teleological and based on the effectiveness of those provisions.

77. First, the analysis of the wording of the relevant provisions cannot justify excluding the compensation for the damage at issue from the scope of the insurance cover against civil liability provided for in the First, Second and Third Directives. Indeed the definition of the ‘injured party’ given in Article 1(2) of the First Directive is sufficiently broad to encompass indirect victims, the only condition laid down being that they are ‘entitled to compensation in respect of any loss or injury caused by vehicles’ in accordance with the applicable provisions of national law.

78. It is true that, while breaking with the terminology used in the previous legislation,⁵⁹ Article 1 of the Third Directive refers to ‘personal injuries to all passengers, other than the driver’ which could give the impression that a person who was not involved in an accident should not be covered by compulsory insurance against civil liability. However, that provision must be interpreted in the light of the fourth and fifth recitals in the preamble to that directive, which state that victims subject to the rules for protection in European Union law are not confined to passengers, who seem to be just one

56 — Analysis of the origin of the Second Directive reveals that the dichotomy established between damage to property and personal injuries was not included in the original Commission proposal (proposal submitted on 7 August 1980, OJ 1980 C 214, p. 9), where they were subject to the same arrangements, but stems from the Opinion of the Economic and Social Committee, prepared on 25 and 26 February 1981 (OJ 1981 C 138, p. 15, paragraph 2.2), which noted that compensation for personal injuries was ‘more important from the social point of view’ than that for damage to property.

57 — See point 91 of this Opinion.

58 — The judgment of the EFTA Court in *Nguyen*, paragraph 2, states that the claimant had lost her husband and two children in a road traffic accident and that she herself was only slightly injured physically, but suffered from psychological afflictions since the accident.

59 — The term ‘passenger’ does not appear in the First or Second Directive.

particular category among all of the third parties protected by the insurance of the owner of the vehicle which caused the accident.⁶⁰ The aim of that article is to clarify the scope *ratione personae* of the guarantee offered by the compulsory insurance and not to limit it to the passengers thus specified.⁶¹ That analysis is confirmed by developments on the subject.⁶²

79. Secondly, insurance cover against civil liability for non-material damage caused to parties injured indirectly by a road traffic accident is required in the light of the aims laid down in the First, Second and Third Directives, which are to encourage freedom of movement and to guarantee victims comparable treatment irrespective of the Member State in which the accident occurred which has caused them damage.⁶³ If Article 3(1) of the First Directive, Article 1(1) and (2) of the Second Directive and Article 1 of the Third Directive were interpreted differently, those persons would be subject to unknown numbers of provisions of national law regarding insurance, the wording of which would be likely to vary depending on the place of the accident, without the harmonisation imposed by European Union law.

80. Third, it is apparent from the settled case-law mentioned above⁶⁴ that although the First, Second and Third Directives are not intended to harmonise the rules governing civil liability in respect of the use of motor vehicles in force in the Member States, they, nevertheless, require them to guarantee that the civil liability which applies in accordance with their national law is covered by insurance which complies with the provisions of those directives. Accordingly, since the right to compensation for damages is acquired on the basis of the civil liability of an insured person under the applicable national law,⁶⁵ the cover by compulsory insurance against civil liability which is provided for in those directives must apply to it.

81. I note that the right to compensation for non-material damage caused by the loss of a next of kin in a road traffic accident is recognised in the legislature of numerous Member States,⁶⁶ even if the ability to access that right varies since some of those States open up such a possibility for compensation only in exceptional circumstances⁶⁷ whereas others provide for a reduced burden of proof.⁶⁸ Since the legislators of the Member States have retained powers with regard to civil liability, it is therefore for them to determine whether the right to compensation for such damage is admissible in principle and, if so, under which conditions. In particular, the question of whether it is a personal right of the victim as a knock-on effect or a right which should be derived from that of the deceased person, is left to their discretion.

60 — Recital 4 includes all ‘motor vehicle accident victims’ in the protection afforded by European Union law. In recital 5, the words ‘in particular’ and ‘particularly’ emphasise that the passengers of motor vehicles are considered to be a ‘category’, amongst others, of ‘potential victims’, those passengers requiring special attention owing to their vulnerability.

61 — In its Opinion of 26 April 1989 on the proposal for the Third Directive (OJ 1989 C 159, p. 7), the Economic and Social Committee stated, in paragraph 1.2, that passengers must be given the protection of third party insurance cover, on the ground that, at that time, it was not compulsory in some Member States.

62 — In particular Article 1a of the Third Directive, inserted by Directive 2005/14, stated that other categories of victims, such as pedestrians, cyclists and other non-motorised users of the roads, are also covered where they ‘are entitled to compensation in accordance with national civil law’.

63 — See the settled case-law cited above (in particular *Marques Almeida*, paragraph 26), which refers to the preambles to those directives).

64 — See point 59 et seq. of this Opinion.

65 — It being noted that national law, and not European Union law, determines the victim’s right, and the extent of that right, to compensation on the basis of the civil liability of the insured person (see in particular, *Marques Almeida*, paragraph 35).

66 — This is the case inter alia in Bulgaria, Germany, Estonia, Ireland, Spain, France, Italy, Cyprus, Latvia, Poland, Slovenia, Sweden and the United Kingdom.

67 — In Germany, the damage can be compensated for only if it goes beyond ‘normal’ reactions and disadvantages following a death which has occurred in those circumstances. In Estonia, compensation is justified mainly where the next of kin was a witness to the accident. In the United Kingdom, the case-law has imposed cumulative conditions, namely a psychiatric illness caused by the shock, the existence of close ties of affection with the victim, the closeness of the beneficiary to the accident and the shock caused by directly witnessing the accident.

68 — In Sweden, the indirect victim automatically receives compensation for the year following the death of a next of kin. After that year, the victim must prove that his suffering is more sustained by producing medical certificates.

82. However, in accordance with the case-law,⁶⁹ the Member States must exercise that power in a way which complies with European Union law and, in particular, which preserves the useful effect of the First, Second and Third Directives. However, that effect would, in my opinion, be affected significantly if indirect victims of road traffic accidents, such as those involved in the main proceedings, were not able to be protected by compulsory insurance against civil liability whereas the insured person is clearly liable towards them.

83. In the light of the foregoing, I propose that the Court reply that Article 3(1) of the First Directive, Article 1(1) and (2) of the Second Directive and Article 1 of the Third Directive must be interpreted as meaning that where, in accordance with the applicable national law, the insured person is civilly liable for the non-material damage suffered by a person whose next of kin has died in a road traffic accident, such compensation must be covered by the mechanism of compulsory insurance provided for in those directives.

C – The impossibility for the Member States to fix maximum amounts of compensation by insurance which are lower than the minimum guarantees provided for under European Union law (second question in Drozdovs)

1. The wording of the question referred

84. In *Drozdovs*, the referring court asks a second question in the alternative, should the Court answer the first question in the affirmative, that is to say, in the sense that the compulsory insurance against civil liability, which is laid down in Article 3 of the First Directive and Article 1(1) and (2) of the Second Directive, also includes compensation for non-material damage such as that invoked by the applicant in the main proceedings.

85. The referring court is essentially asking whether the abovementioned articles preclude a rule of national law which, with regard to compensation by an insurer for non-material damage, lays down a maximum amount which is clearly lower, on the one hand, than the minimum amounts of compulsory insurance cover laid down by the Second Directive and, on the other, than the limits for insurer's liability set by national law.

86. It is clear from the decision to refer the case that, by that question, the Court is being invited to rule on the admissibility of the maximum limit of compensation for non-material damage such as that suffered by Vitālijs Drozdovs which is laid down in Article 7 of Latvian Decree No 331,⁷⁰ with regard not only to the minimum guarantees set out in Article 1(2) of the Second Directive,⁷¹ but also to that specified in Article 15(1)(1) of the Latvian Law on Compulsory Insurance,⁷² which transposed that directive in particular.

87. That final part of the request for a preliminary ruling matches the grounds in the appeal on a point of law submitted by the guardian of Vitālijs Drozdovs, who claims inter alia that the limit for compensation laid down in Latvian Decree No 331 is disproportionately low and not in conformity with the provisions of the Latvian Law on Compulsory Insurance, which is implemented by that

69 — See, inter alia, *Marques Almeida*, paragraph 31 and the case-law cited.

70 — That article provides that the flat-rate amount for compensation paid by an insurer for psychological pain and suffering caused by the death, in particular, of an economic provider is LVL 100, thus approximately EUR 143 per applicant and per deceased person.

71 — The amounts at issue, noted in point 13 of this Opinion, are now included in Article 9 of Directive 2009/103.

72 — That law fixes the limit for which the liability of an insurer may be sought in accordance with compensation for personal injuries at LVL 250 000, thus approximately EUR 357 283.

Governmental Decree.⁷³ However, the Court does not have jurisdiction to rule on the constitutional validity or the lawfulness of provisions of national law, and, in particular, to decide upon whether national regulations comply with provisions of national law. That aspect of the question will therefore not be examined.

2. The binding nature of the minimum amounts of civil liability cover laid down by the Second Directive

88. Both the guardian of Vitālijs Drozdovs and the Commission consider that Article 3 of the First Directive and Article 1 of the Second Directive preclude a Member State from limiting compensation for non-material damage in respect of compulsory insurance against civil liability to an amount which is lower than the limit laid down for the insurer's liability in that legislation. I wish to say, from the outset, that I share that view for the following reasons.

89. The origin, genesis and evolution of the provisions of European Union law referred to in the second question from the Augstākās tiesas Senāts contain an abundance of information for the purposes of interpreting them.

90. As the Court has already highlighted, in its original version, Article 3(1) *in fine* of the First Directive left it to the Member States to determine the damage covered and the terms and conditions of compulsory insurance against civil liability.⁷⁴ In accordance with the third recital in the preamble to the Second Directive, in order to reduce the disparities which continued to exist between the laws of the Member States as regards the extent of the obligation to insure, Article 1 of the Second Directive required civil liability for damage to property and personal injuries to be compulsorily covered up to specified sums, those minimum amounts guaranteeing a minimum level of protection to road accident victims.⁷⁵

91. An examination of the works underlying the adoption of the Second Directive reveals that Article 1(2) thereof, which fixes the minimum guarantees, was one of the provisions amended most frequently in the course of the initial legislative procedure.⁷⁶ The same is true in the successive revisions of that directive,⁷⁷ it being specified that I consider that account should be taken of that secondary legislation,⁷⁸ in respect of the policies they reflect, even though their provisions do not apply *ratione temporis* in *Drozdovs*. All of those factors show that much attention has been paid by the European legislator to Article 1 of the Second Directive. Moreover, the evolution followed by that provision, towards a progressive strengthening of the requirements laid down therein, is evidence of the ever-greater desire to protect victims. Indeed, as the legislator has expressly pointed out, 'Member States' obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute an important element' to achieve that aim.⁷⁹

73 — Article 19(3) of the Latvian Law on Compulsory Insurance had provided that the amount and the method for calculating compensation by insurers for material and non-material damage caused to persons are fixed by the Council of Ministers.

74 — Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 15.

75 — See *Mendes Ferreira and Delgado Correia Ferreira*, paragraph 26, and points 8 and 9 of the Opinion of Advocate General Cosmas in that case.

76 — This is apparent from a comparison between the original Commission proposal of 7 August 1980, the Opinion of the Economic and Social Committee of 25 and 26 February 1981, the amendments proposed by the European Parliament of 14 October 1981 (OJ 1981 C 287, p. 44) and the amendment of that proposal submitted by the Commission on 3 March 1982 (OJ 1982 C 78, p. 17).

77 — Those amounts were revised upwards and coupled with a periodic revision clause in order to ensure that the minimum amount of cover was not eroded, when Directive 2005/14 was adopted. See also Article 9 of Directive 2009/103 and the Commission's Notice regarding the adaptation in line with inflation of certain amounts laid down in the Motor Insurance Directive 2009/103 (OJ 2010 C 332, p. 1).

78 — The Court has also followed that approach, in particular, in Case C-484/09 *Carvalho Ferreira Santos* [2011] ECR I-1821, paragraph 45.

79 — See recital 10 in the preamble to Directive 2005/14 and recital 12 in the preamble to Directive 2009/103.

92. Following that approach, the Court has made it clear that Article 1(2) of the Second Directive precludes domestic laws laying down maximum amounts of compensation that are lower than the minimum amounts of cover laid down by that provision.⁸⁰

93. To substantiate the decisions made in that regard, it has held, as I have already pointed out in my response to the first questions referred for a preliminary ruling, that the Member States must ensure that the civil liability arising under their domestic law which applies to road traffic accidents is covered by insurance that complies with the provisions of the First, Second and Third Directives. The Member States must exercise their powers in that field in compliance with European Union law, which implies, in particular, that the civil liability insurance cover adheres to the minimum guarantees laid down in the Second Directive and, therefore, that no national legislation can limit the protection afforded by it by laying down maximum levels of compensation which are lower.⁸¹

94. The Court has added that ‘any other interpretation would deprive Article 3(1) of the First Directive and Article 1(2) of the Second Directive of their intended effect. That effect, which is to protect the victims of road-traffic accidents by means of compulsory civil liability insurance, would be jeopardised if cover for such liability by insurance was left to the discretion of the national legislature’.⁸²

95. All of the foregoing considerations can, in my opinion, be transposed with regard to provisions such as those contained in Latvian Decree No 331, which lay down a guarantee limit which is too low, in particular for non-material damage as a result of the death of a person on whom an individual depends, since respecting the aim and the practical effect of those provisions involves guaranteeing victims of road traffic accidents adequate compensation irrespective of the Member State in which the accident occurred.⁸³ Accordingly, the second question referred by the Augstākās tiesas Senāts must be answered in the affirmative.

96. I would point out that, in my view, it is immaterial that the excessively low level chosen in national law is moderately lower than the limit of insurers’ liability laid down in the directives and substantially lower than that stated by the court in its question for a preliminary ruling.⁸⁴ The fact that the minimum level of cover is not reached is sufficient for a rule of national law not to satisfy those requirements of European Union law. By contrast, the reservation made at the beginning of Article 1(2) of the Second Directive⁸⁵ authorises Member States to go beyond the minimum levels of cover provided for, it being specified that they may require an unlimited guarantee, or specify amounts up to which such insurance is compulsory, the only requirement being that those amounts are not lower than the minimum levels.⁸⁶

80 — *Mendes Ferreira and Delgado Correia Ferreira*, paragraph 41, and *Messejana Viegas*, paragraph 20, on the Portuguese legislation laying down those amounts where, in the absence of fault on the part of the driver of the vehicle which caused the accident, only civil liability for materialisation of risk arises.

81 — The Court has pointed out that the Community legislator intended to require cover for all civil liability arising from the use of motor vehicles, even though the Member States are free to determine the civil liability scheme, based on fault or risk, which applies to those accidents. See *Mendes Ferreira and Delgado Correia Ferreira*, paragraphs 29 and 40, and the Order in *Messejana Viegas*, paragraph 21.

82 — Order in *Messejana Viegas*, paragraph 22. See also the Opinion of Advocate General Cosmas in Case C-348/98, point 48.

83 — I note that the minimum amounts of guarantees laid down in the directives at issue are likely to give rise to some *de facto* harmonisation of the civil liability rules applicable in the Member States, which may be inclined to amend their legislation on the subject, even though there is no legal obligation to do so in European Union law (see H. Heiss ‘Motor vehicle liability insurance between the European directives and national tort law’, *Over grenzen: liber amicorum Herman Cousy*, Intersentia, Antvers-Cambridge, 2011, p. 127 to 136, in particular p. 133).

84 — This issue should not be confused with the Court’s examination of proportionality with regard to national laws denying or limiting in a disproportionate manner, the right of a victim to be compensated by compulsory insurance against civil liability solely on the basis of the victim’s contribution to the occurrence of his injuries (see, inter alia, *Marques Almeida*, paragraphs 30 et seq., and the Order of 21 March 2013 in Case C-486/11 *Rodrigues Esteves*, paragraph 26 et seq.).

85 — Namely ‘Without prejudice to any higher guarantees which Member States may lay down ...’.

86 — This can be seen in the preparatory works regarding that provision (see in particular, the original proposal and the Opinion of the Economic and Social Committee, cited above, paragraphs 2.1 and 2.2).

97. Given the risk of ambiguities, which can be seen from the observations submitted to the Court, I must point out that, in my opinion, what is contrary to European Union law is not limiting the amounts of guarantee as such,⁸⁷ but the fact that a Member State sets a maximum level of compensation at a level which is much lower than the minimum amounts laid down in the directives at issue.

98. Indeed, in accordance with the aforementioned settled case-law, all civil liability in respect of the use of motor vehicles provided for by a national legal system must be covered by insurance. However, in my opinion, that principle must be understood as meaning solely that a rule of national law regarding insurance cannot preclude certain types of damage or certain categories of injured parties from cover where the victims are able to rely on the civil liability of the insured person to obtain compensation in that regard. The decision, taken by the European legislator, to introduce levels of guarantee which are ‘at the minimum’ of the amounts laid down in the directives concerned makes sense only if it has been recognised that they allow, by contrast, only higher levels to be fixed by the Member States and, therefore, that civil liability which goes beyond those national limits should not be covered by compulsory insurance.⁸⁸ Therefore, the legal systems of the Member States where the general legislation applicable to civil liability does not contain compensation limits can nevertheless restrict the cover of that compensation by compulsory insurance by introducing limits which exceed the lowest amounts laid down in those directives.

3. The impact of the proposed answer

99. In the grounds of its request for a preliminary ruling, the Augstākās tiesas Senāts dwells on the importance of finding a balance between the interests involved. That court points out that the interest of victims to receive compensation for their injuries that is as comprehensive as possible, differs from that of the owner of the vehicle that caused the damage, which is to pay an insurance premium which is as low as possible, and that the insurer’s aim, which is to earn profits, depends largely on the relationship between the insurance premiums paid and the insurance compensation paid in respect of an insured event.⁸⁹ It suggests that reconciling those diverging interests involves clearly establishing the limits in the guarantee payable by the insurer, so that the owner is able to take out insurance at a tariff that is not excessive⁹⁰ and, accordingly, that the victim does indeed receive the compensation provided for with regard to his loss.

100. The Latvian and Lithuanian Governments agree with that viewpoint. They add that fixing such limits in law would also give the advantage of guaranteeing legal certainty, whereas significant compensation arising from non-material damage would risk, in the case of accidents involving a number of persons, affecting the fair distribution of the limited amounts available.⁹¹ They deduce from this that the application to non-material damage of the limits laid down in Article 1 of the Second Directive would raise difficulties for the efficiency of the civil liability insurance scheme at issue.

101. It is true that, a priori, the functioning of the European insurance market could be affected by the obligation for insurers to cover damage more broadly and at a higher level, with regard to vehicles that are normally based in the territory of the Member States, which would be likely to cause an increase in the premiums paid by insured persons.

87 — As the referring court seems to envisage (see paragraph 8.1 *in fine* of its decision).

88 — See *Marques Almeida*, paragraph 30 and the case-law cited, where the Court held that ‘Member States are obliged to ensure that the civil liability arising under their domestic law is covered by *insurance which complies with* the provisions of the three abovementioned directives (emphasis added).

89 — See paragraph 8.2 of the order for reference.

90 — It refers in this regard to paragraphs 77 and 78 of the judgment in Case C-518/06 *Commission v Italy* [2009] ECR I-3491.

91 — I observe that the risk invoked would be the same with regard to material damage.

102. However, I wish to point out, from the outset, that the European Economic and Social Committee had envisaged ‘the problems that fixing of these minimum sums will inevitably entail in certain countries (in particular, an increase in present insurance premiums)’ but it thought, rightly in my opinion, that ‘this step must be taken in order to achieve the objective, namely better protection for victims’ and it therefore supported the proposal to introduce minimum guarantees.⁹² In order to take account of the situations in some Member States at the outset as regards those amounts, the Second Directive contains transitional measures concerning the gradual implementation of the related provisions in those Member States.⁹³

103. Moreover, in practice, a broad understanding of the scope of compulsory insurance against civil liability does not necessarily have repercussions which are as sensitive as those expected on the level of insurance premiums.⁹⁴ Accordingly, in Bulgaria, the recent amendment to the law concerning the amounts covered by such insurance, which includes compensation for non-material damage,⁹⁵ has not had a significant impact on related premiums.⁹⁶ Moreover, in Sweden, according to the preparatory work leading to the insertion into the law of the right to compensation for personal injuries in the event of the death of a next of kin in a road traffic accident,⁹⁷ that reform should have only a marginal effect on the costs for insurance undertakings and, therefore, on insurance premiums, which should rise by only 1 to 1.5% or less.⁹⁸

104. Furthermore, the concerns expressed by the governments intervening in the present case do not seem justified to me, since, I repeat, in my opinion, Member States are not precluded from fixing levels, so that the guarantee payable by the insurers is not unlimited, the only requirement arising from Article 1 of the Second Directive being that that limit is set at a level which is higher than the minimum amounts provided for by that article.

105. In the light of the foregoing, in my view, the answer to the second question referred for a preliminary ruling in *Drozdovs* must be that Article 3 of the First Directive and Article 1(1) and (2) of the Third Directive preclude a provision of national law which, to limit compensation for non-material damage likely to be payable under compulsory insurance against civil liability, lays down maximum guarantees which are lower than the minimum guarantees for compensation for personal injuries laid down by Article 1 of the Second Directive.

D – The second question referred for a preliminary ruling in Haasová

106. In the second question referred for examination by the Court in *Haasová*, the Krajský súd v Prešove starts from the assumption that it will be held, in response to the first question, that provisions of national law regarding insurance which do not allow financial compensation to be paid for non-material damage caused to the survivors of victims of a road traffic accident are not contrary to European Union law.

92 — In paragraph 2.3 of its Opinion on the proposal for a Second Directive.

93 — See recital 11 in the preamble to the Second Directive and Articles 5 and 6 of the Second Directive.

94 — The Commission’s Proposal of 19 June 2002 which led to the adoption of Directive 2005/14 makes an assessment according to which a number of Member States have opted for unlimited cover and the majority of those that have set minimum amounts of cover have done so at a level which is higher than that laid down in the directives without insurance undertakings in those Member States having suffered as a result [COM(2002) 244 final, p. 6 and p. 29].

95 — Law amending and supplementing the Insurance Code (DV No 21 of 13 March 2012).

96 — See the article of I. Stoyanova, ‘Обезщетенията за неимуществени вреди при ‘Гражданска отговорност’ на автомобилистите’, available at: www.zastrahovatel.com/statia.php?mysid=3522&t=4.

97 — This law was inserted into the Swedish General Law on Compensation for Damages by Law 2001:732, which entered into force on 1 January 2002.

98 — Regeringens proposition 2000/01:68, Ersättning för ideell skada, p. 34 and p. 63.

107. The referring court is therefore basing its argument on a premise that is contrary to the response that I propose the Court gives to the first question referred for a preliminary ruling. Having regard to the wording of the response that, in my opinion, must be given to it, I consider that it is not necessary to answer the second question, which was asked only in the alternative.

108. Nevertheless, I note that the referring court is asking the Court to interpret provisions of national law,⁹⁹ which is precluded, in accordance with settled case-law.¹⁰⁰

109. In the event that the Court does not follow my proposal, the question should be reformulated, in my view, as meaning that it concerns in essence the possible opportunity for a court of a Member State to interpret a rule of national law in accordance with the provisions of the First and Third Directives referred to. In any event, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem*, consisting in this case of making compensation for damage the liability of the insurer, contrary to what is provided for in a rule of national law.¹⁰¹

V – Conclusion

110. In *Haasová* (Case C-22/12), in the light of the foregoing, I propose that the Court answer the questions referred by the Krajský súd v Prešove as follows:

- (1) Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, on the one hand, and the first subparagraph of Article 1 of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, on the other, must be interpreted as meaning that compulsory insurance against civil liability in respect of the use of motor vehicles normally based in the territory of a Member State covers compensation for non-material damage suffered by the next of kin of victims who have died in a road traffic accident which occurred in that context, provided that that compensation is provided for with regard to the civil liability of the insured person by the national law applicable to the case.
- (2) There is no need to answer the second question referred for a preliminary ruling.

111. In *Drozдовs* (Case C-277/12), in the light of the foregoing, I propose that the Court answer the questions referred by the Augstākās tiesas Senāts as follows:

- (1) Article 3 of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, on the one hand, and Article 1(1) and (2) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, on the other, must be interpreted as meaning that compulsory insurance against civil liability in respect of the use of a motor vehicle normally based in the territory of a Member State covers compensation for non-material damage suffered

99 — The question is worded as follows: ‘must the provisions of Article 4(1)(2) and (4) of the Slovak Law [on Compulsory Insurance] and Article 6(1) to (3) of the Czech Law [on Compulsory Insurance] be interpreted ...’.

100 — See *inter alia*, Case C-23/12 *Zakaria* [2013] ECR, paragraph 29.

101 — See, in particular, judgment in Case C-282/10 *Dominguez* [2012] ECR, paragraph 25, and point 67 of my Opinion in Case C-98/09 *Sorge* [2010] ECR I-5837.

by the next of kin of victims who have died in a road traffic accident which occurred in that context, provided that that compensation is provided for with regard to the civil liability of the insured person by the national law applicable to the case.

- (2) Article 3 of the First Directive and Article 1(1) and (2) of the Second Directive must be interpreted as precluding a rule of national law which, with regard to the compensation liable to be paid by an insurer as compensation for non-material damage arising from the death in a road traffic accident of a person on whom the interested party depended, lays down maximum amounts of guarantee which are lower than the minimum guarantees laid down in the latter article for compensation for personal injuries.