



## Reports of Cases

### JUDGMENT OF THE COURT (Tenth Chamber)

15 December 2022\*

(Reference for a preliminary ruling – Compulsory insurance against civil liability in respect of the use of motor vehicles – Directive 2009/103/EC – Article 3, fourth paragraph – Concept of ‘personal injury’ – Cover by compulsory insurance – Road traffic accident – Death of a passenger – Right to compensation for minor children – Non-material damage – Suffering of a child resulting from the death of his or her parent as a result of that accident – Compensation only in the event of pathological damage’)

In Case C-577/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 11 August 2021, received at the Court on 20 September 2021, in the proceedings

**LM,**

**NO**

v

**HUK-COBURG-Allgemeine Versicherung AG,**

THE COURT (Tenth Chamber),

composed of M. Ilešič, acting as President of the Chamber, I. Jarukaitis (Rapporteur) and Z. Csehi, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- HUK-COBURG-Allgemeine Versicherung AG, by G.I. Ilieva, avocat,
- the German Government, by J. Möller, U. Bartl, J. Heitz, M. Hellmann and U. Kühne, acting as Agents,

\* Language of the case: Bulgarian.

– the European Commission, by C. Georgieva, D. Triantafyllou and H. Tserepa-Lacombe, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(1) 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 (OJ 1984 L 8, p. 17), as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p. 14) ('the Second Directive').
- 2 The request has been made in proceedings between, on the one hand, LM and NO and, on the other hand, HUK-COBURG-Allgemeine Versicherung AG ('HUK-COBURG'), an insurance company, concerning compensation by the latter, on the basis of compulsory civil liability in respect of the use of motor vehicles, for non-material damage suffered by LM and NO as a result of the death of their mother in a road traffic accident.

### **Legal context**

#### ***European Union law***

##### *The Second Directive*

- 3 Article 1(1) of the Second Directive provided:

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

##### *Directive 2009/103/EC*

- 4 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) codified the earlier directives relating to compulsory insurance against civil liability in respect of the use of motor vehicles, including the Second Directive, and consequently repealed them with effect from 27 October 2009. According to the correlation table in Annex II to Directive 2009/103, Article 1(1) of the Second Directive corresponds to the fourth paragraph of Article 3 of Directive 2009/103.

5 Article 1 of Directive 2009/103 contains the following definition:

‘For the purposes of this Directive:

...

(2) “injured party” means any person entitled to compensation in respect of any loss or injury caused by vehicles;

...’

6 Article 3 of that directive, entitled ‘Compulsory insurance of vehicles’, 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.’

7 Article 5(1) of that directive, entitled ‘Derogation from the obligation in respect of compulsory insurance of vehicles’, provides in the first subparagraph:

‘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.’

*Regulation (EC) No 593/2008*

8 The second subparagraph of Article 7(2) 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), entitled ‘Insurance contracts’, provides:

‘To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.’

*Regulation (EC) No 864/2007*

9 Under Article 4(1) of Regulation (EC) No 864/2007 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):

‘Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of

the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.’

### *German law*

10 Under the heading ‘Non-material damage’, Paragraph 253 of the Bürgerliches Gesetzbuch (Civil Code), in the version applicable to the dispute in the main proceedings (‘the BGB’), is worded as follows:

- ‘1. Money may be sought as compensation for non-material damage only in the cases specified by law.
2. Where damages are to be paid on account of bodily injury, damage to health, freedom or sexual self-determination, fair compensation in monetary terms for non-material damage may also be sought.’

11 Paragraph 823 of the BGB, entitled ‘Obligation to make good damage’, provides in paragraph 1:

‘A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or other right of another person is liable to pay compensation to the other party for the damage arising from this.’

12 Under the heading ‘Direct right of action’, Paragraph 115 of the Gesetz über den Versicherungsvertrag (Law on Insurance Contracts) of 23 November 2007 (BGB1. 2007 I, p. 2631), in the version applicable to the dispute in the main proceedings, provides in paragraph 1:

‘The third party may also assert his or her right to compensation against the insurer

1. in the case of insurance against civil liability for the enforcement of an insurance obligation under the Law on compulsory insurance ...

...

The right arises from the insurer’s obligations in respect of the insurance relationship and, in the absence of any obligation, from Article 117(1) to (4). The insurer must may pay monetary compensation. The insurer and the policyholder liable to pay compensation for damage shall be jointly and severally liable.’

13 Paragraph 7 of the Straßenverkehrsgesetz (Law on Road Traffic), in the version applicable to the dispute in the main proceedings, entitled ‘Liability of the holder, fraud’, provides in paragraph 1:

‘If, during the use of a motor vehicle, a person is killed, suffers physical injury or harm to his health, or if an item of property is damaged, the owner shall be required to make good the resulting damage to the injured party.’

14 Under Paragraph 11 of the Law on Road Traffic, in the version applicable to the dispute in the main proceedings, entitled ‘Extent of the obligation to provide compensation in the case of damage to health’:

‘In the event of bodily injury or impaired health, compensation shall be made in respect of the costs incurred in restoring the injured person’s health and also the pecuniary loss which the injured person

suffers because, as a result of the injury, his or her earning capacity is permanently or temporarily brought to an end or reduced or his or her needs are increased on a temporary or permanent basis. Fair compensation in money for non-material damage may also be claimed.’

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

- 15 NO, born in 2006, and LM, born in 2010, are the daughters of AB, their mother, and CD, their father, all being Bulgarian nationals.
- 16 In 2013, AB and CD took up residence in Germany in order to work there, while NO and LM remained in Bulgaria.
- 17 On 27 July 2014, AB died in a road traffic accident in Emsdetten (Germany). CD, who was insured with HUK-Coburg, an insurance company established in Germany, on the basis of compulsory civil liability, caused that accident when he was driving his vehicle in a state of intoxication, while AB was on the right in the front passenger seat and was not wearing her seatbelt.
- 18 Following the accident, HUK-Coburg paid NO and LM the sum of EUR 5 000 by way of compensation for the damage linked to the death of their mother. Finding that sum to be insufficient, NO and LM, represented by CD, brought an action against HUK-Coburg before the Sofiyski gradski sad (Sofia City Court, Bulgaria), the referring court, seeking compensation of 300 000 leva (BGN) (approximately EUR 153 000) for each of them in respect of the non-material damage resulting from that death. That damage stems from an injury to their mental health, since NO and LM suffer from insomnia, nightmares, mood swings, irritability, anxiety, introversion and panic attacks.
- 19 HUK-COBURG disputes the merits of that claim and submits before the referring court, first of all, that the law applicable in the present case is German law and that that law, in the version applicable at the time of the accident, did not provide for compensation for non-material damage suffered by third parties, unless that damage consisted in a pathological disorder. It has been only since 22 July 2017 that German law has provided for compensation for non-material damage suffered by third parties if those persons had particularly close links with the victim. Secondly, the victim contributed to her own death by travelling in a car driven by a person in a state of intoxication without wearing her seatbelt. Finally, the amount of the compensation claimed by NO and LM is excessive.
- 20 The referring court considers that, on the basis of the second subparagraph of Article 7(2) of the Rome I Regulation and Article 4(1) of the Rome II Regulation, German law is applicable to the dispute before it.
- 21 That court states that, according to the settled case-law of the Bundesgerichtshof (Federal Court of Justice, Germany), damages payable as compensation for pain and suffering resulting from the death of a parent, under German law, namely Article 253(2) and Article 823(1) of the BGB, read in conjunction with point 1 of the first subparagraph of Article 115(1) of the Law on Insurance Contracts, are to be payable only if they have led to pathological damage.
- 22 In the view of the referring court, it should therefore, further to that interpretation, reject NO and LM’s claim on the ground that the pain and suffering caused by the death of their mother did not entail any pathological condition.

- 23 However, that court considers that the case-law of the Bundesgerichtshof (Federal Court of Justice) restricts the scope of the concept of ‘personal injuries’, within the meaning of the Second Directive.
- 24 The referring court therefore asks whether that interpretation by the Bundesgerichtshof (Federal Court of Justice), which would have the effect of restricting, in practice, the class of persons entitled to compensation for non-material damage resulting from the death of a close relative following a road traffic accident, is compatible with EU law in so far as it appears to limit the effectiveness of the Second Directive.
- 25 Given that the national court is required to interpret national law in a manner consistent with EU law, that court also asks whether, in the context of the possible application of that principle to the dispute before it, it may, in its capacity as a Bulgarian court, interpret the law of another Member State, namely German law.
- 26 In those circumstances, the Sofiyski gradski sad (Sofia City Court) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is it contrary to Article 1(1) of [the Second Directive] for the notion of “personal injuries” to be interpreted as meaning that such injury exists in the case of psychological pain and suffering caused to a child by the death of a parent as a result of a road traffic accident only where that pain and suffering has resulted in pathological damage to the child’s health?
- (2) Does the principle that a national court is to interpret national law in conformity with EU law apply where the national court applies not its own national law but that of another Member State of the European Union?’

## **Consideration of the questions referred**

### ***The first question***

- 27 It should be noted at the outset that, in its first question, the referring court refers to Article 1(1) of the Second Directive.
- 28 In that regard, it follows from the Court’s settled case-law that, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. Furthermore, the Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court by those courts (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 24).
- 29 In the present case, since Directive 2009/103 codified and repealed, with effect from 27 October 2009, the earlier directives 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, including the Second Directive, and Article 1(1) thereof corresponding, in accordance with the table in Annex II to Directive 2009/103, to the fourth paragraph of Article 3 of that directive, it is appropriate to provide the referring court

with regard to the date of the accident which gave rise to the main proceedings, an interpretation not of Article 1(1) of the Second Directive but of the fourth paragraph of Article 3 of Directive 2009/103. Furthermore, since Directive 2009/103 did not make substantial amendments to those earlier directives, the case-law relating to those earlier directives can be transposed to the interpretation of the equivalent provisions of Directive 2009/103 (see, to that effect, judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 23).

- 30 Consequently, it must be held that, by its first question, the referring court seeks, in essence, to ascertain whether the fourth paragraph of Article 3 of Directive 2009/103 must be interpreted as precluding national legislation which makes compensation, by the insurer against civil liability in respect of the use of motor vehicles, for non-material damage suffered by the close family members of victims of road traffic accidents subject to the condition that that harm entailed pathological damage to the health of such close family members.
- 31 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. The second paragraph of Article 3 provides that the extent of the liability covered and the terms and conditions of the cover are to be determined on the basis of the measures referred to in the first paragraph of Article 3. The final paragraph of Article 3 of that directive stipulates that the insurance referred to in the first paragraph is to cover compulsorily both damage to property and personal injuries. Article 5(1) of Directive 2009/103 provides inter alia that, under the conditions laid down in that provision, each Member State may derogate from Article 3 in respect of certain natural or legal persons.
- 32 In that regard, it should be recalled, in the first place, that, as the Court has already held, the first paragraph of Article 3 of Directive 2009/103, worded in very general terms, requires Member States to establish, in their domestic legal systems, a general obligation to insure vehicles (judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 25 and the case-law cited).
- 33 Consequently, it should be noted, in the second place, that the recitals of Directive 2009/103 show that, like the directives relating to insurance against civil liability in respect of the use of motor vehicles which preceded it, the aim of that directive is, on the one hand, to ensure the free movement of vehicles normally based on EU territory and of persons travelling in those vehicles, and, on the other, to guarantee that the victims of accidents caused by those vehicles will receive comparable treatment irrespective of where in the European Union the accidents occurred (judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 34 and the case-law cited).
- 34 Directive 2009/103 therefore 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 damage and the third-party victims to be covered by that insurance (judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 35 and the case-law cited).
- 35 The obligation to provide insurance cover against civil liability for damage caused to third parties by motor vehicles is, however, distinct from the extent of the compensation to be afforded to them on the basis of the civil liability of the insured person. Whereas the former is defined and

guaranteed by EU legislation, the latter is, essentially, governed by national law (judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 36 and the case-law cited).

- 36 It is apparent from the aim of Directive 2009/103 and its wording that, like the directives which it codifies, it does not seek to harmonise the rules of the Member States governing civil liability and that, as EU law currently stands, the Member States remain free to determine the rules of civil liability applicable to road accidents (judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 37 and the case-law cited).
- 37 Consequently, and having regard in particular to Article 1(2) of Directive 2009/103, as EU law currently stands, the Member States remain, in principle, free to determine, in particular, what damage caused by motor vehicles must be compensated, the extent of the right to compensation and the persons who must be entitled to compensation (see, to that effect, judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 38 and the case-law cited). Thus, that directive does not, in principle, preclude national legislation imposing binding criteria for the determination of the non-material damage which may be the subject of compensation (see, to that effect, judgment of 23 January 2014, *Petillo*, C-371/12, EU:C:2014:26, paragraph 43).
- 38 That freedom is however restricted by that directive, inasmuch as it, first, renders the cover of certain types of damage mandatory, specifying minimum amounts of cover determined by that directive. ‘Personal injuries’, as set out in the last subparagraph of Article 3 of Directive 2009/103, feature among the types of damage in respect of which cover is mandatory (see, to that effect, judgment of 23 January 2014, *Petillo*, C-371/12, EU:C:2014:26, paragraph 33 and the case-law cited).
- 39 The notion of ‘personal injuries’ covers any type of damage, in so far as compensation for such damage is provided for as part of the civil liability of the insured under the national law applicable in the dispute, resulting from an injury to physical integrity, which includes both physical and psychological suffering (see, to that effect, judgment of 23 January 2014, *Petillo*, C-371/12, EU:C:2014:26, paragraph 34 and the case-law cited).
- 40 Consequently, non-material damage, compensation for which is provided for as part of the civil liability of the insured person, under the national law applicable in the dispute, features among the types of damage in respect of which compensation must be provided in accordance with Directive 2009/103 (see, to that effect, judgment of 23 January 2014, *Petillo*, C-371/12, EU:C:2014:26, paragraph 35 and the case-law cited).
- 41 Secondly, as regards the persons who are entitled to compensation for such non-material damage under Directive 2009/103, it should be noted that it follows from a combined reading of Article 1(2) and the first paragraph of Article 3 of that directive that the protection which must be ensured by virtue of that directive extends to any person entitled under national civil liability law to compensation for damage caused by motor vehicles. It cannot be concluded from any part of that directive that the EU legislature wished to restrict the protection ensured by those directives exclusively to persons directly involved in an event causing harm (see, to that effect, judgment of 24 October 2013, *Drozdovs*, C-277/12, EU:C:2013:685, paragraphs 42 and 45).



- 42 Consequently, the Member States are required to ensure that compensation payable, under their national civil liability law, for non-material harm suffered by the next of kin of victims of road traffic accidents are covered by compulsory insurance of at least the minimum amounts laid down in Directive 2009/103 (see, to that effect, judgment of 24 October 2013, *Drozdovs*, C-277/12, EU:C:2013:685, paragraph 46).
- 43 It follows from the grounds set out in paragraphs 39 to 43 above that the Member States must ensure, in the national legal system, that civil liability in respect of the use of motor vehicles applicable under their national law is covered by insurance which complies with the requirements of the provisions of Directive 2009/103 set out in those paragraphs and must exercise their powers in that field in compliance with EU law. Furthermore, the national provisions governing compensation for road accidents cannot deprive that directive of its effectiveness (see, to that effect, judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraphs 39 and 40 and the case-law cited).
- 44 In that regard, the Court has held on several occasions that, in order to ensure the effectiveness of provisions of EU law relating to compulsory insurance against civil liability in respect of the use of motor vehicles, those provisions had to be interpreted as precluding national legislation which undermine that effectiveness, in that, by automatically excluding or disproportionately limiting the victim's right to compensation under compulsory insurance against civil liability in respect of the use of motor vehicles, they impeded the achievement of the objective of protecting victims of road traffic accidents, which has continuously been pursued and reinforced by the EU legislature (see, to that effect, judgment of 10 June 2021, *Van Ameyde España*, C-923/19, EU:C:2021:475, paragraph 44 and the case-law cited).
- 45 In the present case, it should be noted, first, that the German legislation at issue in the main proceedings, as interpreted by the Bundesgerichtshof (Federal Court of Justice), falls within the scope of the substantive national civil liability law to which Directive 2009/103 refers. Furthermore, it is apparent from the documents before the Court that that legislation, as interpreted by the Bundesgerichtshof (Federal Court of Justice), also governs compensation for non-material damage incurred by third parties, including pain and suffering suffered by a child as a result of the death of a parent following a road traffic accident, and defines the damage giving rise to the right to compensation for such harm under civil liability insurance, irrespective of the circumstances in which it occurred.
- 46 Secondly, as the German Government asserts in its observations, under German law compensation for non-material damage suffered by indirect victims of a road traffic accident is essentially subject to three conditions, namely that (i) such a victim has suffered damage to his or her own health, (ii) that person is a close family member of the direct victim and (iii) there is a causal relationship between the fault committed by the person responsible for the accident and that injury. In addition, the German Government points out, as regards the first of those conditions, that, under German law, as interpreted by the Bundesgerichtshof (Federal Court of Justice), injuries to mental health can only be considered to be harm to health if they are part of a pathological condition and go beyond the health problems to which persons concerned are generally exposed in the event of the death or serious injury of a close family member.
- 47 Thus, the national legislation at issue lays down, in particular, an objective criterion which makes it possible to identify, where appropriate during a check carried out on a case-by-case basis by a national court seised, the non-material damage which may be the subject of compensation to a close family member of the direct victim of a road traffic accident.

- 48 It follows from the case-law of the Court, recalled in paragraphs 36 and 37 above, that Directive 2009/103 does not require the Member States to choose a system of civil liability in particular in order to determine the extent of the victim's right to compensation on the basis of the civil liability of the insured person, so that that directive does not, in principle, preclude national legislation which lays down binding criteria for determining the non-material damage that may be compensated.
- 49 In those circumstances, in the present case, it does not appear that the conditions laid down by the German legislature, as interpreted by the Bundesgerichtshof (Federal Court of Justice), for non-material damage suffered by close family members to victims of road traffic accidents to give rise to a right to compensation, are such as to compromise the attainment of the objective of protecting the victims of road traffic accidents referred to in Directive 2009/103.
- 50 There is nothing in the documents before the Court to indicate that a system of civil liability such as that at issue automatically excludes or restricts disproportionately the right of a close family member of the direct victim of a road traffic accident to obtain compensation for non-material damage in respect of compulsory insurance against civil liability in respect of the use of motor vehicles.
- 51 It follows from all the foregoing considerations that the fourth paragraph of Article 3 of Directive 2009/103 must be interpreted as not precluding national legislation which makes compensation, by an insurer against civil liability in respect of the use of motor vehicles, for non-material damage suffered by close family members of victims of road traffic accidents subject to the condition that that harm entailed pathological damage to the health of such close family members.

*The second question*

- 52 In the light of the answer to the first question, there is no need to reply to the second question.

**Costs**

- 53 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 (Tenth Chamber) hereby rules:

**The fourth 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 not precluding national legislation which makes compensation, by an insurer against civil liability in respect of the use of motor vehicles, for non-material damage suffered by close family members of victims of road traffic accidents subject to the condition that that harm entailed pathological damage to the health of such close family members.**

[Signatures]