JUDGMENT OF THE COURT (First Chamber)

19 April 2007 *

In Case C-356/05,

REFERENCE for a preliminary ruling under Article 234 EC by the High Court (Ireland), made by decision of 30 July 2004, received at the Court on 23 September 2005, in the proceedings

Elaine Farrell

v

Alan Whitty,

Minister for the Environment,

* Language of the case: English.

Ireland,

Attorney General,

and

Motor Insurers' Bureau of Ireland (MIBI),

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, E. Juhász (Rapporteur), J.N. Cunha Rodrigues, K. Schiemann and E. Levits, Judges,

Advocate General: C. Stix-Hackl,
Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 7 September 2006,

after considering the observations submitted on behalf of:

— Elaine Farrell, by E. McCullough SC, C. McCarthy BL and C. Murphy, Barrister, instructed by M. O'Shea, Solicitor,

— the Minister for the Environment, Ireland and the Attorney General, by E. Fitzsimons, K. McMeel, D. Maloney and D. O'Hagan, acting as Agents,

— the Motor Insurers' Bureau of Ireland (MIBI), by E. Gleeson SC, instructed by P. Boyd, Solicitor,

— the Commission of the European Communities, by N. Yerrell, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 5 October 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of 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 reference was made in the course of proceedings between Ms Farrell, on the one hand, and Mr Whitty and the Minister for the Environment, Ireland and the Attorney General (hereafter 'Ireland'), together with the Motor Insurers' Bureau of Ireland (MIBI) ('the MIBI'), on the other.

Legal framework

Community legislation

3 Article 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), as amended by the Third Directive ('the First Directive'), provides that '"vehicle" means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled'.

4 Article 3(1) of the First Directive states:

'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 The first and third subparagraphs of Article 1(4) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17), as amended by the Third Directive ('the Second Directive'), state:

'Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which

the insurance obligation provided for in paragraph 1 has not been satisfied. This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the victim's establishing in any way that the person liable is unable or refuses to pay.

...

However, 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 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.'

7 The second to the fifth recitals in the preamble to the Third Directive state:

'Whereas Article 3 of [the First Directive] requires each Member State to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance; whereas the extent of the liability covered and the terms and conditions of the insurance cover should be determined on the basis of those measures;

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

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

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

8 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.

For the purposes of this Directive, the meaning of the term "vehicle" is as defined in Article 1 of [the First Directive].'

9 Article 6(2) of the Third Directive states that Ireland is to have until 31 December 1998 to comply with Article 1 of that directive as regards pillion passengers of motorcycles and until 31 December 1995 to comply with Article 1 as regards other vehicles.

National legislation

10 According to the order for reference, the relevant legislation essentially comprises sections 5, 56 and 65(1)(a) of the Road Traffic Act 1961, in the version in force at the time of the facts in the main proceedings ('the 1961 Act'), together with article 6 of the Road Traffic (Compulsory Insurance) Regulations 1962, as amended.

11 The national court states that the effect of that legislation is that a person using a vehicle must have an approved policy of insurance to cover any liability for personal injuries caused to persons travelling in the vehicle other than excepted persons. Excepted persons are those persons claiming in respect of an injury sustained while in a vehicle other than a type of vehicle specified by ministerial regulation. With respect to those vehicles designated by the competent Minister, a compulsory insurance obligation exists in respect of civil liability for injury to individuals travelling in those vehicles. However, the Minister does not have power to extend

the compulsory insurance obligation in respect of liability for injury to individuals travelling in a part of that vehicle which has not been designed and constructed with seating accommodation.

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

12 Ms Farrell was the victim of a road traffic accident on 26 January 1996. She was travelling in a van that was not designed and constructed for the carriage of passengers in the rear of the vehicle. Mr Whitty, who was the owner and driver of that van, lost control of his vehicle, which collided with a wall. Since the vehicle was not fitted with seating accommodation in the rear, Ms Farrell was seated on the floor of the van at the time of the accident.

13 As it transpired that Mr Whitty was uninsured, Ms Farrell sought compensation from the MIBI under the terms of an agreement entered into between that organisation and the Minister for the Environment in 1988 ('the agreement'). By that agreement, the MIBI undertook to compensate victims of road accidents involving drivers who had not taken out the compulsory insurance required by the 1961 Act.

14 However, the MIBI refused to compensate Ms Farrell on the ground that she was travelling in a part of the vehicle that was not designed and constructed with seating

accommodation for passengers. It took the view that liability for the personal injuries sustained by the plaintiff was not therefore a liability for which insurance was compulsory under the 1961 Act. Accordingly, the agreement did not apply and the MIBI was not therefore obliged to compensate the plaintiff or to comply with any judgment delivered against Mr Whitty.

15 In September 1997, Ms Farrell brought proceedings against the defendants in the main proceedings. In July 2001, she obtained judgment against Mr Whitty. The assessment of damages was adjourned to the decision on the merits. While Ms Farrell claimed that the court should declare that the national implementing measures in force at the time of the accident did not properly implement the relevant provisions of the First and Third Directives, in particular Article 1 of the Third Directive, the MIBI and Ireland denied that those measures did not properly implement that article and the latter contended that the non-extension of compulsory insurance in respect of civil liability to persons in part of a mechanically-propelled vehicle which has not been designed and equipped with seating accommodation for the carriage of passengers is permissible under the Third Directive.

16 In these circumstances, the High Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Under Article 1 of [the Third] Directive ..., is Ireland obliged, as of 31 December 1995 — the date by which Ireland was obliged to implement the provisions of

the Third Directive in respect of passengers on vehicles other than motorcycles — to render insurance compulsory in respect of civil liability for injury to individuals travelling in a part of a motor vehicle not designed and constructed with seating accommodation for passengers?

(2) If the answer to Question 1 is in the positive, does Article 1 of the Third Directive confer rights on individuals that may be relied upon directly before the national courts?'

The questions referred for a preliminary ruling

Question 1

17 By Question 1, the national court essentially asks whether Article 1 of the Third Directive is to be interpreted as meaning that it precludes national legislation whereby compulsory motor insurance for civil liability does not cover liability in respect of personal injuries to persons travelling in a part of a motor vehicle which has not been designed and constructed with seating accommodation for passengers.

18 Ms Farrell and the Commission of the European Communities essentially argue that Article 1 of the Third Directive requires that compulsory insurance should cover, in all Member States, injuries to persons travelling in a part of a vehicle which has not been designed for the carriage of passengers or fitted with seating accommodation for that purpose.

19 Ireland, supported by the MIBI, takes the contrary view. It contends, first, that since there is no definition in the Third Directive of the concept of 'passenger', it is for the Member States to define which persons travelling in vehicles are to be considered as passengers for the purposes of that directive and, secondly, that that directive does not require Member States to ensure that compulsory insurance is in place in respect of personal injuries suffered by persons travelling in any part of a vehicle which has not been designed with seating accommodation.

20 Ireland adds that its restrictive approach is justified by a desire for consistency with the legislation on road safety, since the inclusion of such persons within the scope of the compulsory insurance indemnity would be tantamount to requiring insurers to underwrite conduct that was deliberately dangerous. That State also contends that such an approach is consistent with the joint statement of the Council and the Commission recorded in the minutes of the Council at the time of the adoption of its common position on the draft of the Third Directive. Those minutes record that the Council and the Commission stated that Article 1 of the Third Directive is without prejudice to provisions in Member States' legislation concerning compensation for passengers incurring liability in respect of an accident, passengers whose numbers exceed the permitted limits or passengers who are carried in a vehicle which is not designed to carry persons other than the driver.

21 The arguments of Ireland cannot be accepted.

22 It must be pointed out that Article 1 of the Third Directive provides that compulsory insurance is to cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

23 Since that article clearly extends insurance cover to all passengers, Ireland's argument can be accepted only in so far as persons carried in a vehicle that was not designed for their transport could not be classified as 'passengers'.

24 It would be contrary to the objectives of the Community legislation to exclude from the concept of 'passenger', and thus from insurance cover, injured parties seated in a vehicle which was not designed for their carriage or equipped for that purpose. According to the fourth and fifth recitals in the preamble to the Third Directive, the objective of that legislation includes the filling of gaps in the compulsory insurance cover of motor vehicle passengers in certain Member States and the protection of that particularly vulnerable category of potential victims, coupled with the guaranteeing of comparable treatment to motor vehicle accident victims irrespective of where in the Community accidents occur.

25 That interpretation is, moreover, confirmed by the case-law of the Court. The Court has already held that the First and Second Directives did not require Member States

to provide prior to 31 December 1995, that is to say before the expiry of the period for transposition laid down for Ireland by the Third Directive, that compulsory insurance is to cover personal injuries to passengers carried in a part of a vehicle not adapted for the transport of seated passengers. However, the Court has held that Article 1 of the Third Directive extended, from that date, the compulsory insurance cover imposed by Article 3(1) of the First Directive, as amplified and supplemented by the Second Directive, to personal injuries to passengers other than the driver (see order in Case C-158/01 *Withers* [2002] ECR I-8301, paragraphs 20 and 21).

26 Furthermore, as is apparent from that case-law, when the Court delivered judgment on the question of personal injuries to passengers carried in a part of a vehicle that was not adapted for the transport of seated passengers, it held that such persons were 'passengers', irrespective of the part of the vehicle in which they were travelling (see, to that effect, order in *Withers*, paragraph 21).

27 In addition, Community legislation expressly lays down exceptions to the obligation to protect victims of accidents. Those exceptions are referred to in the third subparagraph of Article 1(4) and in Article 2(1) of the Second Directive.

28 However, the Community legislature did not provide any derogation with respect to a separate category of persons who may be the victims of a road traffic accident, namely those who were on board a part of a vehicle which is not designed for their carriage and equipped for that purpose. That being so, those persons cannot be excluded from the concept of 'passenger' and, accordingly, from the insurance cover which the Community legislation guarantees.

29 Given that, first, the right to derogate from the obligation to protect accident victims is defined and circumscribed by Community law and, secondly, the realisation of the objectives referred to above requires a uniform approach to the insurance cover in respect of passengers at Community level, the Member States are not entitled to introduce additional restrictions to the level of compulsory insurance cover to be accorded to passengers.

30 Accordingly, it is not permissible for national legislation to restrict the concept of 'passenger' and thereby to limit the insurance cover in respect of persons entitled, in accordance with the First, Second and Third Directives, to compensation for injuries caused by motor vehicles.

31 It should be added that the restrictive approach taken by the national legislature also cannot be justified by the joint statement of the Council and the Commission referred to in paragraph 20 of this judgment. It is settled case-law that, where a statement recorded in Council minutes is not referred to in the wording of a provision of secondary legislation, it cannot be used for the purpose of interpreting that provision (Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 18; Case C-375/98 *Epson Europe* [2000] ECR I-4243, paragraph 26; and Case C-402/03 *Skov and Bilka* [2006] ECR I-199, paragraph 42).

32 It should also be pointed out that the obligation to provide insurance cover for passengers is separate from the extent of the compensation to be made available to them in the event of their becoming victims of a road traffic accident. Whereas the former is guaranteed and defined by Community legislation, the latter is essentially governed by national law.

33 In that regard, the Court has already held that the First, Second and Third Directives do not seek to harmonise the rules of the Member States governing civil liability and that, as Community law stands at present, the Member States are free to determine the rules of civil liability applicable to road traffic accidents. However, the Member States must ensure that the civil liability arising under their domestic law is covered by insurance which complies with the provisions of the three directives in question (Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711, paragraphs 23 and 29, and Case C-537/03 *Candolin and Others* [2005] ECR I-5745, paragraph 24).

34 It is also clear from that case-law that the Member States must exercise their powers in this field in compliance with Community law and, in particular, with Article 1 of the Third Directive, and that national provisions which govern the payment of compensation for personal injuries resulting from road traffic accidents cannot deprive that article of its effectiveness (see, to that effect, Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 19, and *Candolin and Others*, paragraphs 27 and 28).

35 Accordingly, national rules, formulated in terms of general and abstract criteria, cannot refuse or restrict to a disproportionate extent the compensation to be made available to a passenger solely on the basis of his contribution to the occurrence of the injuries which arise. It is only in exceptional circumstances that, on the basis of an individual assessment and in compliance with Community law, the amount of such compensation may be limited (see, to that effect, *Candolin and Others*, paragraphs 29, 30 and 35).

36 In the light of those considerations, the answer to Question 1 should be that Article 1 of the Third Directive is to be interpreted as precluding national legislation

whereby compulsory motor vehicle liability insurance does not cover liability in respect of personal injuries to persons travelling in a part of a motor vehicle which has not been designed and constructed with seating accommodation for passengers.

Question 2

37 As regards Question 2, which asks whether individuals may rely directly upon Article 1 of the Third Directive before the national courts, it should be pointed out that it has consistently been held that a provision in a directive has direct effect if it appears, as far as its subject-matter is concerned, to be unconditional and sufficiently precise (Case 8/81 *Becker* [1982] ECR 53; Joined Cases C-253/96 to C-258/96 *Kampelmann and Others* [1997] ECR I-6907, paragraph 37; and Case C-292/02 *Meiland Azewijn* [2004] ECR I-7905, paragraph 57).

38 It must be held in the present case that, as the Commission argues, those criteria are satisfied by Article 1 of the Third Directive. That article allows both the obligation of the Member State and the beneficiaries to be identified, and its provisions are unconditional and precise. Article 1 of the Third Directive may accordingly be relied upon in order to set aside provisions of national law which exclude from the benefit of the guarantee provided by compulsory insurance cover persons travelling in any part of a vehicle which is not designed and constructed with seating accommodation for passengers.

39 The question remains whether that provision may be relied on against a body such as the MIBI.

40 A directive cannot be relied on against individuals, whereas it may be relied on as against a State, regardless of the capacity in which the latter is acting, that is to say, whether as employer or as public authority. The entities against which the provisions of a directive that are capable of having direct effect may be relied upon include a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals (Case C-188/89 *Foster and Others* [1990] ECR I-3313, paragraph 20; Case C-343/98 *Collino and Chiappero* [2000] ECR I-6659, paragraph 23; and Case C-157/02 *Rieser Internationale Transporte* [2004] ECR I-1477, paragraph 24).

41 Since the national court has not provided sufficient information regarding the MIBI for it to be possible to determine whether the latter can be assimilated to such a body, it is for the national court to ascertain, taking account, on the basis of the above considerations, of the status of the MIBI and its relationship with the Irish State, whether the directive may be relied upon against it.

42 Should the national court decide that the directive cannot be relied upon against the MIBI, it will be bound, when applying domestic law and, in particular, legislative

provisions specifically adopted for the purpose of implementing the requirements of a directive, to interpret national law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by it (Case C-408/01 *Adidas-Salomon and Adidas Benelux* [2003] ECR I-12537, paragraph 21, and Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 113).

43 In any event, the liability of the Member State to make good damage caused by a failure to transpose a directive, within the meaning of the judgment in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, may arise.

44 The answer to Question 2 should therefore be that Article 1 of the Third Directive satisfies all the conditions necessary for it to produce direct effect and accordingly confers rights upon which individuals may rely directly before the national courts. However, it is for the national court to determine whether that provision may be relied upon against a body such as the MIBI.

Costs

45 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 (First Chamber) hereby rules:

1. **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 is to be interpreted as precluding national legislation whereby compulsory motor vehicle liability insurance does not cover liability in respect of personal injuries to persons travelling in a part of a motor vehicle which has not been designed and constructed with seating accommodation for passengers.**

2. **Article 1 of Third Directive 90/232 satisfies all the conditions necessary for it to produce direct effect and accordingly confers rights upon which individuals may rely directly before the national courts. However, it is for the national court to determine whether that provision may be relied upon against a body such as the Motor Insurers' Bureau of Ireland.**

[Signatures]