

Pleas in law and main arguments

The period for the transposition of Directive 2006/43/EC lapsed on 28 June 2008. At the date the present action was commenced, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not informed the Commission of those measures.

(¹) OJ 2006 L 157, p. 87.

Reference for a preliminary ruling from the Judecătoria Focșani (Romania) lodged on 24 February 2010 — Frăsina Bejan v Tudorel Mușat

(Case C-102/10)

(2010/C 113/47)

Language of the case: Romanian

Referring court

Judecătoria Focșani

Parties to the main proceedings

Applicant: Bejan Frăsina

Defendant: Mușat Tudorel Adrian

Questions referred

1. Do the provisions of Article 40a of Law No 136/1995 (¹) and of Articles 1 to 6, in particular Articles 3 and 6, of Decree 3111/2004 of the Comisia de Supraveghere a Asigurărilor (Insurance Supervisory Council), (²) in conjunction with the provisions of Article 10(3) of Law No 136/1995, breach the provisions of Article 169 TFEU (formerly Article 153 EC)?
2. If the national law of a Member State provides that an injured party has no right to compensation under a contract of civil-liability motor insurance where: the accident was caused deliberately, the accident occurred in the commission of facts punishable under the criminal law on road traffic as criminal offences, the accident occurred while the person who had committed the offence with intent was attempting to escape from the forces of law and order, the person responsible for the damage was driving the vehicle without the permission of the insured person — are those provisions excessively restrictive for the achievement of the objective pursued, namely, social protection, or, in other words, ensuring that injured persons are able to obtain compensation for the destruction of their property, and do they go beyond what is necessary to achieve that objective?
3. In the event that the second question is answered in the negative, does the restriction imposed place the injured person in a situation in which that person is treated less favourably than nationals of other Member States of the European Union who are denied compensation only in the cases set out under Article 2(1), first to third indents, of Second Council Directive 84/5/EEC (³) 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?
4. Do the exclusions from the insured risk imposed by national law in the situations outlined amount to a restriction on the freedom of establishment or on the freedom to provide services, contrary to Articles 49 TFEU (formerly Article 43 EC) and 56 TFEU (formerly Article 49 EC), in conjunction with the provisions of Council Directive 92/49/EEC (⁴) of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive)?
5. Where the national law of a Member State of the European Union provides that the victim of a road accident may seek from the person responsible compensation in respect of expenses arising from the repair or, where appropriate, the replacement of the motor vehicle, together with any other expenses, is the exemption of the insurer from any obligation to reimburse the injured party during an initial phase following a road traffic accident (the period immediately after the accident occurred), such that, subsequently, in accordance with the procedures for the resolution of the dispute and, in particular, the procedures for identifying the party responsible for the damage, the insurer is entitled to bring an action in recourse, so as to facilitate the rapid, effective resolution of demands for compensation and to avoid, as far as possible, costly legal proceedings which might make it impossible for the parties to enforce their rights, even in situations in which the provisions of Directive 2003/8/EC (⁵) and Recommendations R(81)7 and R(93)1 might apply, to be considered abusive and against the spirit of the recitals in the preambles to all of the directives on civil-liability motor vehicle insurance?
6. In the event that the fifth question is answered in the negative, is that situation contrary to what is provided for in recital 21 in the preamble to Directive 2005/14/EC (⁶) 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?
7. Is the applicant's exclusion from cover in the present case, under her contract of civil-liability motor vehicle insurance, of such a kind as to place her in a situation which is less favourable than that of other persons who would receive compensation even if the party responsible for the damage were to remain unidentified or be uninsured, taking into account the fact that the applicant has signed both a compulsory civil-liability motor vehicle insurance policy and an optional policy, both of which were quite expensive, but has not received any kind of protection cover for her property?

8. Is the national court the only body which is competent to determine whether an undertaking, such as the insurance company here in question, meets the criteria for reliance to be placed, as against it, on the provisions of a directive that produces direct effects and, if so, what criteria are applicable?
9. Is the failure of a Member State of the European Union to transpose Directive 2005/14/CE into national law (despite the expiry on 11 June 2007 of the period allowed for transposition) and, in particular, the failure to transpose what is provided for in recitals 20 to 22 in the preamble to that directive, such as to harm the applicant by infringing one of her fundamental rights, namely the right to respect for her property, even though Directive 2009/103/EC ⁽⁷⁾ 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 has now repealed the First to Fifth Motor Insurance Directives (72/166/EEC, 84/5/EEC, 90/232/EEC, 2000/26/EC and 2005/14/EC), given that the legal rules to which the present court has referred are contained in full in the text of the new EC Directive, which, to a far greater extent than was the case under the repealed provisions, protects the rights of a person who has suffered damage as the result of a road accident?
10. Is the national court entitled to raise of its own motion the issue of breach of a provision of Community law and to rule that an insurance risk exclusion clause is null and void in a case where the injured party, that is to say, the consumer, has not been informed as to the exclusions (situations in which the insurance does not actually operate, by contrast with the scheme under Directive 2005/14/EC) and where the insurance company has imposed other exclusion clauses in addition to those provided for by the Romanian framework law on insurance, Law No 136/1995, even where the possible nullity of the clause has not been raised before the court by the person entitled to do so and even though national legislation has transposed the provisions of Directive 93/13/EC ⁽⁸⁾ by means of Law No 193/2000 ⁽⁹⁾ — Monitorul Oficial al României (Official Journal of Romania), Part I, of [10 November 2000, no 560] (supplemented by Law No 363/2006 on abusive clauses in contracts between businesses and consumers — Monitorul Oficial of 28 December 2007, no 899)?

⁽¹⁾ Law No 136/1995 privind asigurările și reasigurările în România, M. Of., Partea I, nr. 303 din 30.12.1995.

⁽²⁾ Order No 3111/2004 al Comisiei de Supraveghere a Asigurărilor, M. Of., Partea I, nr. 1243/2004 din 23.12.2004.

⁽³⁾ 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, Capital Special Edition 06/vol.1, p. 104).

⁽⁴⁾ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1, Capital Special Edition 06/vol. 2., p. 53).

⁽⁵⁾ Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ 2003 L 26, p. 41, Capital Special Edition 19/vol. 6., p. 41).

⁽⁶⁾ 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 (Text with EEA relevance) (OJ L 149, 11.6.2005, p. 14, Capital Special Edition 06/vol. 7., p. 212).

⁽⁷⁾ Commission Regulation (EC) No 103/2009 of 3 February 2009 amending Annexes VII and IX to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (Text with EEA relevance) (OJ 2009 L 34, p. 11).

⁽⁸⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29, Capital Special Edition 15/vol. 2, p. 273).

⁽⁹⁾ Law No 193/2000 privind clauzele abuzive din contractele încheiate între comercianți și consumatori, M. Of., nr. 560 din 10.11.2000, completată prin Legea nr. 363/2007 privind combaterea practicilor incorecte ale comercianților în relația cu consumatorii și armonizarea reglementărilor cu legislația europeană privind protecția consumatorilor — M. Of., Partea I, nr. 899 din 28.12.2007).

Action brought on 24 February 2010 — European Commission v Portuguese Republic

(Case C-103/10)

(2010/C 113/48)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Oliver and P. Andrade, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/121/EC ⁽¹⁾ of the European Parliament and of the Council of 18 December 2006 amending Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances in order to adapt it to Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency or, in any event, by failing to communicate those measures to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 2 of Directive 2006/121/EC.

— Order the Portuguese Republic to pay the costs.