



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

20 December 2017*

(Reference for a preliminary ruling — Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 2009/103/EC — Article 3, first paragraph — Concept of ‘use of vehicles’ — National legislation excluding the driving of motor vehicles on roads and terrain that are not ‘suitable for use by motor vehicles’, with the exception of those which, though not suitable, are nonetheless ‘ordinarily so used’)

In Case C-334/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Provincial de Albacete (Provincial Court of Albacete, Spain), made by decision of 23 May 2016, received at the Court on 15 June 2016, in the proceedings

José Luis Núñez Torreiro

v

AIG Europe Limited, Sucursal en España, formerly Chartis Europe Limited, Sucursal en España,

Unión Española de Entidades Aseguradoras y Reaseguradoras (Unespa),

THE COURT (Sixth Chamber),

composed of C.G. Fernlund, President of the Chamber, A. Arabadjiev (Rapporteur) and E. Regan, Judges,

Advocate General: Y. Bot,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 5 April 2017,

after considering the observations submitted on behalf of:

- AIG Europe Limited, Sucursal en España and Unión Española de Entidades Aseguradoras y Reaseguradoras (Unespa), by J. Marín López, abogado,
- the Spanish Government, by V. Ester Casas, acting as Agent,
- the German Government, by T. Henze and J. Mentgen, acting as Agents,
- Ireland, by A. Joyce, L. Williams and G. Hodge, acting as Agents, and by G. Gilmore, Barrister,

* Language of the case: Spanish.

- the United Kingdom of Great Britain and Northern Ireland, by J. Kraehling, acting as Agent, and A. Bates, Barrister,
- the European Commission, by J. Rius and K.-P. Wojcik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 June 2017,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 3 and 5 of 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).
- 2 The request has been made in proceedings between Mr José Luis Núñez Torreiro and AIG Europe Limited, Sucursal en España, formerly Chartis Europe Limited, Sucursal en España ('AIG') and the Unión Española de Entidades Aseguradoras y Reaseguradoras (Unespa) (the Association of Spanish Insurers), concerning the payment of compensation under compulsory civil liability insurance in respect of the use of motor vehicles ('compulsory insurance'), following an accident that occurred in a military exercise area.

Legal context

European Union law

- 3 Recitals 1, 2 and 20 of Directive 2009/103 state:
 - '(1) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of 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 [(OJ 1972 L 103, p. 1)], 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 [(OJ 1984 L 8, p. 17)], 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 [(OJ 1990 L 129, p. 33)] and Directive [2000/26/EC of the European Parliament and of the Council of 16 May 2000 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 amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) (OJ 2000 L 181, p. 65)] have been substantially amended several times ... In the interests of clarity and rationality those four Directives should be codified, as well as Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives [72/166], [84/5], 88/357/EEC and 90/232/EEC and Directive [2000/26] 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)].
 - (2) Insurance against civil liability in respect of the use of motor vehicles ... is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings as it constitutes an important part of non-life insurance

business in the [European Union]. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of [European Union] action in the field of financial services to reinforce and consolidate the internal market in motor insurance.

...

(20) Motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in [the European Union] accidents occur.’

4 Article 1 of that directive provides:

‘For the purposes of this Directive:

1. “vehicle” means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled;

...’

5 Article 3 of that directive provides:

‘Each Member State shall, subject to Article 5, 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 the measures referred to in the first paragraph.

...

The insurance referred to in the first paragraph shall cover compulsorily both damage to property and personal injuries.’

6 Article 5 of that directive provides:

‘1. A Member State may derogate from Article 3 in respect of certain natural or legal persons, public or private; a list of such persons shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

...

2. A Member State may derogate from Article 3 in respect of certain types of vehicle or certain vehicles having a special plate; the list of such types or of such vehicles shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

...’

7 Article 29 of Directive 2009/103 is worded as follows:

‘Directives [72/166], [84/5], [90/232], [2000/26] and [2005/14] ... are hereby repealed ...

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.’

Spanish law

- 8 Article 1 of the Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor (law on civil liability and insurance in respect of the use of motor vehicles), codified by Real Decreto Legislativo 8/2004 (Royal Decree-law No 8/2004), of 29 October 2004 (BOE No 267, of 5 November 2004, p. 3662) ('the law on civil liability and motor vehicle insurance'), provides:

'1. A driver of a motor vehicle shall be liable, because of the risk created by driving such vehicles, for personal injuries and damage to property caused by use of the vehicle.

...

6. "Motor vehicle" and "act classifiable as use of a vehicle" shall be defined by regulation, for the purposes of this Law. In any event, use of a vehicle shall exclude use of the motor vehicle as an instrument for committing intentional offences against persons and property.'

- 9 Article 7(1) of the law on civil liability and motor vehicle insurance provides:

'The insurer shall pay to the injured party, within the scope of compulsory insurance and at the expense of the mandatory insurance scheme, compensation corresponding to personal injuries and damage to property sustained, and also any costs and other payments to which the injured party is entitled under the applicable legislation. The insurer will be exempt from this obligation only if it proves that the act at issue does not give rise to civil liability under Article 1 of this Law.

...'

- 10 Article 2 of Real Decreto 1507/2008 por el que se aprueba el reglamento del seguro obligatorio de responsabilidad civil en la circulación de vehículos a motor (Royal Decree No 1507/2008 approving the regulation on compulsory civil liability insurance in respect of the use of motor vehicles), of 12 September 2008 (BOE No 222, of 13 September 2008, p. 37487; 'the compulsory insurance regulation'), is worded as follows:

'1. For the purposes of civil liability in respect of the use of motor vehicles and the compulsory insurance cover governed by this regulation, an act classifiable as use of a vehicle is understood to be an act attendant upon the risk created by the driving of motor vehicles referred to in the previous article, both in garages and parking areas and on public and private roads or terrain suitable for use by motor vehicles, urban or interurban, and on roads or terrain which, although unsuitable, are ordinarily so used.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 11 On 28 June 2012 Mr Núñez Torreiro, an officer in the Spanish army, was taking part in night-time military manoeuvres at a military exercise area in Chinchilla (Spain), when the all-terrain military vehicle fitted with 'Anibal' wheels ('the vehicle at issue'), in which he was a passenger, a vehicle for which compulsory insurance cover was provided by AIG, overturned, causing him various injuries. The vehicle was travelling not in an area for wheeled vehicles, but in an area for tracked vehicles.
- 12 On the basis of Article 7 of the law on civil liability and motor vehicle insurance, Mr Núñez Torreiro claimed from AIG payment of compensation of EUR 15 300.56 for the injury that he had suffered as a result of that accident.

- 13 Relying on Article 1(6) of the law on civil liability and motor vehicle insurance, read together with Article 2 of the compulsory insurance regulation, AIG refused to pay that sum to him, on the ground that the accident did not stem from an ‘act classifiable as use of a vehicle’, since it occurred at a time when the vehicle at issue was being used on the terrain of a military exercise area, to which access for all types of non-military vehicles was restricted. AIG considered that that terrain was not ‘suitable for use by motor vehicles’ and, further, was not ‘ordinarily so used’, within the meaning of Article 2 of that regulation.
- 14 Mr Núñez Torreiro brought an action against AIG before the Juzgado de Primera Instancia n. 1 de Albacete (Court of First Instance No 1 of Albacete, Spain). By a judgment of 3 November 2015, that court dismissed his action on the ground that his injuries were not the result of an ‘act classifiable as the use of a motor vehicle’, since the vehicle in which he was a passenger was travelling on terrain which was neither suitable for use by motor vehicles nor ordinarily used by motor vehicles.
- 15 Mr Núñez Torreiro brought an appeal against that judgment before the referring court, the Audiencia Provincial de Albacete (Provincial Court of Albacete, Spain), claiming that Article 1(6) of the law on civil liability and motor vehicle insurance, read together with Article 2 of the regulation on compulsory insurance, should be strictly interpreted, in line with the judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146), where the Court held that the insurer’s liability cannot be excluded if the use of the vehicle is consistent with the normal function of that vehicle.
- 16 The referring court is uncertain as to whether Article 1(6) and Article 7(1) of the law on civil liability and motor vehicle insurance, read together with Article 2 of the compulsory insurance regulation, are compatible with Article 3 of Directive 2009/103, since the effect of those provisions of national law is that, in a certain number of situations, such as those that are the subject matter of the proceedings before it, liability arising from the use of motor vehicles does not compulsorily have to be covered by insurance. The referring court considers that the only exceptions to compulsory insurance are those listed in Article 5 of that directive. Further, that court notes that, in the judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146), the Court held that, inter alia, the concept of ‘use of vehicles’, within the meaning of Article 3 of Directive 2009/103, cannot be left to the discretion of each Member State.
- 17 It follows, according to the referring court, that the Member States may not provide for derogations from the obligation to take out insurance against civil liability in respect of the use of motor vehicles or from the concept of ‘use of vehicles’ other than within the framework of Article 5 of Directive 2009/103, or where the use of the vehicle concerned is not consistent with its normal function. The exceptions to the concept of an ‘act classifiable as use of a motor vehicle’ that result from the restriction, pursuant to Article 2(1) of the compulsory insurance regulation, of such use to use that takes place on terrain ‘suitable for use by motor vehicles’ or which ‘while not suitable for that purpose, [is] ordinarily so used’, are, consequently, incompatible with EU law. The same is true, according to the referring court, of Article 2(2) and (3) of that regulation, which provide for an exception to the obligation to take out insurance against civil liability in respect of the use of motor vehicles as regards motor vehicles used at sporting events, in ports and in airports, and also motor vehicles used for industrial or agricultural activities or in order to commit intentional offences.
- 18 In those circumstances, the Audiencia Provincial de Albacete (Provincial Court of Albacete) decided to stay the main proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) May the concept of “use of motor vehicles” or “act classifiable as the use of a motor vehicle”, as a risk that has to be covered by civil liability insurance in respect of the use of motor vehicles, to which reference is made in EU legislation (in particular Article 3 of Directive 2009/103), be given a definition in the national legislation of a Member State that differs from that in the EU legislation?’

- (2) If so, may that concept exclude (in addition to specific persons, plates or types of vehicles, as permitted by Article 5(1) and (2) of Directive 2009/103) circumstances which depend on the place in which the vehicle is used, such as use on roads or terrain that are “unsuitable” for use by motor vehicles?
- (3) Similarly, is it possible to exclude from the concept of “act classifiable as use of a vehicle” certain activities of the vehicle relating to its purpose (such as its sporting, industrial or agricultural use) or relating to the driver’s intention (for example, the commission of an intentional offence with the vehicle)?

Consideration of the questions referred

The first and second questions

- 19 By its first and second questions, which can be examined together, the referring court seeks, in essence, to ascertain whether the first paragraph of Article 3 of Directive 2009/103 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes it possible to exclude from compulsory insurance cover injuries and damage that result from the driving of motor vehicles on roads or terrain that are not ‘suitable for use by motor vehicles’, with the exception of roads or terrain which, although not suitable for that purpose, are nonetheless ‘ordinarily so used’.
- 20 Those questions rest, in this case, on the premiss that there can be excluded from compulsory insurance cover, under the Spanish legislation, injuries and damage that result from the use of motor vehicles in a military exercise area, such as that in the main proceedings, for the reason that such an area is terrain that is not suitable for the use of motor vehicles and, in addition, is not ‘ordinarily so used’, within the meaning of Article 2(1) of the compulsory insurance regulation.
- 21 In that regard, the first paragraph of Article 3 of Directive 2009/103 provides that each Member State is, subject to Article 5 of that directive, to 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.
- 22 First, it must be observed that a military vehicle with Anibal wheels, such as that in the main proceedings, is covered by the concept of a ‘vehicle’, defined in Article 1(1) of Directive 2009/103, given that it is a ‘vehicle intended for travel on land and propelled by mechanical power, but not running on rails’. Further, it is undisputed that that vehicle is normally based in the territory of a Member State and that it is not affected by any derogation adopted under Article 5 of that directive.
- 23 In order to provide a useful answer to the questions referred, it is necessary to determine whether circumstances such as those at issue in the main proceedings fall within the scope of the concept of ‘use of vehicles’, within the meaning of the first paragraph of Article 3 of that directive.
- 24 It must be recalled, to that end, that the Court has held that that very concept, within the meaning of Article 3(1) of Directive 72/166 (‘the First Directive’), the content of which essentially corresponds to that of the first and second paragraphs of Article 3 of Directive 2009/103, cannot be left to the discretion of each Member State, but constitutes an autonomous concept of EU law, which must, in accordance with the Court’s settled case-law, be interpreted in the light, in particular, of the context of that provision and the objectives pursued by the rules of which it is part (see, to that effect, judgments of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraphs 41 and 42, and of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 31).

- 25 In that regard, as stated in recital (1) of Directive 2009/103, that directive codified the First Directive, the Second Directive 84/5, the Third Directive 90/232, Directive 2000/26 and Directive 2005/14. Those directives progressively defined the obligations of Member States with respect to compulsory insurance. While the aim of those directives was to ensure the free movement of vehicles normally based on European Union territory and of persons travelling in those vehicles, they also had the objective of guaranteeing that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred (see, to that effect, judgments of 23 October 2012, *Marques Almeida*, C-300/10, EU:C:2012:656, paragraph 26; of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 50; and of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 32).
- 26 It is stated, in essence, in recitals 2 and 20 of Directive 2009/103, that that directive pursues the same objectives.
- 27 In addition, it is clear from the development of the EU legislation concerning compulsory insurance that the objective of protecting the victims of accidents caused by those vehicles has continuously been pursued and reinforced by the EU legislature (see, to that effect, judgments of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraphs 52 to 55, and of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 33).
- 28 It follows from the foregoing that the first paragraph of Article 3 of Directive 2009/103 must be interpreted as meaning that the concept of ‘use of vehicles’ in that provision is not limited to road use, that is to say, to travel on public roads, but that that concept covers any use of a vehicle that is consistent with the normal function of that vehicle (see, to that effect, judgments of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 59, and of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 34).
- 29 In that regard, the Court has stated that, in so far as the motor vehicles defined in Article 1(1) of the First Directive, the wording of which corresponds to that of Article 1(1) of Directive 2009/103, are, irrespective of their characteristics, intended normally to serve as a means of transport, that concept covers any use of a vehicle as a means of transport (judgment of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraphs 37 and 38).
- 30 The Court has held, moreover, that the scope of the concept of ‘use of vehicles’ does not depend on the characteristics of the terrain on which the motor vehicle is used (judgment of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 35).
- 31 There is, moreover, no provision in Directive 2009/103 that limits the scope of the insurance obligation, and of the protection which that obligation is intended to give to the victims of accidents caused by motor vehicles, to the use of such vehicles on certain terrain or on certain roads (see, to that effect, judgment of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 36).
- 32 In this case, it is undisputed that the vehicle at issue was being used, at the time when it overturned and thereby injured Mr Núñez Torreiro, as a means of transport.
- 33 Such use therefore falls within the scope of the concept of ‘use of vehicles’, within the meaning of the first paragraph of Article 3 of Directive 2009/103.
- 34 The fact that, as is stated in the order for reference, the vehicle at issue was being used, at the time when it overturned, in a military exercise area access to which was prohibited for all non-military vehicles and in a part of that area which was not suitable for the use of wheeled vehicles, cannot have any effect on that conclusion and cannot, therefore, limit the insurance obligation that stems from that provision.

- 35 The effect, however, of legislation such as that at issue in the main proceedings is that the extent of compulsory insurance cover is dependent on the characteristics of the terrain on which the motor vehicle is used. That legislation makes it possible to limit the scope of the general compulsory insurance that the Member States are under an obligation to establish, in national law, pursuant to the first paragraph of Article 3 of Directive 2009/103 and, consequently, the scope of the protection that that compulsory insurance is intended to give to victims of accidents caused by motor vehicles, to situations where such vehicles are used on certain terrain or on certain roads.
- 36 In the light of the foregoing, the answer to the first and second questions is that the first paragraph of Article 3 of Directive 2009/103 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes it possible to exclude from compulsory insurance cover injuries and damage that result from the driving of motor vehicles on roads or terrain that are not 'suitable for use by motor vehicles', with the exception of roads or terrain which, although not suitable for that purpose, are nonetheless 'ordinarily so used'.

The third question

- 37 By its third question, the referring court seeks to ascertain, in essence, whether the first paragraph of Article 3 of Directive 2009/103 must be interpreted as precluding national legislation, such as Article 1(6) and Article 7(1) of the law on civil liability and motor vehicle insurance, read together with Article 2(2) and (3) of the compulsory insurance regulation, which excludes from compulsory insurance cover injuries and damage resulting from the use of that vehicle as part of a sporting activity or for industrial or agricultural purposes, or in ports or airports, or in the commission of an intentional offence.
- 38 In that regard, it should be borne in mind that, according to the Court's settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 20 July 2017, *Piscarreta Ricardo*, C-416/16, EU:C:2017:574, paragraph 56 and the case-law cited).
- 39 In this case, it is apparent from the order for reference that the injuries suffered by Mr Núñez Torreiro were the result of an accident involving a military vehicle fitted with Anibal wheels which was being used in part of a military exercise area, suitable for tracked vehicles. The dispute in the main proceedings therefore does not relate to the use of that vehicle as part of a sporting activity or for industrial or agricultural purposes, or in ports or airports, or in the commission of an intentional offence.
- 40 That being the case, it is quite obvious that the interpretation of the first paragraph of Article 3 of Directive 2009/103, requested in the third question referred, bears no relation to the actual facts of the main action or its purpose and, therefore, that that question is inadmissible.

Costs

- 41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

The first paragraph of Article 3 of 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, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes it possible to exclude from compulsory insurance cover injuries and damage that result from the driving of motor vehicles on roads or terrain that are not ‘suitable for use by motor vehicles’, with the exception of roads or terrain which, although not suitable for that purpose, are nonetheless ‘ordinarily so used’.

[Signatures]