



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

23 January 2014 *

(Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC, Directive 84/5/EEC, Directive 90/232/EEC and Directive 2009/103/EEC — Road traffic accident — Non-material damage — Compensation — National provisions establishing methods of calculation specific to road traffic accidents which are less favourable to victims than those provided for under the ordinary rules of civil liability — Compatibility with those directives)

In Case C-371/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Tivoli (Italy), made by decision of 20 June 2012, received at the Court on 3 August 2012, in the proceedings

Enrico Petillo,

Carlo Petillo

v

Unipol Assicurazioni SpA,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot and A. Arabadjiev (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 3 July 2013,

after considering the observations submitted on behalf of:

- Unipol Assicurazioni SpA, by A. Frignani and G. Ponzanelli, avvocati,
- the German Government, by T. Henze, J. Kemper and F. Wannek, acting as Agents,
- the Greek Government, by L. Pnevmatikou, acting as Agent,
- the Spanish Government, by S. Centeno Huerta, acting as Agent,

* Language of the case: Italian.

- the Italian Government, by G. Palmieri, acting as Agent, assisted by M. Santoro, avvocato dello Stato,
- the Latvian Government, by I. Kalniņš and I. Nesterova, acting as Agents,
- the Lithuanian Government, by D. Kriauciūnas and by R. Janeckaitė and A. Svinkūnaitė, acting as Agents,
- the European Commission, by E. Montaguti and K.-P. Wojcik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 October 2013,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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’), 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’), 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), as amended by Directive 2005/14 (‘the Third Directive’), and 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 proceedings between Mr Enrico Petillo and Mr Carlo Petillo, on the one hand, and Unipol Assicurazioni SpA (‘Unipolar’), on the other, concerning the payment of compensation by the latter, on the basis of civil liability in respect of the use of a motor vehicle, for the damage suffered by Mr Enrico Petillo as a result of a road traffic accident.

Legal context

European Union law

- 3 Article 1 of the First Directive states:

‘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;

...

4 Under Article 3(1) of that directive:

‘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’.

5 Article 1(1) and (2) of the Second Directive provides as follows:

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

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require insurance to be compulsory at least in respect of the following amounts:

(a) in the case of personal injury, a minimum amount of cover of EUR 1 000 000 per victim or EUR 5 000 000 per claim, whatever the number of victims;

(b) in the case of damage to property, EUR 1 000 000 per claim, whatever the number of victims.

If necessary, Member States may establish a transitional period of up to five years from the date of implementation of Directive [2005/14], within which to adapt their minimum amounts of cover to the amounts provided for in this paragraph.

Member States establishing such a transitional period shall inform the Commission thereof and indicate the duration of the transitional period.

Within 30 months of the date of implementation of Directive [2005/14] Member States shall increase guarantees to at least a half of the levels provided for in this paragraph.’

6 Article 1 of the Third Directive provides, in particular, that ‘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’.

7 Article 1a of the Third Directive provides:

‘The insurance referred to in Article 3(1) of [the First Directive] shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law. This Article shall be without prejudice either to civil liability or to the amount of damages.’

8 According to Article 30 of Directive 2009/103, that directive entered into force on the 20th day after that of its publication in the *Official Journal of the European Union*, which took place on 7 October 2009.

Italian law

- 9 Article 139 of Legislative Decree No 209 of 7 September 2005 laying down the Private Insurance Code (Ordinary Supplement to GURI No 239 of 13 October 2005), as amended by the Ministerial Decree of 17 June 2011 (GURI No 147 of 27 June 2011; ‘the Private Insurance Code’), provides:

‘1. Damage to health compensation for minor injuries arising from accidents resulting from the use of motor vehicles and waterborne craft shall be awarded in accordance with the following criteria and measures:

- (a) by way of compensation for permanent damage to health, for the consequences of injuries which are equal to or less than [9%], an amount shall be paid which increases more than proportionally with respect to each percentage point of disability; this amount shall be calculated by applying the relevant coefficient to each percentage point of disability in accordance with paragraph 6. As the age of the individual increases, this amount shall decrease at the rate of [0.5%] for each year of age starting from the eleventh year of age. The value of the first point shall be equal to EUR [759.04];
- (b) by way of compensation for temporary damage to health, an amount of EUR [44.28] shall be paid for each day of complete disability; in the case of temporary disability which is less than [100%], the settlement shall be in proportion to the percentage of disability recognised for each day.

2. For the purposes of paragraph 1, “damage to health” means: temporary or permanent physical or mental injury to the person, verifiable through forensic assessment, which has a negative impact on the daily activities and social interaction in the life of the injured person, regardless of any consequences for that person’s ability to produce income. ...

3. The amount of compensation for damage to health paid pursuant to paragraph 1 may be increased by the court by no more than one fifth, following a fair and reasoned assessment of the physical and mental condition of the injured person.

4. By decree of the President of the Republic, following deliberation by the Council of Ministers, on a proposal of the Minister for Health, in consultation with the Minister for Employment and Social Policies, the Minister for Justice and the Minister for Productive Activities, a specific table shall be established setting out the various forms of physical and mental impairment, ranging from one to nine points of disability.

5. The amounts referred to in paragraph 1 shall be updated annually by means of a decree of the Minister for Productive Activities, in proportion to the change in the national consumer price index for families of workers and employees established by the Istituto nazionale di statistica (ISTAT).

6. For the purposes of calculating the amount referred to in paragraph 1(a): for a percentage point of disability equal to 1, a coefficient multiplier of 1.0 shall apply; for a percentage point of disability equal to 2, a coefficient multiplier of 1.1 shall apply; for a percentage point of disability equal to 3, a coefficient multiplier of 1.2 shall apply; for a percentage point of disability equal to 4, a coefficient multiplier of 1.3 shall apply; for a percentage point of disability equal to 5, a coefficient multiplier of 1.5 shall apply; for a percentage point of disability equal to 6, a coefficient multiplier of 1.7 shall apply; for a percentage point of disability equal to 7, a coefficient multiplier of 1.9 shall apply; for a percentage point of disability equal to 8, a coefficient multiplier of 2.1 shall apply; for a percentage point of disability equal to 9, a coefficient multiplier of 2.3 shall apply.’

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

- 10 According to the order for reference, on 21 September 2007, the vehicle driven by Mr Mauro Recchioni collided, from the rear, with the car belonging to Mr Carlo Petillo, which was being driven by Mr Enrico Petillo. The latter suffered physical injuries as a result of that accident.
- 11 Mr Carlo Petillo and Mr Enrico Petillo brought proceedings before the Tribunale di Tivoli against Unipol, Mr Recchioni's insurance company, seeking a declaration of Mr Recchioni's sole responsibility for that accident and an order directing Unipol to pay EUR 3 350 as compensation for the material damage suffered, in addition to the amount of EUR 6 700 already paid, and a total amount of EUR 14 155.37 for the non-material damage suffered by Mr Enrico Petillo, instead of the amount of EUR 2 700 already paid.
- 12 According to the referring court, Italian law provides, in Article 2043 of the Civil Code as regards material damage and Article 2059 of that Code as regards non-material damage, for a right to full compensation of damage resulting from a quasi-delict.
- 13 According to settled case-law of the Italian courts, non-material damage comprises damage to health, resulting from physical and/or mental injury, psychological damage, resulting from the mental suffering caused by the injury, and residual damage, arising, inter alia, from the impairment of normal and everyday activities or of an above average level of personal fulfilment.
- 14 The Corte costituzionale held, in a judgment of 2003, that non-material damage is a unitary concept and cannot be divided into categories or headings. However, the Italian courts continue to differentiate between the components identified in the above paragraph. In addition, in the Italian legal system, it is for the courts to quantify that damage.
- 15 In order to limit the costs of insurance services, the Italian legislature established, in Article 139 of the Private Insurance Code, a specific scheme for the calculation of amounts to be paid for non-material damage suffered by victims of road traffic accidents or accidents involving waterborne craft. That scheme lays down restrictions in comparison with the assessment criteria applied in other cases and limits the court's discretion to increase the amount of compensation in view of the circumstances of the case, restricting such an increase to one fifth of the amount calculated on the basis of Article 139 of the Private Insurance Code.
- 16 The referring court states that, under the applicable Italian legislation and case-law, if the non-material damage suffered by Mr Enrico Petillo had had a cause other than a road traffic accident, it would have been quantified as follows:
- damage to health of 4% suffered by a person aged less than 21 years at the time of the accident: EUR 5 407.55;
 - temporary complete disability for 10 days, partial temporary disability of 50% for 20 days and of 25% for 10 days: EUR 2 250.00, and
 - psychological damage, equal to a third of the harm to health: EUR 2 252.00,
- amounting to a total of EUR 10 210.00 for non-material damage, in addition to the amount of EUR 445.00 payable for medical costs.

17 However, given that the damage arose out of a road traffic accident, the amount to be paid under Article 139 of the Private Insurance Code must be calculated as follows:

- (a) damage to health of 4% suffered by a person aged less than 21 years at the time of the accident: EUR 3 729.92, and
- (b) temporary complete disability for 10 days, partial temporary disability of 50% for 20 days and of 25% for 10 days: EUR 996.00,

amounting to a total of EUR 4 725.00 for non-material damage, in addition to the amount of EUR 445.00 payable for medical costs. The psychological damage is excluded since it is not provided for in the Private Insurance Code, even though there is a growing line of case-law in that respect which is more favourable to victims.

18 The amounts determined in accordance with the different methods of calculation therefore show, for the same damage, a difference of EUR 5 485.00. Moreover, Article 139 of the Private Insurance Code does not grant the court any margin of discretion to adapt its assessment to the circumstances of the case, since it is required to carry out a mere calculation, which restricts its ability to adjudicate equitably.

19 Referring, *inter alia*, to the judgment of the EFTA Court in Case E-8/07 *Celina Nguyen v The Norwegian State* [2008] (EFTA Court Report, p. 224), the Tribunale di Tivoli expresses its doubts regarding the compatibility with the First, Second and Third Directives, and with Directive 2009/103, of national legislation which, as regards compensation for damage resulting from a road traffic accident, does not exclude non-material damage from insurance cover, but excludes compensation for psychological damage and limits the compensation payable for physical and/or mental injury in comparison with the compensation allowed in accordance with the settled case-law of the national courts.

20 In particular, the referring court is of the view that Article 139 of the Private Insurance Code does not respect the principle that non-material damage be made good in its entirety, the taking into consideration of which should in no way be limited on the basis of the nature of the event which gives rise to the damage to health.

21 In those circumstances, the Tribunale di Tivoli decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘[I]n the light of [the First, Second, and Third Directives] and [of Directive] 2009/103/EC governing compulsory insurance against civil liability arising from the use of motor vehicles, is it permissible for the domestic legislation of a Member State effectively to provide – by imposing, solely in the case of damage arising from road traffic accidents, a compulsory method for quantifying the damage – a limitation (in terms of quantification) of the liability for non-material damage lying with the persons (insurance companies) obliged under those directives to ensure compulsory insurance for damage caused by the use of vehicles?’

Admissibility of the request for a preliminary ruling

22 Unipol and the Italian government contest the admissibility of the request for a preliminary ruling. In their view, the referring court has not explained why the requested interpretation of European Union law would be useful to the resolution of the dispute in the main proceedings. Moreover, they submit that the order for reference contains no explanations regarding either the choice of the provisions of European Union law whose interpretation is requested or the link between those provisions and the national legislation applicable to the dispute in the main proceedings.

- 23 In that respect, it suffices to note that it is clear from the factual and legal context set out in the order for reference, as supplemented by the reply to the request for clarification sent to the referring court by the Court under Article 101 of its Rules of Procedure, and the presentation of the reasons which led the referring court to refer the present question to the Court for a preliminary ruling, that the answer to that question is useful to the resolution of the dispute before the referring court and that, accordingly, that question is admissible.

Consideration of the question referred for a preliminary ruling

- 24 As a preliminary, it must be noted that, as rightly pointed out by the German and Spanish governments, in view of the date of the accident which gave rise to the dispute in the main proceedings, Directive 2009/103 is not applicable *ratione temporis* to the facts of the main proceedings. Moreover, the Third Directive, does not apply *ratione materiae* to that dispute, since the applicants in the main proceedings have none of the characteristics of the particularly vulnerable victims to which that Directive applies. The question referred must therefore be understood as concerning solely the interpretation of the First and Second Directives.
- 25 It must therefore be concluded that, by its question, the referring court is essentially asking if Article 3(1) of the First Directive and Article 1(1) and (2) of the Second Directive must be interpreted as precluding national legislation such as that at issue in the main proceedings, which lays down a specific compensation scheme for non-material damage resulting from minor physical injuries caused by road traffic accidents, limiting the compensation payable for that damage in comparison with the compensation allowed for identical damage arising from causes other than those accidents.
- 26 In that regard, it should be noted that the preambles to the First and Second Directives show that their aim is, first, to ensure the free movement of vehicles normally based on EU territory 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 (Case C-300/10 *Marques Almeida* [2012] ECR, paragraph 26 and the case-law cited).
- 27 The First Directive, as amplified and supplemented by the Second Directive, thus 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 to be covered by that insurance (Case C-22/12 *Haasová* [2013] ECR, paragraph 38).
- 28 It should however be noted that the obligation to provide insurance cover against civil liability for damage caused to third parties by motor vehicles is 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 European Union legislation, the latter is, essentially, governed by national law (Case C-277/12 *Drozdovs* [2013] ECR, paragraph 30).
- 29 In that regard, the Court has already held that it is apparent from the aim of the First and Second Directives, and from their wording, that they do not seek to harmonise the rules of the Member States governing civil liability and that, as European Union law stands at present, the Member States are free to determine the rules of civil liability applicable to road accidents (*Marques Almeida*, paragraph 29 and the case-law cited).
- 30 Consequently, and having regard inter alia to Article 1(2) of the First Directive, as European Union law currently stands, in relation to their civil liability insurance schemes, in principle the Member States remain free to determine, in particular, which damage caused by motor vehicles is to be compensated, the extent of such compensation and the persons who are entitled to it (*Haasová*, paragraph 41, and *Drozdovs*, paragraph 32).

- 31 However, the Court has emphasised that the Member States are required to ensure that the civil liability resulting from the use of motor vehicles arising under their domestic law is covered by insurance which complies with the provisions of, inter alia, the First and Second Directives (*Marques Almeida*, paragraph 30 and the case-law cited).
- 32 It is also apparent from the case-law of the Court that the Member States must exercise their powers in that field in compliance with European Union law and that the national provisions which govern compensation for road accidents may not deprive, inter alia, the First and Second Directives of their effectiveness (*Marques Almeida*, paragraph 31 and the case-law cited).
- 33 Consequently, the freedom enjoyed by the Member States to determine the damage covered and the terms and conditions of compulsory insurance has been restricted by, inter alia, the Second Directive, in that it rendered the cover of certain types of damage mandatory, specifying fixed minimum amounts of cover. Personal injuries, as set out in Article 1(1) of the Second Directive, feature among the types of damage in respect of which cover is mandatory (*Haasová*, paragraph 46, and *Drozdovs*, paragraph 37).
- 34 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 (*Haasová*, paragraph 47, and *Drozdovs*, paragraph 38).
- 35 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, inter alia, the First and Second Directives (*Haasová*, paragraph 50, and *Drozdovs*, paragraph 41).
- 36 In the present case, in the first place, it is apparent from the documents before the Court that, like in the circumstances which gave rise to the judgment in *Marques Almeida*, the national legislation at issue in the main proceedings is intended to determine the extent of the victim’s right to compensation on the basis of the insured person’s civil liability and does not limit the insurance cover against civil liability.
- 37 According to the statement of the Italian law made by the referring court, Article 2059 of the Civil Code provides the legal basis of the right to compensation for non-material damage resulting from road traffic accidents, while Article 139 of the Private Insurance Code lays down the means of determining the extent of the right to compensation, as regards the damage to health arising from minor injuries caused, inter alia, by such accidents.
- 38 Furthermore, in response to the request for clarification sent to it by the Court under Article 101 of its Rules of Procedure, the referring court stated, as confirmed by the Italian government during the hearing before the Court, that, according to Italian law, the civil liability of the insured person for non-material damage suffered by persons as a result of a road traffic accident cannot exceed the amounts covered, under Article 139 of the Private Insurance Code, by compulsory insurance.
- 39 Accordingly, that national legislation falls within the scope of the substantive national civil liability law to which the First and Second Directives refer (see, by analogy, *Haasová*, paragraph 58) and it is not such as to limit the cover of the civil liability incurred by an insured person (see, by analogy, *Marques Almeida*, paragraph 35).
- 40 It must be added that, as regards the compulsory cover, by the insurance referred to in Article 3(1) of the First Directive, of damage to property and personal injuries, nothing in the documents before the Court indicates that the national legislation concerned does not provide for amounts in accordance with the minimum amounts set out in Article 1 of the Second Directive.

- 41 In the second place, it is necessary to examine whether that national legislation automatically excludes or disproportionately limits the victim's right to compensation through the compulsory insurance against civil liability in respect of the use of motor vehicles.
- 42 In that respect, as pointed out by the Advocate General in points 69 to 74 and 82 and 83 of his Opinion, it follows from the case-law referred to in paragraphs 30 to 32 of the present judgment that the First and Second Directives do not require that the Member States adopt a particular scheme for determining the extent of the victim's right to compensation on the basis of the civil liability of the insured person.
- 43 Accordingly, those directives do not preclude, in principle, either national legislation imposing binding criteria on national courts for the determination of the non-material damage to be compensated or specific schemes adapted to the particular circumstances of road traffic accidents, even if such schemes comprise, for some non-material damage, a method of determining the extent of the right to compensation which is less favourable to the victim than that applicable to the right to compensation of victims of accidents other than road traffic accidents.
- 44 In particular, the fact that, in the assessment of the amount of compensation payable for non-material damage arising from minor injuries, calculation factors which are applicable to the compensation of victims of accidents other than road traffic accidents are omitted or limited does not affect the compatibility with the abovementioned directives of such legislation, since that legislation does not automatically exclude or disproportionately limit the victim's right to compensation (see, to that effect, *Marques Almeida*, paragraph 32, and Case C-409/09 *Ambrósio Lavrador and Others* [2011] ECR I-4955, paragraph 29).
- 45 In the present case, nothing in the documents submitted to the Court indicates such an automatic exclusion or disproportionate limitation. It is apparent from those documents, first, that compensation is granted, secondly, that the more restrictive method of calculating that compensation is applicable only to damage arising from minor physical injuries and, lastly, that the amount resulting from that calculation is proportionate, inter alia, to the seriousness of the injuries suffered and the duration of the disability suffered. Moreover, that scheme allows the court to adjust the amount of compensation to be granted, by increasing it by up to one fifth of the calculated amount.
- 46 In view of the foregoing, it must be held that the guarantee, provided under European Union law, that civil liability in respect of the use of motor vehicles, determined according to the applicable national law, will be covered by insurance in accordance, inter alia, with the First and Second Directives, is not affected (see, to that effect, *Marques Almeida*, paragraph 38 and the case-law cited).
- 47 It follows that the answer to the question referred is that Article 3(1) of the First Directive and Article 1(1) and (2) of the Second Directive must be interpreted as not precluding national legislation such as that at issue in the main proceedings, which lays down a specific compensation scheme for non-material damage resulting from minor physical injuries caused by road traffic accidents, limiting the compensation payable for such damage in comparison with the compensation allowed for identical damage arising from causes other than those accidents.

Costs

- 48 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 (Second 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 1(1) and (2) 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 Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as not precluding national legislation such as that at issue in the main proceedings, which lays down a specific compensation scheme for non-material damage resulting from minor physical injuries caused by road traffic accidents, limiting the compensation payable for such damage in comparison with the compensation allowed for identical damage arising from causes other than those accidents.

[Signatures]