



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

20 July 2017*

(Reference for a preliminary ruling — Insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Second Directive 84/5/EEC — Article 2(1) — Insurance contract concluded on the basis of false statements concerning the ownership of the vehicle and the identity of its usual driver — Policyholder — No economic interest in the conclusion of that contract — Insurance contract null and void — Whether that nullity may be invoked against third-party victims)

In Case C-287/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supremo Tribunal de Justiça (Supreme Court, Portugal), made by decision of 4 May 2016, received at the Court on 23 May 2016, in the proceedings

Fidelidade-Companhia de Seguros SA

v

Caisse Suisse de Compensation,

Fundo de Garantia Automóvel,

Sandra Cristina Crystello Pinto Moreira Pereira,

Sandra Manuela Teixeira Gomes Seemann,

Catarina Ferreira Seemann,

José Batista Pereira,

Teresa Rosa Teixeira,

THE COURT (Sixth Chamber),

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

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Portuguese.

after considering the observations submitted on behalf of:

- the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and M. Rebelo, acting as Agents,
- the European Commission, by P. Costa de Oliveira and K.-Ph. Wojcik, 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 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360) ('the First Directive'), Article 2(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) ('the Second Directive'), and Article 1 of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33) ('the Third Directive').
- 2 The request has been made in proceedings between Fidelidade-Companhia de Seguros SA and the Caisse Suisse de Compensation, the Fundo de Garantia Automóvel (Portuguese Motor Vehicle Guarantee Fund), Ms Sandra Cristina Crystello Pinto Moreira Pereira, Ms Sandra Manuela Teixeira Gomes Seemann, Ms Catarina Ferreira Seemann, Mr José Batista Pereira and Ms Teresa Rosa Teixeira concerning the compatibility with the abovementioned provisions of national legislation which renders null and void an insurance contract concluded on the basis of false statements concerning the identity of the owner of a motor vehicle and the identity of its usual driver.

Legal context

European Union law

- 3 Article 3(1) of 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 these measures.'

- 4 The sixth and seventh recitals of the Second Directive state:

'Whereas it is necessary to make provision for a body to guarantee that the victim will not remain without compensation where the vehicle which caused the accident is uninsured or unidentified; whereas it is important, without amending the provisions applied by the Member States with regard to the subsidiary or non-subsidiary nature of the compensation paid by that body and to the rules applicable with regard to subrogation, to provide that the victim of such an accident should be able to apply directly to that body as a first point of contact; whereas, however, Member States should be

given the possibility of applying certain limited exclusions as regards the payment of compensation by that body and of providing that compensation for damage to property caused by an unidentified vehicle may be limited or excluded in view of the danger of fraud;

Whereas it is in the interest of victims that the effects of certain exclusion clauses be limited to the relationship between the insurer and the person responsible for the accident; whereas, however, in the case of vehicles stolen or obtained by violence, Member States may specify that compensation will be payable by the abovementioned body.’

- 5 Article 1(4) of the Second Directive provides that each Member State is to set up or authorise a body the purpose of which is to provide compensation, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by an unidentified or uninsured vehicle. The third subparagraph of that provision states:

‘... Member States may exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.’

- 6 Article 2(1) of the Second Directive is worded as follows:

‘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.

However the provision or clause referred to in the first indent may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen.

...’

- 7 The fourth recital of the Third Directive states:

‘Whereas motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur.’

- 8 The first paragraph of Article 1 of that 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.’

Portuguese law

- 9 The First Directive was transposed into Portuguese law by Decreto-Lei No 522/85 — Seguro Obrigatório de Responsabilidade Civil Automóvel (Decree-Law No 522/85 regarding compulsory motor vehicle insurance against civil liability) of 31 December 1985. That decree-law, as amended by Decreto-Lei No 72-A/2003 — Lei do Seguro Obrigatório (Decree-Law No 72-A/2003 enacting the Law on Compulsory Insurance) of 14 April 2003, in force at the time of the events giving rise to the dispute in the main proceedings ('Decree-Law No 522/85'), lays down the obligation to insure a land-based motor vehicle in Article 1(1) thereof, as follows:

'Every person who may be liable under civil law to make reparation for pecuniary and non-pecuniary damage resulting from injury to the person or property of third parties caused by a land-based motor vehicle, its trailers or semi-trailers, must, in order that those vehicles may be used on the roads, be covered by insurance guaranteeing that liability, in accordance with the provisions of this Decree-Law.'

- 10 Article 2 of Decree-Law No 522/85, concerning which persons are under an obligation to take out insurance, is worded as follows:

'1 — The obligation to take out insurance shall rest with the owner of the vehicle, except in cases of usufruct, sale with reservation of ownership, or leasing arrangements, in which cases the obligation shall rest with the usufructuary, the buyer, or the lessee, respectively.

2 — If any other person concludes, in respect of that vehicle, an insurance contract satisfying the provisions of this Decree-Law, the obligation of the persons referred to in paragraph 1 above shall be deemed to be fulfilled for the duration of that contract.

...'

- 11 Article 14 of that decree-law, concerning whether exceptions may be invoked against victims, provides:

'Apart from the grounds for exclusion or annulment set out in this Decree-Law, the insurer may invoke against victims only (i) the termination of the contract under Article 13(1), or (ii) the setting aside or nullity thereof under the terms of the legislation then in force, where these occur prior to the date of the accident.'

- 12 Title XV of the Portuguese Commercial Code deals with insurance. Articles 428 and 429 thereof are worded as follows:

'Article 428 Persons on whose behalf insurance may be taken out

A person may take out insurance on his own behalf or on behalf of another.

1. If the person for whom or on whose behalf insurance is taken out has no interest in the insured property, that insurance shall be null and void.

2. If it is not stated in the insurance policy that the insurance is taken out on behalf of another, the insurance shall be deemed to be taken out on behalf of the contracting party.

...

Article 429 Nullity of insurance as a result of inaccuracies or omissions

Any inaccurate statement, as well as any deliberate omission of facts or circumstances known to the insured person or to the person taking out the insurance which might have influenced the terms or the very existence of the contract shall render the insurance null and void.

Sole subparagraph: If the party who made the statements did so in bad faith, the insurer will be able to demand a premium.’

The facts in the main proceedings and the question referred for a preliminary ruling

- 13 On 20 May 2004 a road accident took place involving, on the one hand, a motor vehicle driven by Mr Teixeira Pereira and belonging to Ms Crystello Pinto Moreira Pereira and, on the other, a motorcycle driven by its owner, Mr Seemann. The accident resulted in the death of both drivers.
- 14 On 11 January 2010 the Caisse Suisse de Compensation brought legal proceedings against the Fundo de Garantia Automóvel and Ms Crystello Pinto Moreira Pereira seeking reimbursement of the sum of EUR 285980.54 paid to the family members of its insured, Mr Seemann.
- 15 The defendants in those proceedings argued that legal proceedings could not be brought against them, basing that argument on the fact that, at the time of the accident, a valid insurance contract was in place, concluded with the company now known as Fidelidade-Companhia de Seguros (‘the insurer’), which covered civil liability in respect of the motor vehicle concerned. Called on to join the proceedings, that company maintained that the contract for motor vehicle insurance against civil liability was not valid, on the ground that the policyholder concerned had made a false statement on the date the contract was concluded, claiming to be both the owner of the vehicle and its usual driver.
- 16 The court hearing the case at first instance ruled that the insurance contract was not valid and that that invalidity could be invoked against the victims. Hearing the case on appeal, the Tribunal da Relação do Porto (Court of Appeal, Porto, Portugal) ruled that the contract was not valid, but that that invalidity could not be invoked against the victims. The insurer lodged an appeal on a point of law against the judgment of the Tribunal da Relação do Porto (Court of Appeal, Porto) before the Supremo Tribunal de Justiça (Supreme Court, Portugal), claiming that the insurance contract in question was null and void and that that nullity could be invoked against both the victim — Mr Seemann — and the Caisse Suisse de Compensation.
- 17 Regarding the interpretation of the First, Second and Third Directives on motor vehicle insurance, the referring court considers that there are doubts as to whether the nullity of the insurance contract, as referred to in Article 428(1) of the Portuguese Commercial Code, may be invoked against the victims.
- 18 Indeed, there are differences of interpretation in the case-law of the Supremo Tribunal de Justiça (Supreme Court). One line of case-law has ruled to the effect that the insurance contract is rendered null and void when the policyholder falsely states that he is the owner and usual driver of the vehicle concerned, with the aim of inducing the insurer to conclude an insurance contract against civil liability and/or concluding such a contract on conditions which are less onerous for the insured person. That nullity is based, inter alia, on the fact that the legal condition relating to the policyholder’s ‘interest’, required by Article 428(1) of the Portuguese Commercial Code, is not met. Pursuant to Article 14 of Decree-Law No 522/85, such nullity may, according to that line of case-law, be invoked against the victim. That approach takes account of the fact that the victim will always be protected via the Fundo de Garantia Automóvel.

- 19 According to the second line of case-law, the possibility that a contract for compulsory motor vehicle insurance against civil liability may be concluded by a third party constitutes a derogation from the legal condition relating to the policyholder's 'interest'. Consequently, the issue should be resolved in the light of the specific regime applicable to false statements made in the context of the conclusion of an insurance contract, which is that of relative nullity only, which may not be invoked against a victim.
- 20 In those circumstances, the Supremo Tribunal de Justiça (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do Article 3(1) of [the First Directive], Article 2(1) of [the Second Directive] and Article 1 of [the Third Directive] preclude national legislation which provides that an insurance contract is to be null and void as a result of false statements concerning the owner of the motor vehicle and the identity of its usual driver, because the contract was concluded by a person who has no economic interest in the use of the vehicle and there is an underlying fraudulent intent on the part of the interested parties (the policyholder, the owner of the vehicle, and its usual driver) to obtain cover for risks in respect of its use via: (i) the conclusion of a contract which the insurer would not have concluded had it known the identity of the policyholder and (ii) the payment of a lower premium than would normally be due having regard to the age of the usual driver?'

Consideration of the question referred

- 21 By its question, the referring court asks, in essence, whether Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive are to be interpreted as precluding national legislation which would have the effect of making it possible to invoke against third-party victims, in circumstances such as those at issue in the main proceedings, the nullity of a contract for motor vehicle insurance against civil liability arising as a result of the policyholder initially making false statements concerning the identity of the owner and of the usual driver of the vehicle concerned or from the fact that the person for whom or on whose behalf that insurance contract was concluded had no economic interest in the conclusion of that contract.
- 22 It should be borne in mind that, according to the preambles to the First and Second Directives, the aim of those directives is, first, to ensure the free movement of vehicles normally based in the territory of the European Union and of persons travelling in those vehicles and, second, to guarantee that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred (judgment of 23 October 2012, *Marques Almeida*, C-300/10, EU:C:2012:656, paragraph 26 and the case-law cited).
- 23 To those ends, Article 3(1) of the First Directive, as amplified and supplemented by the Second and Third Directives, requires the Member States to ensure that civil liability in respect of the use of motor 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 1 December 2011, *Churchill Insurance Company Limited and Evans*, C-442/10, EU:C:2011:799, paragraph 28).
- 24 As regards the rights granted to third-party victims, Article 3(1) of the First Directive precludes a company insuring against civil liability in respect of the use motor vehicles from relying on statutory provisions or contractual clauses in order to refuse to compensate those victims for an accident caused by the insured vehicle (judgment of 1 December 2011, *Churchill Insurance Company Limited and Evans*, C-442/10, EU:C:2011:799, paragraph 33 and the case-law cited).

- 25 The Court has also held that the first subparagraph of Article 2(1) of the Second Directive simply repeats that obligation, with respect to statutory provisions or contractual clauses in an insurance policy referred to in that article which exclude from the cover provided by motor vehicle insurance against civil liability damage or injury suffered by third-party victims as a result of the use or driving of an insured vehicle by persons not authorised to drive the vehicle, persons not holding a driving licence, or persons in breach of the statutory technical requirements concerning the condition and safety of that vehicle (judgment of 1 December 2011, *Churchill Insurance Company Limited and Evans*, C-442/10, EU:C:2011:799, paragraph 34 and the case-law cited).
- 26 It is true that, by way of derogation from that obligation, the second subparagraph of Article 2(1) of the Second Directive provides that certain victims may be excluded from compensation by the insurance company, having regard to the situation they have themselves brought about, that is to say, persons who voluntarily entered the vehicle which caused the damage or injury, when that company can prove that they knew the vehicle had been stolen. However, and as the Court has already held, derogations from the first subparagraph of Article 2(1) of the Second Directive may be made only in that single, specific case (judgment of 1 December 2011, *Churchill Insurance Company Limited and Evans*, C-442/10, EU:C:2011:799, paragraph 35).
- 27 Accordingly, it must be held that the fact that the insurance company has concluded that contract on the basis of omissions or false statements on the part of the policyholder does not enable the company to rely on statutory provisions regarding the nullity of the contract or to invoke that nullity against a third-party victim so as to be released from its obligation under Article 3(1) of the First Directive to compensate that victim for an accident caused by the insured vehicle.
- 28 The same is true regarding the fact that the policyholder is not the usual driver of the vehicle.
- 29 Indeed, the Court has held that the fact that a vehicle is driven by a person not named in the insurance policy relating to that vehicle cannot, in view, in particular, of the aim pursued by the First, Second and Third Directives of protecting victims of road traffic accidents, support the conclusion that that vehicle is uninsured for the purposes of the third subparagraph of Article 1(4) of the Second Directive (judgment of 1 December 2011, *Churchill Insurance Company Limited and Evans*, C-442/10, EU:C:2011:799, paragraph 40).
- 30 In that context, the referring court also asks the Court whether an insurance company is entitled to rely, in the case of an ongoing contract for compulsory motor vehicle insurance against civil liability and in order to avoid its obligation to compensate third-party victims of an accident caused by the insured vehicle, on a statutory provision, such as Article 428(1) of the Portuguese Commercial Code, which provides for the nullity of an insurance contract in the event that the person for whom or on whose behalf the insurance has been taken out has no economic interest in the conclusion of that contract.
- 31 It must be noted that such a question is concerned with the legal conditions of validity of the insurance contract, which are governed not by EU law but by the laws of the Member States.
- 32 Those States are nonetheless obliged to ensure that the civil liability arising under their domestic law is covered by insurance which complies with the provisions of the three abovementioned directives. It is also apparent from the Court's case-law that the Member States must exercise their powers in that field in a way that is consistent with EU law and that the provisions of national legislation which govern compensation for road accidents may not deprive the First, Second and Third Directives of their effectiveness (judgment of 23 October 2012, *Marques Almeida*, C-300/10, EU:C:2012:656, paragraphs 30 and 31 and the case-law cited).

- 33 As noted by the European Commission, the right of victims of an accident to receive compensation may be impaired by the conditions for the validity of the insurance contract, such as the general clauses set out in Article 428(1) and the first paragraph of Article 429 of the Portuguese Commercial Code.
- 34 Such provisions are thus liable to result in compensation not being paid to third-party victims and, consequently, in those directives being deprived of their effectiveness.
- 35 That finding is not called in question by the fact that it is possible for the victim to receive compensation from the Fundo de Garantia Automóvel. The payment of compensation by the body referred to in Article 1(4) of the Second Directive was, in fact, designed to be a measure of last resort, envisaged only for cases in which the vehicle that caused the injury or damage has not satisfied the requirement for insurance referred to in Article 3(1) of the First Directive, that is to say, it is a vehicle in respect of which no insurance contract is in place. Such a restriction is explained by the fact that that provision, as recalled in paragraph 23 of the present judgment, requires each Member State to ensure, subject to the derogations allowed under Article 4 of the First Directive, that every owner or keeper of a vehicle normally based in its territory concludes a contract with an insurance company in order to guarantee, up to the limits established by EU law, his civil liability arising as a result of the use of that vehicle (see, to that effect, judgment of 11 July 2013, *Csonka and Others*, C-409/11, EU:C:2013:512, paragraphs 30 and 31).
- 36 However, as recalled in paragraph 29 of the present judgment, the fact that a vehicle is driven by a person not named in the insurance policy relating to that vehicle cannot support the conclusion that that vehicle is uninsured for the purposes of the third subparagraph of Article 1(4) of the Second Directive.
- 37 Having regard to all the foregoing, the answer to the question referred is that Article 3(1) of the First Directive and Article 2(1) of the Second Directive must be interpreted as precluding national legislation which would have the effect of making it possible to invoke against third-party victims, in circumstances such as those at issue in the main proceedings, the nullity of a contract for motor vehicle insurance against civil liability arising as a result of the policyholder initially making false statements concerning the identity of the owner and of the usual driver of the vehicle concerned or from the fact that the person for whom or on whose behalf that insurance contract was concluded had no economic interest in the conclusion of that contract.

Costs

- 38 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:

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, and Article 2(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 must be interpreted as precluding national legislation which would have the effect of making it possible to invoke against third-party victims, in circumstances such as those at issue in the main proceedings, the nullity of a contract for motor vehicle insurance against civil liability arising as a result of the policyholder initially making false statements concerning

the identity of the owner and of the usual driver of the vehicle concerned or from the fact that the person for whom or on whose behalf that insurance contract was concluded had no economic interest in the conclusion of that contract.

[Signatures]