



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

23 October 2012\*

(Insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Directive 84/5/EEC — Article 2(1) — Directive 90/232/EEC — Article 1 — Right to compensation by means of compulsory insurance against civil liability in respect of the use of motor vehicles — Civil liability of the insured person — Victim's contribution to loss or injury — Limitation of the right to compensation)

In Case C-300/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação de Guimarães (Portugal), made by decision of 22 April 2010, received at the Court on 17 June 2010, in the proceedings

**Vítor Hugo Marques Almeida**

v

**Companhia de Seguros Fidelidade-Mundial SA,**

**Jorge Manuel da Cunha Carvalheira,**

**Paulo Manuel Carvalheira,**

**Fundo de Garantia Automóvel,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, L. Bay Larsen, A. Rosas, M. Berger, E. Jarašiūnas, Presidents of Chambers, E. Juhász, J.-C. Bonichot, A. Arabadjiev (Rapporteur), A. Prechal and C.G. Fernlund, Judges,

Advocate General: V. Trstenjak,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 May 2012,

after considering the observations submitted on behalf of:

— Mr Marques Almeida, by A. Novo, advogada,

— the Portuguese Government, by L. Inez Fernandes and S. Nunes de Almeida, acting as Agents,

\* Language of the case: Portuguese.

— the German Government, by T. Henze and F. Wannek, acting as Agents,  
— the European Commission, by P. Guerra e Andrade, N. Yerrell and G. Braun, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 5 July 2012,  
gives the following

### Judgment

- 1 This reference 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 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 Articles 1 and 1a 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 reference has been made in proceedings brought by Mr Marques Almeida against Companhia de Seguros Fidelidade-Mundial SA (‘Fidelidade-Mundial’), Mr da Cunha Carvalheira, Mr Carvalheira and Fundo de Garantia Automóvel regarding the compensation payable by them, on the basis of civil liability in respect of the use of motor vehicles, for the damage suffered by Mr Marques Almeida in a road traffic accident.

### Legal context

#### *EU law*

- 3 Under Article 3(1) of the First Directive:

‘Each Member State shall, subject to Article 4, 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 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.

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.

Member States shall have the option — in the case of accidents occurring on their territory — of not applying the provision in the first subparagraph if and in so far as the victim may obtain compensation for the damage suffered from a social security body.’

5 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.

...’

6 Under Article 1a of the Third Directive, inserted into that directive by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ 2005 L 149, p. 14):

‘The insurance referred to in Article 3(1) of Directive 72/166/EEC 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.’

#### *National law*

7 Article 503(1) of the Portuguese Civil Code (‘the Civil Code’) states:

‘The person with effective control of any motor vehicle and who uses it in his own interests, even if acting through an agent, is liable for the damage resulting from the risks posed by the vehicle itself, even when the latter is not in use.’

8 Article 504(1) of that code provides:

‘The liability for damage caused by vehicles shall benefit third parties in addition to those travelling in the vehicle.’

9 Article 505 of that code states:

‘Without prejudice to Article 570, liability provided for in Article 503(1) shall not be excluded unless the accident is due to the injured person himself or to a third party or is the result of *force majeure* external to the operation of the vehicle.’

10 Article 570 of that code provides:

‘1. When the injured person’s fault has contributed to the occurrence or aggravation of the injury or loss, it shall be for the court to determine, on the basis of the seriousness of the fault of both parties and of the consequences resulting therefrom, whether compensation is to be awarded in full, or in part, or is even not to be awarded.

2. When liability is based on a mere presumption of fault, the injured person’s fault shall, save as otherwise expressly provided, exclude the obligation to compensate.’

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

11 On 12 June 2004 a vehicle in which Mr Marques Almeida was a passenger was involved in a collision with a vehicle belonging to Mr da Cunha Carvalheira and driven by Mr Carvalheira.

12 In the collision, Mr Marques Almeida, who was the front passenger in the vehicle and was not wearing his seat belt, was thrown through the windscreen, suffering deep cuts to his head and face.

13 At the time of the collision, the owner of the vehicle in which Mr Marques Almeida was riding had taken out insurance against civil liability in respect of the use of motor vehicles with Fidelidade-Mundial. However, the vehicle belonging to Mr da Cunha Carvalheira was not covered by any insurance against such liability.

14 Following the accident, Mr Marques Almeida brought an action before the competent Portuguese court seeking an order that Fidelidade-Mundial, Mr da Cunha Carvalheira, Mr Carvalheira and Fundo de Garantia Automóvel were jointly and severally liable to pay EUR 65 000 by way of damages for the injury suffered in the accident together with such sum as may be incurred in respect of any surgical operations which he might have to undergo.

15 The action was dismissed on the basis of Article 570 of the Civil Code, on the ground that the damage suffered by Mr Marques Almeida was the result of his own fault in not fastening his seat belt in breach of Article 82(1) of the Portuguese highway code.

16 Mr Marques Almeida appealed against that decision before the Tribunal da Relação de Guimarães (Court of Second Instance of Guimarães).

17 The referring court points out that, according to most of the national case-law, applied by the court of first instance, the liability of the victim of a road traffic accident for the occurrence of the damage he suffered is, under Articles 505 and 570 of the Civil Code, such as to exclude the strict liability under Article 503(1) of that code of the person with effective control of the vehicle in question.

18 It follows that, in circumstances such as those of the case in the main proceedings, where it is not proven that the drivers of the motor vehicles involved in a collision were at fault, while it is established that the fault of an injured passenger caused the damage he suffered, that passenger cannot be compensated on the basis of the strict liability under Article 503(1) of the Civil Code.

19 However, the referring court takes the view that it is apparent from the case-law of the Court of Justice, in particular from Case C-537/03 *Candolin and Others* [2005] ECR I-5745 and Case C-356/05 *Farrell* [2007] ECR I-3067, that the Court endeavours to ensure special protection for the passengers of vehicles involved in accidents. For instance, the Court held to be inapplicable the statutory and contractual provisions which, in one Member State, remove the obligation to compensate such passengers in certain circumstances in breach of the provisions of the First, Second and Third Directives.

20 In the light of that case-law of the Court, the Tribunal da Relação de Guimarães has doubts concerning the compatibility of the civil liability rules applicable in the main proceedings with the relevant provisions of EU law.

21 It is against that background that the Tribunal da Relação de Guimarães decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Articles 3(1) of the First Directive ..., 2(1) of the Second Directive ... and 1 and 1a of the Third Directive ... be interpreted to the effect that they preclude national civil law, in particular through the rules laid down in Articles 503(1), 504, 505 and 570 of the Civil Code, from providing that if, when two vehicles collide, the event is not attributable to the fault of either driver, and it gives rise to personal injury to the passenger in one of the vehicles (the injured person seeking compensation), the compensation to which the latter is entitled is to be refused or limited, on the ground that that passenger has contributed to the occurrence of the injury, for he was travelling in the vehicle, in the front passenger seat, without fastening his seat-belt as required by national legislation?’

— having regard to the fact that it has been established that when the two vehicles involved collided, because of that collision and because he had not fastened his seat-belt, that passenger struck his head with force against the windscreen, breaking it, which resulted in deep cuts to his head and face?

— and having regard to the fact that, one of the vehicles involved not being covered by valid and effective insurance with any insurer at the date of the accident, the defendants and respondents in the proceedings include, in addition to the insurer of the other vehicle involved, the owner of the uninsured vehicle, its driver and the Fundo de Garantia Automóvel, who and which may, in so far as strict liability is concerned, be jointly and severally liable to pay such compensation?’

### **The question referred for a preliminary ruling**

#### *Preliminary observations*

22 It must be observed at the outset that Article 1a of the Third Directive, as amended by Directive 2005/14, is not applicable to the facts of the case in the main proceedings either *ratione materiae* or *ratione temporis*, as the German Government correctly pointed out. First, that provision concerns only the right to compensation for damage suffered by pedestrians, cyclists and other non-motorised road users. However, at the time of the collision which resulted in the damage he suffered, Mr Marques Almeida was a passenger in a motor vehicle.

23 Secondly, that provision was inserted into the Third Directive by Directive 2005/14, Article 7 of which provides that it is to enter into force on the day of its publication in the *Official Journal of the European Union*, that is to say, on 11 June 2005, and Article 6(1) of which provides that it is to be implemented by 11 June 2007 at the latest. The road traffic accident giving rise to the dispute in the main proceedings, however, occurred on 12 June 2004.

24 Consequently, the question referred must be taken to relate only to the interpretation of Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive.

#### *The question referred*

25 By its question, the referring court seeks to know, essentially, whether Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive must be interpreted as meaning that they preclude national provisions which, where two motor vehicles collide

giving rise to personal injury to the passenger in one of the vehicles and the event is not attributable to the fault of the drivers of those vehicles, allows the civil liability of the insured person, and, consequently, the compensation for that passenger, to be limited or excluded by the insurance against civil liability in respect of the use of motor vehicles, solely on the ground that that passenger has contributed to the occurrence of the injury.

- 26 In that regard, it should be noted that, according to the preambles to the First and Second Directives, 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 (see Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 13; Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711, paragraph 24; Case C-484/09 *Carvalho Ferreira Santos* [2011] ECR I-1821, paragraph 24; and Case C-409/09 *Ambrósio Lavrador and Olival Ferreira Bonifácio* [2011] ECR I-4955, paragraph 23).
- 27 The First Directive, as amplified and supplemented by the Second and Third Directives, 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 and the third-party victims to be covered by that insurance (*Mendes Ferreira and Delgado Correia Ferreira*, paragraph 27; *Carvalho Ferreira Santos*, paragraph 27; and *Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 24).
- 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 EU legislation, the latter is, essentially, governed by national law (see *Carvalho Ferreira Santos*, paragraph 31 and the case-law cited, and *Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 25).
- 29 In that regard, the Court has already held that it is apparent from the aim of the First, Second and Third Directives, and from their wording, that they do not seek to harmonise the rules of the Member States governing civil liability and that, as EU law stands at present, the Member States are free to determine the rules of civil liability applicable to road accidents (*Carvalho Ferreira Santos*, paragraph 32 and the case-law cited, and *Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 26).
- 30 That being so, Member States are 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 (*Mendes Ferreira and Delgado Correia Ferreira*, paragraph 29; *Farrell*, paragraph 33; *Carvalho Ferreira Santos*, paragraph 34; and *Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 27).
- 31 It is also apparent from the case-law of the Court of Justice that the Member States must exercise their powers in that field in compliance with EU law and that the national provisions which govern compensation for road accidents may not deprive the First, Second and Third Directives of their effectiveness (*Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 28).
- 32 As the Court has stated, those directives would be deprived of their effectiveness if, solely on the basis of the victim's contribution to the occurrence of his injuries, national rules, established on the basis of general and abstract criteria, either denied the victim the right to be compensated by the compulsory insurance against civil liability in respect of the use of motor vehicles or limited such a right in a disproportionate manner. It is, therefore, only in exceptional circumstances that that right may be limited on the basis of an assessment of a particular case (*Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 29).

- 33 The Court has thus held that Articles 2(1) of the Second Directive and 1 of the Third Directive preclude national rules which allow the disproportionate refusal or restriction of the compensation to be made available to a passenger by means of compulsory insurance against civil liability in respect of the use of motor vehicles solely on the basis of his contribution to the occurrence of that damage (*Candolin and Others*, paragraph 35, and *Farrell*, paragraph 35).
- 34 However, in the case in the main proceedings, it should be pointed out, first, that, in contrast to the circumstances which led to the judgments in *Candolin and Others*, and in *Farrell*, the right to compensation for the victims of a road traffic accident is affected not by a limitation of the cover against civil liability by the insurance provisions, but, as in the disputes leading to the judgments in *Carvalho Ferreira Santos* and *Ambrósio Lavrador and Olival Ferreira Bonifácio*, by the national civil liability rules in relation to road traffic accidents.
- 35 The national rules at issue in the main proceedings seek only to determine the right of the victim, and the possible extent of that right, to compensation on the basis of the civil liability of the insured person. However, they are not such as to limit any civil liability insurance cover established for the insured person.
- 36 Second, it is apparent from the order for reference that Articles 503 and 504 of the Civil Code provide for strict liability in the case of road traffic accidents but that, without prejudice to Article 570 of that code, the liability for risk set out in Article 503(1) of that code can be excluded, pursuant to Article 505 of the code, only if the accident is attributable to the victim or to a third party, or is the result of *force majeure*. Article 570(1) of the Civil Code provides that, where the injured person's fault has contributed to the occurrence or aggravation of the injury or loss, according to the assessment made by the competent court and the seriousness of the fault of each party and the consequences thereof, that person may be deprived of some or all of the compensation (see *Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 32).
- 37 In contrast to the legal contexts which led respectively to the judgments in *Candolin and Others* and in *Farrell*, those national rules do not have the effect, therefore, where the victim, who in the present case was a passenger in a vehicle involved in such an accident, contributes to his own loss or injury, of automatically excluding or limiting disproportionately the right of that victim to compensation by means of compulsory insurance against the civil liability of the driver of the vehicle involved in the accident (see *Carvalho Ferreira Santos*, paragraph 43, and *Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 34).
- 38 Having regard to the foregoing considerations, it must be held that the national legislation at issue in the main proceedings does not affect the guarantee, provided by the law of the European Union, 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 with the First, Second and Third Directives (see *Carvalho Ferreira Santos*, paragraph 44, and *Ambrósio Lavrador and Olival Ferreira Bonifácio*, paragraph 34).
- 39 It follows that the answer to the question referred is that, in circumstances such as those of the case in the main proceedings, Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive must be interpreted as meaning that they do not preclude national provisions which, where two motor vehicles collide giving rise to personal injury to the passenger in one of the vehicles and the event is not attributable to the fault of the drivers of those vehicles, allows the civil liability of the insured persons to be limited or excluded.

## Costs

- 40 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:

**In circumstances such as those of the case in the main proceedings, 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, 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, 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 must be interpreted as meaning that they do not preclude national provisions which, where two motor vehicles collide giving rise to personal injury to the passenger in one of the vehicles and the event is not attributable to the fault of the drivers of those vehicles, allows the civil liability of the insured persons to be limited or excluded.**

[Signatures]