



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

10 October 2017*

(Reference for a preliminary ruling — Approximation of laws — Insurance against civil liability in respect of the use of motor vehicles — Directive 90/232/EEC — Article 1 — Liability for personal injury caused to all passengers other than the driver — Compulsory insurance — Direct effect — Directive 84/5/EEC — Article 1(4) — Organisation responsible for paying compensation for damage to property or personal injury caused by an unidentified or uninsured vehicle space — Whether a directive can be relied on against a State — Conditions governing whether a private law body can be deemed to be an emanation of the State and whether provisions of a directive capable of having direct effect can be relied upon against it)

In Case C-413/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 12 May 2015, received at the Court on 27 July 2015, in the proceedings

Elaine Farrell

v

Alan Whitty,

Minister for the Environment,

Ireland,

Attorney General,

Motor Insurers Bureau of Ireland (MIBI),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, A. Rosas and J. Malenovský, Presidents of Chambers, E. Juhász, A. Borg Barthet (Rapporteur), D. Šváby, M. Berger, A. Prechal, K. Jürimäe, C. Lycourgos and M. Vilaras, Judges,

Advocate General: E. Sharpston,

Registrar: T. Millett, Deputy Registrar,

having regard to the written procedure and further to the hearing on 5 July 2016,

* Language of the case: English.

after considering the observations submitted on behalf of:

- the Minister for the Environment, Ireland and the Attorney General, by E. Creedon and S. Purcell, acting as Agents, and by J. Connolly, Senior Counsel, and C. Toland, Barrister-at-Law,
- the Motor Insurers Bureau of Ireland (MIBI), by J. Walsh, Solicitor, and B. Murray, Barrister, and by L. Reidy and B. Kennedy, Senior Counsel,
- the French Government, by G. de Bergues, D. Colas and C. David, acting as Agents,
- the European Commission, by H. Krämer and K.-Ph. Wojcik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 June 2017,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the issue of whether provisions of the 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, English Special Edition 1972(II), p. 360), as amended by the Third Council Directive 90/232/EEC of 14 May 1990 (OJ 1990 L 129, p. 33), ('the Second Directive') that are capable of having direct effect may be relied upon against a private law body on which a Member State has conferred the task that is the subject of Article 1(4) of the Second Directive.
- 2 The request has been made in proceedings where the opposing parties are, on the one hand, Ms Elaine Farrell, and, on the other, Mr Alan Whitty, the Minister for the Environment, Ireland, the Attorney General and the Motor Insurers Bureau of Ireland (MIBI), concerning compensation for personal injuries suffered by Ms Farrell in a motor vehicle accident.

Legal context

EU law

- 3 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; 'the First Directive'), provides:

'Each 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 those measures.'

- 4 Article 1 of the Second Directive provides:

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

...

4. Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied. This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the victim's establishing in any way that the person liable is unable or refuses to pay.

...'

- 5 The first subparagraph of Article 2(1) of the Second Directive provides:

'Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3(1) of [the First Directive], which excludes from insurance the use or driving of vehicles by:

- persons who do not have express or implied authorisation thereto, or
- persons who do not hold a licence permitting them to drive the vehicle concerned, or
- persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned,

shall, for the purposes of Article 3(1) of [the First Directive] be deemed to be void in respect of claims by third parties who have been victims of an accident.'

- 6 The second, third, fourth and fifth recitals of the Third Directive 90/232 (the Third Directive) state:

'... Article 3 of [the First Directive] requires each Member State 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 extent of the liability covered and the terms and conditions of the insurance cover should be determined on the basis of those measures;

... [the Second Directive] reduced considerably the disparities between the level and content of compulsory civil liability insurance in the Member States; ... significant disparities still exist, however, in such insurance cover;

... motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the [European Union] accidents occur;

...there are, in particular, gaps in the compulsory insurance cover of motor vehicle passengers in certain Member States; ... to protect this particularly vulnerable category of potential victims, such gaps should be filled'.

- 7 The first subparagraph of Article 1 of the Third Directive provides:

'Without prejudice to the second subparagraph of Article 2(1) of [the Second Directive], 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.'

- 8 Under Article 6(2) of the Third Directive, Ireland was to have until 31 December 1998 to comply with Article 1 of that directive as regards pillion passengers of motorcycles and until 31 December 1995 to comply with Article 1 as regards other vehicles.

Irish law

- 9 Section 56 of the Road Traffic Act 1961, in the version applicable to the dispute in the main proceedings ('the 1961 Act') makes it compulsory for every user of a motor vehicle to be covered by insurance against personal injuries or damage to property sustained by third parties in a public place. However, that compulsory insurance does not extend to injury or damage sustained by persons travelling in parts of vehicles that are not equipped to carry passengers.
- 10 Under Section 78 of the 1961 Act, insurers carrying on vehicle insurance in Ireland must be members of the MIBI.
- 11 The MIBI is a company limited by guarantee, but without a share capital, that is entirely funded by its members, who are the insurers operating in the motor vehicle insurance market in Ireland. The MIBI was established in November 1954, following an agreement between the Department of Local Government and the insurers writing motor insurance in Ireland.
- 12 Pursuant to clause 2 of an agreement concluded in 1988 by the Minister for the Environment and the MIBI, legal proceedings may be brought against the MIBI by any person seeking compensation from an uninsured or unidentified driver. Under clause 4 of that agreement, the MIBI agrees to pay compensation to the victims of uninsured or unidentified drivers. The obligation of the MIBI to pay compensation to victims arises where a judgment is not satisfied in full within 28 days, provided that that judgment covers 'any liability for injury to person or damage to property which is required to be covered by an approved policy of insurance under Section 56 of [the 1961 Act]'.

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

- 13 Ms Farrell was the victim of a traffic accident on 26 January 1996 when she was a passenger in a van owned and driven by Mr Whitty and he lost control of the vehicle. At the time of the accident, Ms Farrell was seated on the floor in the rear of Mr Whitty's vehicle, that vehicle being neither designed nor constructed to carry passengers in the rear.
- 14 Since Mr Whitty was not insured for the personal injuries suffered by Ms Farrell, she sought compensation from the MIBI.
- 15 The MIBI refused Ms Farrell's request for compensation because liability for the personal injuries she had suffered was not a liability in respect of which insurance was required under Irish law.
- 16 In September 1997 Ms Farrell initiated legal proceedings before the Irish courts against Mr Whitty, the Minister for the Environment, Ireland, the Attorney General and the MIBI, claiming, inter alia, that the national transposition measures in force at the time of the accident failed properly to implement the relevant provisions of the First and Third Directives. The High Court (Ireland) then made a reference to the Court for a preliminary ruling.
- 17 In response to that reference, the Court held that, first, Article 1 of the Third Directive was to be interpreted as precluding national legislation whereby compulsory motor vehicle liability insurance does not cover liability in respect of personal injuries to persons travelling in a part of a motor vehicle which has not been designed and constructed with seating accommodation for passengers and, second, that article satisfied all the conditions necessary for it to produce direct effect and accordingly

conferred rights upon which individuals might rely directly before the national courts. The Court held, however, that it was for the national court to determine whether that provision might be relied upon against a body such as the MIBI (judgment of 19 April 2007, *Farrell*, C-356/05, EU:C:2007:229, paragraphs 36 and 44).

- 18 In a judgment of 31 January 2008, the High Court (Ireland) held that MIBI was an emanation of the State and that, consequently, Ms Farrell had a right to obtain compensation from the MIBI.
- 19 The MIBI brought an appeal against that judgment before the referring court, contending that it was not an emanation of the State and that, accordingly, the provisions of a directive, even those having direct effect, which had not been transposed into national law could not be relied on against it.
- 20 Following an agreement between the parties to the main proceedings, Ms Farrell received compensation with respect to the personal injuries suffered by her. However, the MIBI, on the one hand, and the Minister for the Environment, Ireland, the Attorney General, on the other, disagree on the question of who ought to bear the cost of paying that compensation.
- 21 Considering that the answer to that question depends on whether the MIBI is or is not to be deemed to be an emanation of the State and a body against which the provisions of a directive capable of having direct effect can be relied upon, the Supreme Court (Ireland) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:
- ‘(1) Is the test [as set out at paragraph 20 of the judgment of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313)] on the question of what is an emanation of a Member State to be read on the basis that the elements of the test are to be applied
- (a) conjunctively, or
- (b) disjunctively?
- (2) To the extent that separate matters referred to in [the judgment of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313)] may, alternatively, be considered to be factors which should properly be taken into account in reaching an overall assessment, is there a fundamental principle underlying the separate factors identified in that decision which a court should apply in reasoning an assessment as to whether a specified body is an emanation of the State?
- (3) Is it sufficient that a broad measure of responsibility has been transferred to a body by a Member State for the ostensible purpose of meeting obligations under European law for that body to be an emanation of the Member State or is it necessary, in addition, that such a body additionally have
- (a) special powers or (b) operate under direct control or supervision of the Member State?’

Consideration of the questions referred

The first question

- 22 By its first question, the referring court seeks, in essence, to ascertain whether Article 288 TFEU must be interpreted as not precluding the possibility that the provisions of a directive that are capable of having direct effect may be relied upon against a body which does not display all the characteristics listed in paragraph 20 of the judgment of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313).
- 23 In paragraphs 3 to 5 of that judgment, the Court stated that the body concerned in the case that gave rise to that judgment, namely the British Gas Corporation, was a ‘statutory corporation’, ‘responsible for developing and maintaining a system of gas supply in Great Britain, and had a monopoly of the supply of gas’, and ‘[its] members ... were appointed by the competent Secretary of State [who] also

had the power to give [British Gas] directions of a general character in relation to matters affecting the national interest and instructions concerning its management’, and that British Gas had the right ‘with the consent of the Secretary of State, to submit proposed legislation to Parliament’.

- 24 In that context, the Court stated in paragraph 18 of that judgment that it had ‘held in a series of cases that unconditional and sufficiently precise provisions of a directive could be relied on against organisations or bodies which were subject to the authority or control of the State or had special powers beyond those which result from the normal rules applicable to relations between individuals’.
- 25 The Court concluded, in paragraph 20 of that judgment, that ‘a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals is included in any event among the bodies against which the provisions of a directive capable of having direct effect may be relied upon’.
- 26 As the Advocate General stated in point 50 of her Opinion, the fact that the Court chose in paragraph 20 of the judgment of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313) to use the words ‘is included in any event among the bodies’ confirms that the Court was not attempting to formulate a general test designed to cover all situations in which a body might be one against which the provisions of a directive capable of having direct effect might be relied upon, but rather was holding that a body such as that concerned in the case that gave rise to that judgment must, in any event, be considered to be such a body, since it displays all the characteristics listed in paragraph 20.
- 27 Paragraph 20 of that judgment must be read in the light of paragraph 18 of the same judgment, where the Court stated that such provisions can be relied on by an individual against organisations or bodies which are subject to the authority or control of the State or have special powers beyond those which result from the normal rules applicable to relations between individuals.
- 28 Accordingly, as stated, in essence, by the Advocate General in points 53 and 77 of her Opinion, the conditions that the organisation concerned must, respectively, be subject to the authority or control of the State, and must possess special powers beyond those which result from the normal rules applicable to relations between individuals cannot be conjunctive (see, to that effect, judgments of 4 December 1997, *Kampelmann and Others*, C-253/96 to C-258/96, EU:C:1997:585, paragraphs 46 and 47, and of 7 September 2006, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 26).
- 29 In the light of the foregoing, the answer to the first question is that Article 288 TFEU must be interpreted as meaning that it does not, in itself, preclude the possibility that provisions of a directive that are capable of having direct effect may be relied on against a body that does not display all the characteristics listed in paragraph 20 of the judgment of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313), read together with those mentioned in paragraph 18 of that judgment.

The second and third questions

- 30 By its second and third questions, which can be examined together, the referring court seeks, in essence, to ascertain whether there is a fundamental principle that should guide a court when examining the issue whether provisions of a directive that are capable of having direct effect may be relied upon against an organisation, and, in particular, whether such provisions may be relied upon against an organisation on which a Member State has conferred the task that is the subject of Article 1(4) of the Second Directive.
- 31 In that regard, it must be recalled that, in accordance with the Court’s settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual (judgments of 26 February 1986, *Marshall*, 152/84, EU:C:1986:84, paragraph 48;

of 14 July 1994, *Faccini Dori*, C-91/92, EU:C:1994:292, paragraph 20 ; of 5 October 2004, *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraph 108, and of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 30). The effect of extending the possibility of relying on directives that are not transposed to the sphere of relations between individuals would be to recognize a power invested in the European Union to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations (judgment of 14 July 1994, *Faccini Dori*, C-91/92, EU:C:1994:292, paragraph 24).

- 32 Nonetheless, again in accordance with the Court's settled case-law, where a person is able to rely on a directive not against an individual but against the State, he may do so regardless of the capacity in which the latter is acting, whether as employer or as public authority. In either case it is necessary to prevent the State from taking advantage of its own failure to comply with EU law (judgments of 26 February 1986, *Marshall*, 152/84, EU:C:1986:84, paragraph 49; of 12 July 1990, *Foster and Others*, C-188/89, EU:C:1990:313, paragraph 17, and of 14 September 2000, *Collino and Chiappero*, C-343/98, EU:C:2000:441, paragraph 22).
- 33 On the basis of those considerations, the Court has held that provisions of a directive that are unconditional and sufficiently precise may be relied upon by individuals, not only against a Member State and all the organs of its administration, such as decentralised authorities (see, to that effect, judgment of 22 June 1989, *Costanzo*, 103/88, EU:C:1989:256, paragraph 31), but also, as was stated in the answer to the first question, against organisations or bodies which are subject to the authority or control of the State or which possess special powers beyond those which result from the normal rules applicable to relations between individuals (judgments of 12 July 1990, *Foster and Others*, C-188/89, EU:C:1990:313, paragraph 18, and of 4 December 1997, *Kampelmann and Others*, C-253/96 to C-258/96, EU:C:1997:585, paragraph 46).
- 34 Such organisations or bodies can be distinguished from individuals and must be treated as comparable to the State, either because they are legal persons governed by public law that are part of the State in the broad sense, or because they are subject to the authority or control of a public body, or because they have been required, by such a body, to perform a task in the public interest and have been given, for that purpose, such special powers.
- 35 Accordingly, a body or an organisation, even one governed by private law, to which a Member State has delegated the performance of a task in the public interest and which possesses for that purpose special powers beyond those which result from the normal rules applicable to relations between individuals is one against which the provisions of a directive that have direct effect may be relied upon.
- 36 In this case, it must be noted that, under Article 3(1) of the First Directive, the Member States were obliged to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory was covered by insurance.
- 37 The importance attached by the EU legislature to the protection of victims led it to supplement those arrangements by requiring Member States, under Article 1(4) of the Second Directive, to establish a body with the task of providing compensation, at least up to the limits laid down by EU law, for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation under Article 1(1) of that directive, which refers to Article 3(1) of the First Directive, was not satisfied (judgment of 11 July 2013, *Csonka and Others*, C-409/11, EU:C:2013:512, paragraph 29).

- 38 Therefore, the task that a compensation body such as MIBI is required by a Member State to perform, a task that contributes to the general objective of victim protection pursued by the EU legislation relating to compulsory motor vehicle liability insurance, must be regarded as a task in the public interest that is inherent, in this case, in the obligation imposed on the Member States by Article 1(4) of the Second Directive.
- 39 In that regard, it must be borne in mind that, in case of damage to property or personal injuries caused by a motor vehicle for which the insurance obligation provided for in Article 3(1) of the First Directive has not been satisfied, the Court has held that the intervention of such a body is designed to remedy the failure of a Member State to fulfil its obligation to ensure that civil liability in respect to the use of motor vehicles normally based in its territory is covered by insurance (see, to that effect, judgment of 11 July 2013, *Csonka and Others*, C-409/11, EU:C:2013:512, paragraph 31).
- 40 As regards the MIBI, it must be added that, under Section 78 of the 1961 Act, the Irish legislature made membership of that organisation compulsory for all insurers who carry on motor vehicle insurance in Ireland. In doing so, the Irish legislature conferred on the MIBI special powers beyond those which result from the normal rules applicable to relations between individuals, in that, on the basis of that statutory provision, that private organisation has the power to require all those insurers to become members of it and to contribute funds for the performance of the task conferred on it by the Irish State.
- 41 The provisions of a directive that are unconditional and sufficiently precise may consequently be relied upon against an organisation such as the MIBI.
- 42 In the light of the foregoing, the answer to the second and third questions is that provisions of a directive that are capable of having direct effect may be relied on against a private law body on which a Member State has conferred a task in the public interest, such as that inherent in the obligation imposed on the Member States by Article 1(4) of the Second Directive, and which, for that purpose, possesses, by statute, special powers, such as the power to oblige insurers carrying on motor vehicle insurance in the territory of the Member State concerned to be members of it and to fund it.

Costs

- 43 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 (Grand Chamber) hereby rules:

1. **Article 288 TFEU must be interpreted as meaning that it does not, in itself, preclude the possibility that provisions of a directive that are capable of having direct effect may be relied on against a body that does not display all the characteristics listed in paragraph 20 of the judgment of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313), read together with those mentioned in paragraph 18 of that judgment.**
2. **Provisions of a directive that are capable of having direct effect may be relied on against a private law body on which a Member State has conferred a task in the public interest, such as that inherent in the obligation imposed on the Member States by Article 1(4) 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, as amended by the Third Council Directive 90/232/EEC of 14 May 1990, and which,**

for that purpose, possesses, by statute, special powers, such as the power to oblige insurers carrying on motor vehicle insurance in the territory of the Member State concerned to be members of it and to fund it.

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| Lenaerts | Tizzano | Silva de Lapuerta |
| Ilešič | Bay Larsen | Rosas |
| Malenovský | Juhász | Borg Barthet |
| Šváby | Berger | Prechal |
| Jürimäe | Lycourgos | Vilaras |

Delivered in open court in Luxembourg on 10 October 2017.

A. Calot Escobar
Registrar

K. Lenaerts
President