



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

31 January 2019*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Law applicable to non-contractual obligations — Regulation (EC) No 864/2007 (Rome II) — Articles 16 and 27 — Overriding mandatory provisions — Directive 2009/103/EC — Civil liability insurance for motor vehicles — Article 28)

In Case C-149/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon, Portugal), made by decision of 20 December 2017, received at the Court on 26 February 2018, in the proceedings

Agostinho da Silva Martins

v

Dekra Claims Services Portugal SA,

THE COURT (Sixth Chamber),

composed of C. Toader, President of the Chamber, A. Rosas and M. Safjan (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Portuguese Government, by L. Inez Fernandes, M. Figueiredo, P. Lacerda, L. Medeiros and P. Barros da Costa, acting as Agents,
- the Spanish Government, by L. Aguilera Ruiz and V. Ester Casas, acting as Agents,
- the European Commission, by M. Wilderspin and P. Costa de Oliveira, acting as Agents,

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

gives the following

* Language of the case: Portuguese.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 16 and 27 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; ‘the Rome II Regulation’), and of Article 28 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).
- 2 The request has been made in the course of proceedings between Mr Agostinho da Silva Martins and the insurance company Dekra Claims Services Portugal SA, concerning the determination of the law applicable to an obligation to pay compensation arising as the result of a car accident that occurred in Spain.

Legal context

European Union law

The Rome II Regulation

- 3 Recital 7 of the Rome II Regulation states:

‘The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ... (‘Brussels I’) and the instruments dealing with the law applicable to contractual obligations.’

- 4 Under Article 4 of the Rome II Regulation, entitled ‘General rule’:

‘1. 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.

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.’

- 5 Article 15 of that regulation, entitled ‘The scope of the applicable law’, provides:

‘The law applicable to non-contractual obligations under this Regulation shall govern in particular:

...

(h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.’

6 In accordance with Article 16 of the Rome II Regulation, entitled ‘Overriding mandatory provisions’:

‘Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.’

7 Article 27 of that regulation, entitled ‘Relationship with other provisions of Community law’, provides:

‘This Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.’

The Rome Convention

8 Under the heading ‘Mandatory rules’, Article 7 of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1; ‘the Rome Convention’), provides:

‘1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

2. Nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.’

The Rome I Regulation

9 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; ‘the Rome I Regulation’) replaced the Rome Convention. Paragraphs 1 and 2 of Article 9 of that regulation, which is entitled ‘Overriding mandatory provisions’, are worded as follows:

‘1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.’

Directive 2009/103

10 Article 28 of Directive 2009/103, entitled ‘General provisions’, provides:

‘1. Member States may, in accordance with the Treaty, maintain or bring into force provisions which are more favourable to injured parties than the provisions needed to comply with this Directive.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.’

Portuguese law

11 Article 11 of Decreto-Lei No 291/2007 (Decree-Law No 291/2007) of 21 August 2007, provides:

‘1. The insurance against civil liability provided for in Article 4 shall cover:

- (a) With regard to accidents occurring in the territory of Portugal, the obligation to pay compensation provided for in civil legislation;
- (b) With regard to accidents occurring in the territory of other countries whose national insurers’ bureau have acceded to the Agreement between national insurers’ bureaux, the obligation to pay compensation provided for in the law applicable to the accident, which, in the case of accidents occurring in territories in which the Agreement on the European Economic Area [of 2 May 1992 (OJ 1994 L 1, p. 3)] is applicable, shall be replaced by Portuguese law where the latter provides better cover;
- (c) With regard to accidents occurring while travelling as referred to in Article 10(1)(b), only damages caused to residents of Member States and countries whose national insurers’ bureaux have acceded to the Agreement between national insurers’ bureaux and in accordance with Portuguese law.

2. The insurance against civil liability provided for in Article 4 shall cover damage suffered by pedestrians, cyclists and other non-motorised road users when, and in so far as, the law applicable to the civil liability resulting from a road traffic accident provides for compensation of such harm.’

12 Article 498 of the Código Civil (Civil Code), entitled ‘Limitation’, provides:

‘1. The right to compensation shall be subject to a limitation period of three years from the date on which the injured party becomes aware of his right, even if he does not know who the responsible person is or the full extent of the damage, without prejudice to the ordinary limitation period in the event of that period having elapsed since the harmful event.

2. The limitation period of the right of recovery between liable parties shall also be three years from fulfilment of the obligation.

3. Where the unlawful act constitutes a criminal offence for which the law establishes a longer limitation period, that limitation period shall apply.

4. Limitation in respect of the right to compensation does not entail limitation in respect of the claim for recovery or for restitution based on unjust enrichment, in the event of either claim.’

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

13 On 20 August 2015 a road traffic accident occurred in Spain involving two vehicles: one registered in Portugal, driven by the owner of the vehicle, Mr da Silva Martins; the other registered in Spain and insured with the insurance company Segur Caixa, represented in Portugal by Dekra Claims Services Portugal.

- 14 The front part of the vehicle registered in Spain collided with the rear part of Mr da Silva Martins' vehicle which, on account of the damage sustained, could no longer be driven. Consequently, that vehicle had to be towed back to Portugal, where repairs were carried out.
- 15 The costs of the repairs to Mr da Silva Martin's vehicle were initially paid by the insurance company Axa Portugal, now Ageas Portugal, under the own damage cover of the vehicle. Since the driver of the vehicle registered in Spain was solely responsible for the accident, his insurer, Segur Caixa, reimbursed those costs to Axa Portugal.
- 16 In the case in the main proceedings, Mr da Silva Martins seeks compensation for indirect damage resulting from the accident.
- 17 He points out that the law applicable to the dispute in the main proceedings is Portuguese law, in particular Article 498(1) of the Civil Code, which provides for a limitation period of three years for actions seeking compensation for damage resulting from accidents. Since the accident occurred on 20 August 2015, the proceedings commenced on 11 November 2016 were therefore brought within the time limit.
- 18 By contrast, Segur Caixa contends that the law applicable to the action for compensation brought by the appellant in the main proceedings is Spanish law, which provides for a limitation period of one year in respect of actions seeking compensation for damage resulting from accidents. Accordingly, it claims that that action is time-barred.
- 19 The court of first instance upheld Segur Caixa's plea that the action was time-barred.
- 20 Mr da Silva Martins appealed against the judgment given by that court, requesting that it be set aside and that the limitation period stipulated in Portuguese law be applied.
- 21 The referring court notes that, in the light of the Rome II Regulation, Spanish law, which provides for a limitation period of one year, is applicable. However, since it is also possible that Directive 2009/103 and the system of compulsory third party motor insurance in force in Portugal, which provides for a limitation period of three years, may also apply, that court is unclear in particular as to whether the Portuguese legislation transposing that directive into national law — which provides that the law of the contracting State of the Agreement on the European Economic Area in which the accident occurred is replaced by Portuguese law 'where it provides better cover' — is mandatory, within the meaning of Article 16 of the Rome II Regulation.
- 22 In those circumstances, the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon, Portugal) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Must it be understood that the national legislation in force in Portugal prevails as an overriding, mandatory rule within the meaning of Article 16 of the Rome II Regulation?
- (2) Does that rule constitute a provision of Community law laying down a conflict-of-law rule within the meaning of Article 27 of the Rome II Regulation?
- (3) In the light of Article 28 of Directive 2009/103, must it be concluded that the limitation period set out in Article 498(3) of the Portuguese Civil Code is applicable where a Portuguese citizen is the victim of a road traffic accident in Spain?'

Consideration of the questions referred

The first question

- 23 By its first question, the referring court is asking, in essence, whether Article 16 of the Rome II Regulation must be interpreted as meaning that a national provision, such as that at issue in the main proceedings, which provides that the limitation period for actions seeking compensation for damage resulting from an accident is three years, may be considered to be an overriding mandatory provision, within the meaning of that article.
- 24 In that connection, it should be observed, first, that it is clear from Article 4(1) of the Rome II Regulation that the law applicable to a non-contractual obligation arising out of a tort/delict is to 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.
- 25 Second, Article 15(h) of the Rome II Regulation provides that the law applicable to a non-contractual obligation under that regulation is to govern, in particular, the rules of prescription and limitation.
- 26 However, Article 16 of the Rome II Regulation authorises the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.
- 27 Although the concept of ‘overriding mandatory provisions’ used in that provision is not defined in the Rome II Regulation, it must be observed that Article 9(1) of the Rome I Regulation defines mandatory provisions as provisions the respect for which is regarded as crucial by a State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under that regulation.
- 28 The requirement for consistency in the application of the Rome I and Rome II Regulations (judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraph 43) supports the harmonisation wherever possible of the interpretation of the concepts used by those two regulations which are, in functional terms, identical. It must therefore be held that, irrespective of the fact that certain language versions of the Rome II Regulation use different terminology compared to the Rome I Regulation, ‘*dispositions impératives dérogatoires*’ (‘overriding mandatory provisions’), within the meaning of Article 16 of the Rome II Regulation, fall within the definition of ‘*lois de police*’ (‘overriding mandatory provisions’), within the meaning of Article 9 of the Rome I Regulation, so that the Court’s interpretation of the latter concept also applies to ‘*dispositions impératives dérogatoires*’ (‘overriding mandatory provisions’) within the meaning of Article 16 of the Rome II Regulation.
- 29 In that connection, it must be borne in mind that the Court has already pointed out, in the context of the Rome Convention, that the plea relating to the existence of a ‘mandatory rule’ within the meaning of the legislation of the Member State concerned must be interpreted strictly (judgment of 17 October 2013, *Unamar*, C-184/12, EU:C:2013:663, paragraph 49).
- 30 It is settled case-law of the Court that it is, in that context, for the national court, in the course of its assessment of whether the national law which it proposes to substitute for that expressly chosen by the parties to the contract is a ‘mandatory rule’, to take account not only of the exact terms of that law, but also of its general structure and of all the circumstances in which that law was adopted in order to

determine whether it is mandatory in nature in so far as it appears that the legislature adopted it in order to protect an interest judged to be essential by the Member State concerned (judgment of 17 October 2013, *Unamar*, C-184/12, EU:C:2013:663, paragraph 50).

- 31 By analogy, it must be held that, with regard to the possible identification of an ‘overriding mandatory provision’, within the meaning of Article 16 of the Rome II Regulation, the referring court must find, on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which that provision was adopted, that it is of such importance in the national legal order that it justifies a departure from the applicable law, designated pursuant to Article 4 of that regulation.
- 32 The order of reference indicates that Article 11(1)(b) of Decree-Law No 291/2007 provides that, so far as concerns accidents occurring in the territory of States that are Contracting Parties to the Agreement on the European Economic Area, the obligation to pay compensation laid down in the law applicable to the accident is replaced by Portuguese law where it provides better cover. Pursuant to Article 498(1) of the Civil Code, the limitation period for actions seeking compensation for damages resulting from accidents is three years, whereas the period laid down in Spanish law — which the referring court deems applicable in the present case, pursuant to Article 4 of the Rome II Regulation — is one year.
- 33 Although it is not for the Court of Justice to assess the provisions referred to in the preceding paragraph in the light of the criteria set out in paragraph 31 of the present judgment, it must be pointed out that, in spite of the variety of national rules of prescription and limitation, Article 15(h) of the Rome II Regulation expressly makes such rules subject to the general rule on determining the law applicable, and that no other provision of EU law establishes specific requirements with regard to the limitation period for actions such as that at issue in the main proceedings.
- 34 In those circumstances, as the European Commission points out, the application to an action seeking compensation for damage resulting from an accident of a limitation period other than that laid down in the law designated as applicable would require the identification of particularly important reasons, such as a manifest infringement of the right to an effective remedy and to effective judicial protection arising from the application of the law designated as applicable pursuant to Article 4 of the Rome II Regulation.
- 35 It follows from the foregoing that the answer to the first question is that Article 16 of the Rome II Regulation must be interpreted as meaning that a national provision, such as that at issue in the main proceedings, which provides that the limitation period for actions seeking compensation for damage resulting from an accident is three years, cannot be considered to be an overriding mandatory provision, within the meaning of that article, unless the court hearing the case finds, on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which that provision was adopted, that it is of such importance in the national legal order that it justifies a departure from the law applicable, designated pursuant to Article 4 of that regulation.

The second and third questions

- 36 By its second and third questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 27 of the Rome II Regulation must be interpreted as meaning that Article 28 of Directive 2009/103, as transposed into national law, constitutes a provision of EU law which lays down a conflict-of-law rule relating to non-contractual obligations, within the meaning of Article 27 of that regulation.
- 37 Under Article 27, the Rome II Regulation is not to prejudice the application of provisions of EU law which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

- 38 In that connection, it must be observed, first, that there is nothing in the wording or the objectives of Directive 2009/103 to suggest that it is intended to lay down conflict-of-law rules (judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraph 40).
- 39 That directive is in fact limited to requiring Member States to adopt measures guaranteeing that the victim of a road traffic accident and the owner of the vehicle involved in that accident are protected (judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraph 39).
- 40 Second, it should be noted that although, in accordance with its objective of protecting the victims of accidents caused by motor vehicles, Article 28 of Directive 2009/103 in fact allows the adoption of rules that are more favourable for those victims than those required under the directive, that provision concerns solely the transposition legislation of a Member State and does not concern the question of whether, in a specific case, those more favourable rules are to be applied rather than the rules of other Member States.
- 41 Thus, in such a case, the national transposition legislation is assessed only once the law applicable has initially been determined in accordance with the provisions of the Rome II Regulation.
- 42 The answer to the second and third questions is therefore that Article 27 of the Rome II Regulation must be interpreted as meaning that Article 28 of Directive 2009/103, as transposed into national law, does not constitute a provision of EU law which lays down a conflict-of-law rule relating to non-contractual obligations, within the meaning of Article 27 of that regulation.

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 (Sixth Chamber) hereby rules:

1. **Article 16 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) must be interpreted as meaning that a national provision, such as that at issue in the main proceedings, which provides that the limitation period for actions seeking compensation for damage resulting from an accident is three years, cannot be considered to be an overriding mandatory provision, within the meaning of that article, unless the court hearing the case finds, on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which that provision was adopted, that it is of such importance in the national legal order that it justifies a departure from the law applicable, designated pursuant to Article 4 of that regulation.**
2. **Article 27 of Regulation No 864/2007 must be interpreted as meaning that Article 28 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, as transposed into national law, does not constitute a provision of EU law which lays down a conflict-of-law rule relating to non-contractual obligations, within the meaning of Article 27 of that regulation.**

[Signatures]