JUDGMENT OF THE COURT (Fifth Chamber)

4 December 2003 *

In Case C-63/01,

REFERENCE to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

Samuel Sidney Evans

and

The Secretary of State for the Environment, Transport and the Regions,

and

The Motor Insurers' Bureau,

on the interpretation of Article 1(4) of the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States

* Language of the case: English.

relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17),

THE COURT (Fifth Chamber),

composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, D.A.O. Edward and S. von Bahr, Judges,

Advocate General: S. Alber,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Samuel Evans, by R. Plender QC and D. Broatch, Barrister,

— the Motor Insurers' Bureau, by D. O'Brien QC and F. Randolph, Barrister,

— the United Kingdom Government, by G. Amodeo, acting as Agent, P. Roth QC and H. Davies, Barrister,

— the Commission of the European Communities, by C. Tufvesson, C. Ladenburger and M. Shotter, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of S. Evans, represented by R. Plender and D. Broatch, of the Motor Insurers' Bureau, represented by D. O'Brien and F. Randolph, of the United Kingdom Government, represented by J.E. Collins, acting as Agent, P. Roth and H. Davies, and of the Commission, represented by M. Shotter, at the hearing on 11 July 2002,

after hearing the Opinion of the Advocate General at the sitting on 24 October 2002,

gives the following

Judgment

1 By order of 17 May 2000, received at the Court on 13 February 2001, the High Court of Justice of England and Wales, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 234 EC five questions on the interpretation 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, hereinafter 'the Second Directive').

2 Those questions were raised in proceedings between Samuel Evans and the Secretary of State for the Environment, Transport and the Regions (hereinafter 'the Secretary of State') and the Motor Insurers' Bureau (hereinafter 'the MIB') concerning compensation for injuries suffered by Mr Evans in a road traffic accident involving an unidentified vehicle.

Legal background

Community legislation

3 Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition, Series I, 1972 (I), p. 360, hereinafter 'the First Directive'), provides:

'1. 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 1 of the Second Directive is worded as follows:

'1. The insurance referred to in Article 3(1) of Directive 72/166/EEC 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 that the amounts for which such insurance is compulsory are at least:

— in the case of personal injury, ECU 350 000 where there is only one victim; where more than one victim is involved in a single claim, this amount shall be multiplied by the number of victims,

— in the case of damage to property ECU 100 000 per claim, whatever the number of victims.

Member States may, in place of the above minimum amounts, provide for a minimum amount of ECU 500 000 for personal injury where more than one victim is involved in a single claim or, in the case of personal injury and damage to property, a minimum overall amount of ECU 600 000 per claim whatever the number of victims or the nature of the damage.

...

4. 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.

The victim may in any case apply directly to the body which, on the basis of information provided at its request by the victim, shall be obliged to give him a reasoned reply regarding the payment of any compensation.

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.

Member States may limit or exclude the payment of compensation by that body in the event of damage to property by an unidentified vehicle.

They may also authorise, in the case of damage to property caused by an uninsured vehicle, an excess of not more than ECU 500 for which the victim may be responsible.

Furthermore, each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by this body, without prejudice to any other practice which is more favourable to the victim.'

National legislation

5 In the United Kingdom, Article 1(4) of the Second Directive was implemented by means of a number of agreements between the Secretary of State and the MIB.

6 The MIB is a private-law entity of which all insurance companies which offer motor vehicle insurance in the United Kingdom are members. Its main purpose is to pay compensation to victims of accidents caused by uninsured or untraced drivers.

7 The compensation scheme, which was set up before the United Kingdom acceded to the Community, is based on two series of agreements between the Secretary of State and the MIB: the Motor Insurers' Bureau (Compensation of Victims of Uninsured Drivers) Agreement and the Motor Insurers' Bureau (Compensation of Victims of Untraced Drivers) Agreement (hereinafter 'the Agreement').

8 The provisions of the Agreement relevant to this case are as follows:

— The Agreement is to apply to any case in which an application is made to the MIB for a payment in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle on a road in Great Britain where, subject to certain conditions which are not relevant to this case, the applicant for the payment is unable to trace any person responsible for the death or injury (clause 1).

— On any application in a case to which the Agreement applies, the MIB is to award payment of an amount which is to be assessed in the same way as a court, applying as appropriate the laws in force, would assess the damages

which the applicant would have been entitled to recover from the untraced person (clause 3).

— The MIB must cause any application for a payment under the Agreement to be investigated and decide whether to make an award (clause 7).

— The MIB is required to give the applicant a reasoned reply regarding the payment of any compensation. Where the MIB decides to make an award, it must notify the applicant of the amount it proposes to pay and the way in which that amount has been calculated. Where the applicant decides to accept the award, the MIB must pay to the applicant the amount of the award (clauses 9 and 10).

— The applicant is to have a right of appeal to an arbitrator against any decision of the MIB (clause 11).

— Before lodging an appeal, the applicant may make comments to the MIB on its decision and may supply further evidence relating to the application. The MIB may investigate that new evidence and must inform the applicant of the result of such investigation and of any change in its decision (clause 13).

— On appeal, the arbitrator is to decide whether the MIB should make an award under the Agreement and, if so, the amount which it should award to the applicant (clause 16).

— The arbitrator is to be selected from two panels of Queen's Counsel appointed respectively by the Lord Chancellor and the Lord Advocate (clause 18).

— The arbitrator is to decide the appeal on the documents submitted to him, although he may ask the MIB to make any further investigation which he considers desirable, and the applicant may submit comments on the findings of such investigation (clause 17).

— Each party to the appeal is to bear its own costs (clause 21). The MIB is to pay the arbitrator's fees, except where it appears to the arbitrator that there were no reasonable grounds for the appeal, in which case he may decide that his fee ought to be paid by the applicant (clause 22).

9 The Agreement makes no express provision for payment of interest on the compensation awarded or for reimbursement of costs incurred in the proceedings before the MIB.

The main proceedings and the questions referred to the Court

10 On 25 December 1991, Mr Evans was struck by a vehicle which was never traced, causing him physical injury.

11 On 11 June 1992, Mr Evans submitted a request for compensation under the Agreement.

12 On 11 January 1996, the MIB informed Mr Evans that it had decided to make an award of GBP 50 000.

13 Mr Evans appealed against that decision.

14 On 27 August 1996 the arbitrator made her award. She considered that Mr Evans's damages on a full liability basis would have been GBP 58 286 but that that figure should be reduced by 20% by reason of his contributory negligence, resulting in an award of GBP 46 629. Taking into account certain evidence, the arbitrator also took the view that Mr Evans had been dishonest and therefore ordered him to pay the fees of the arbitration. She did not award him interest on the damages.

15 The MIB paid Mr Evans the sum of GBP 46 629, together with his representative's costs of GBP 770 and an *ex gratia* payment of GBP 150, plus VAT.

16 In December 1996, Mr Evans was granted leave to appeal to the High Court against the arbitrator's refusal to award him interest. His appeal was dismissed. In September 1998, the Court of Appeal (England and Wales) (Civil Division) dismissed a further appeal by Mr Evans. In January 1999, the House of Lords refused his application for leave to appeal.

17 On 25 February 1999, Mr Evans commenced proceedings against the Secretary of State for the Environment, Transport and the Regions, who was responsible for the implementation of the First and Second Directives by the United Kingdom. Mr Evans submitted, in essence, that the United Kingdom had failed to implement the Second Directive or had done so inadequately in the following respects:

— the Agreement makes no provision for payment of interest on the damages awarded;

— the Agreement also fails to make provision for payment of the costs incurred by victims in proceedings for compensation;

— victims' access to court is insufficient in that they have a full right of appeal against the determination of the MIB only to an arbitrator and not to a court;

— the United Kingdom has not duly authorised a body to provide compensation for victims of untraced drivers, as required by the Second Directive, since the Agreement does not create rights which such victims can enforce directly against the MIB.

18 Mr Evans maintains that those defects in the transposition of the Second Directive adversely affected him and constitute a sufficiently grave and manifest breach of Community law to found a right to recover damages from the Secretary of State.

19 It was in those circumstances that the High Court of Justice stayed proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. On the proper interpretation of 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 ("the Second Motor Insurance Directive"):

(a) must the arrangements concerning the provision of compensation by the body established or authorised pursuant to Article 1(4) include provision for the payment of interest on the sums found to be payable for the damage to property or personal injuries?

(b) if the answer to question (a) is yes, from what date and on what basis should such interest be calculated?

2. On the proper interpretation of Article 1(4) of the Second Motor Insurance Directive, in circumstances where the compensating body itself has an obligation to investigate the victim's injury and loss (and to incur the costs thereof, including the cost of medical and other reports):

(a) must the arrangements concerning the provision of compensation by the body include provision for the payment of the costs incurred by a victim in preparing and making his application to that body for compensation?

(b) if the answer to question (a) is yes, on what basis are those costs to be calculated in a case where that body has made an offer to the victim in excess of the amount that he finally recovers, which offer the victim declined to accept?

3. On the proper interpretation of Article 1(4) of the Second Motor Insurance Directive, if the victim's application for compensation is determined by a body that is not a court, must he have a full right to appeal against that determination to a court, on both the facts and the law, rather than an appeal to an independent arbitrator having the following principal characteristics:

(i) the victim may appeal to the arbitrator on both the facts and the law;

(ii) when giving notice of appeal, the victim may make further representations and adduce further evidence to the compensating body upon which the compensating body may alter its award prior to the appeal;

(iii) the victim is provided in advance with a copy of all the material to be provided to the arbitrator and is given the opportunity to add any material that he wishes in response;

(iv) the arbitrator makes an award, without an oral hearing, in which he or she decides what award the compensating body ought to make and gives reasons for that decision;

(v) if the victim is dissatisfied, he is entitled to appeal from the arbitrator to the Courts but he may do so only on the grounds of serious irregularity affecting the arbitration or on a question of law (including whether there was any evidence to support any particular conclusion of the arbitrator or whether any particular conclusion was one to which no arbitrator could reasonably come upon the evidence), and in the case of an appeal on a question of law, permission to appeal must be obtained from the Court which will not be given unless the decision of the arbitrator is obviously wrong and it is just and proper in all the circumstances for the Court to determine the question.

4. If the answer to questions l(a) and/or 2(a) and/or 3 is yes, has a Member State duly authorised a body under Article 1(4) of the Second Motor Insurance Directive when an existing body has the task of providing compensation to victims pursuant only to an agreement with the relevant authority of the Member State that does not correspond to the Second Motor Insurance Directive in those respects, and:

(a) that agreement creates a legal obligation owed to the relevant authority of the Member State to provide compensation to victims which is directly enforceable by the relevant authority and does not give such victims a directly enforceable legal right to claim against that body, but the victim may apply to the Court for an order that the authority should enforce the agreement if the authority were to fail to do so; and

(b) that body carries out that obligation by accepting and paying claims from victims in accordance with that agreement; and

(c) the Member State considered in good faith that the provision of that agreement gave at least as good protection to victims as the requirements of the Second Motor Insurance Directive?

5. If the answer to any of questions 1(a) or 2(a) or 3 is yes, and/or if the answer to question 4 is no, does a failure to comply with the Second Motor Insurance Directive in that respect constitute a sufficiently serious breach by the Member State to give rise to liability for damages as a matter of Community law if it is established that such damage was caused?'

The questions referred to the Court

20 The questions referred to the Court, which it is appropriate to consider together, raise a number of problems concerning the nature of the body which the Member States are required to establish in order to implement the Second Directive (fourth question), the remedies which must be available to victims of damage or injury caused by unidentified vehicles or vehicles for which the insurance obligation has not been satisfied (hereinafter 'insufficiently insured vehicles') (third and fourth questions), the need to provide for interest to be payable on sums paid to victims by the abovementioned body (first question), the need to provide for reimbursement of costs incurred by victims pursuing claims for compensation (second question) and the possible liability of the Member State concerned for failure to transpose the Second Directive correctly (fifth question).

Preliminary observations

21 It is appropriate, first, to consider the nature of the system established by the Second Directive for the benefit of victims of damage or injury caused by unidentified or insufficiently insured vehicles.

22 In contrast to victims of damage or injury caused by an identified vehicle, victims injured by an unidentified vehicle are normally unable to enforce their claims in legal proceedings for compensation because of the impossibility of identifying the person against whom proceedings should be brought.

23 In the case of an insufficiently insured vehicle, even if the victim is able to identify the person against whom legal proceedings should be brought, such proceedings are often liable to be fruitless because the defendant does not have the requisite financial resources to comply with the judgment given against him, or even to pay the costs incurred in the proceedings.

24 It is against that background that the first subparagraph of Article 1(4) of the Second Directive provides that each Member State is to 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 or insufficiently insured vehicle.

25 The insurance obligation laid down in Article 3(1) of the First Directive covers civil liability in respect of the use of vehicles, at least on the basis of the minimum amounts of cover set by the Community legislature.

26 As regards the extent of the insurance obligation, the fifth recital in the preamble to the Second Directive indicates that the amounts of compulsory insurance cover must in any event guarantee victims 'adequate compensation'.

27 It is thus clear that the Community legislature's intention was to entitle victims of damage or injury caused by unidentified or insufficiently insured vehicles to protection equivalent to, and as effective as, that available to persons injured by identified and insured vehicles.

28 It must nevertheless be emphasised that, to meet the requirements of the Second Directive, the body responsible for awarding compensation does not necessarily have to be placed, as far as civil liability is concerned, on the same footing as a defendant such as the driver of an identified and sufficiently insured vehicle.

The nature of the body referred to in Article 1(4) of the Second Directive

Observations submitted to the Court

29 According to Mr Evans, the Second Directive has not been implemented in the United Kingdom with the binding force necessary to satisfy the principle of legal certainty. Apart from the fact that the compensation provided for by the Agreement is not the same in all respects as that provided for by that directive,

victims have to rely on an agreement to which they are not parties and on the MIB's practice of failing to take before the courts the point that the Agreement confers no rights on victims which can be enforced against it.

30 The MIB and the United Kingdom Government point out that it is for the Member States to choose the form of the measures to be adopted for implementing a directive and that, where national provisions already in force comply with those of the directive, they do not need to be amended. In their view, the existing system enables victims of damage or injury caused by unidentified vehicles to make application to the MIB directly.

31 In the Commission's view, the MIB appears to be an authorised body within the meaning of Article 1(4) of the Second Directive since it has been entrusted by the public authorities with the role provided for in the Second Directive; it not only has the capacity to pay, but is obliged to pay, compensation to victims; victims have the right to apply directly to that body; and the body is obliged to provide a reasoned reply. At the hearing, however, it expressed doubts as to the possibility of interpreting and applying the Agreement in such a way as to ensure that victims enjoy all the rights conferred on them by the Second Directive.

Findings of the Court

32 The first subparagraph of Article 1(4) of the Second Directive contains no provision concerning the legal status of the body or the detailed arrangements for its authorisation. It expressly allows the Member States to regard compensation by the body as subsidiary and enables them to make provision for the settlement of claims between that body and those responsible for the accident and for relations with other insurers or social security bodies required to compensate the victim in respect of the same accident.

33 The second subparagraph of Article 1(4) makes it clear, however, that a victim of damage or injury caused by an unidentified or insufficiently insured vehicle must be able to apply directly to the authorised body responsible for paying compensation to him.

34 The fact that the source of the obligation of the body in question lies in an agreement concluded between it and a public authority is immaterial, provided that that agreement is interpreted and applied as obliging that body to provide victims with the compensation guaranteed to them by the Second Directive and as enabling victims to address themselves directly to the body responsible for providing such compensation.

35 As to whether it is sufficient, for the purposes of transposing the Second Directive, to rely on an existing body, it must be borne in mind that, whilst legislative action on the part of each Member State is not necessarily required in order to implement a directive, it is essential for national law to guarantee that the national authorities will effectively apply the directive in full, that the legal position under national law should be sufficiently precise and clear and that individuals are made fully aware of all their rights and, where appropriate, may rely on them before the national courts (Case C-365/93 *Commission* v *Greece* [1995] ECR I-499, paragraph 9, and Case C-144/99 *Commission* v *Netherlands* [2001] ECR I-3541, paragraph 17).

36 As the Court has already made clear, the last-mentioned condition is of particular importance where the directive in question is intended to accord rights to nationals of other Member States (*Commission* v *Greece*, cited above, paragraph 9, and *Commission* v *Netherlands*, cited above, paragraph 18). That is the position in relation to the Second Directive, which is intended in particular, according to the fifth recital in its preamble, to guarantee victims adequate protection, irrespective of the Member State in which the accident occurred.

37 In those circumstances, it must be held that a body may be regarded as authorised by a Member State within the meaning of Article 1(4) of the Second Directive where its obligation to provide compensation to victims of damage or injury caused by unidentified or insufficiently insured vehicles derives from an agreement concluded between that body and a public authority of the Member State, provided that the agreement is interpreted and applied as obliging the body to provide victims with the compensation guaranteed to them by the Second Directive and provided that victims may apply directly to that body.

The remedies available to victims

Observations submitted to the Court

38 Mr Evans submits that the arbitration procedure under the Agreement does not comply with the requirements of the principle of effective judicial control, as developed in the case-law of the Court of Justice (Case 222/84 *Johnston* [1986] ECR 1651, paragraphs 18 and 19), or those of the right to a fair trial under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (hereinafter 'the ECHR'). The victim is not granted an oral hearing and can appeal against the arbitrator's award only on the ground of serious irregularity affecting the arbitration or on a question of law, and in the latter case leave to appeal must be obtained.

39 Those procedural rules also constitute, in his view, a breach of the principle of equal treatment, which requires that the Member States afford to victims of damage or injury caused by unidentified vehicles the same judicial protection as that enjoyed by victims injured by vehicles which have been identified, and, in the United Kingdom, the latter are entitled to bring proceedings directly before a court.

40 The MIB and the United Kingdom Government submit, as a preliminary point, that Article 1(4) of the Second Directive prescribes only minimum procedural requirements, namely that a victim of damage or injury caused by an unidentified vehicle must be able to apply directly to the body responsible for awarding compensation. For the rest, the Second Directive refers to the legal systems of the Member States.

41 The United Kingdom Government observes that the procedures adopted for dealing with an application for compensation submitted by victims of damage or injury caused by an unidentified vehicle, far from rendering impossible or excessively difficult the exercise of the rights accruing to victims under the directive, offer them multiple levels of protection. A victim of damage or injury caused by an unidentified vehicle is, in certain respects, in a more favourable situation than a victim injured by an identified but uninsured vehicle, since the procedure available often makes it possible to settle the dispute in a speedier and less costly manner than by recourse to court proceedings.

42 The MIB and the United Kingdom Government also contend that, according to the case-law of the European Court of Human Rights, the question whether a procedure meets the requirements of Article 6 of the ECHR must be considered as a whole, including the role of any appellate court (see European Court of Human Rights, *Bryan* v *United Kingdom*, judgment of 22 November 1995, Series A, No 335).

43 In the Commission's view, it is for the Member States to ensure effective judicial control of the rights which the Second Directive is intended to confer on the victims of unidentified vehicles. It considers the procedure established in the United Kingdom and concludes that application of the criteria developed by the European Court of Human Rights might disclose the existence of shortcomings in the system in force, particularly as regards the status of the arbitrator, the lack of any hearing to establish the facts and the limitations imposed on the right to appeal against the arbitration award.

Findings of the Court

44 The second subparagraph of Article 1(4) of the Second Directive confines itself to laying down minimum procedural requirements by providing that victims of damage or injury caused by unidentified or insufficiently insured vehicles must be able to apply directly to the body responsible for providing them with compensation (see paragraphs 32 to 34 of this judgment) and that that body is required to give a reasoned reply concerning the action taken by it. According to the information available to the Court, clause 9 of the Agreement meets the latter obligation.

45 It is settled case-law that in the absence of Community rules governing the matter it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, however, that such rules are not less favourable than those governing similar domestic actions (the principle of equivalence) and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (the principle of effectiveness) (see, in particular, Case C-120/97 *Upjohn* [1999] ECR I-223, paragraph 32).

46 As regards application of the principle of effectiveness, each case which raises the question whether a national procedural provision renders application of Community law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national instances. In the light of that analysis, the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure, must, where appropriate, be taken into consideration (see Joined Cases C-430/93 and C-431/93 *Van Schijndel and Van Veen* [1995] ECR I-4705, paragraph 19).

47 According to the observations submitted to the Court, the procedure established by the Agreement comprises several phases.

48 It is to be observed at the outset that, although the MIB is not a court, it is nevertheless required to determine the amount of the compensation which it is to pay under the same conditions as those under which a court would, pursuant to the provisions in force in the United Kingdom, determine the amount of damages which a victim would be entitled to obtain from a person identified as responsible.

49 Among the various arrangements for review provided for by the Agreement, the victim may, first, apply for re-examination of the decision taken by the MIB. However, that application must be submitted to the MIB, which itself decides whether it is appropriate to amend its own decision.

50 Second, the victim has a right of appeal to an arbitrator. According to the information before the Court, the arbitrator is appointed under conditions which ensure that he is independent and that he makes his award after making his own assessment of the information in the file. The file must contain, among other things, all the documents lodged by the victim and all comments made by the victim in connection with both the application for compensation and, if appropriate, the application for review. The arbitrator may call on the MIB to undertake additional investigations, on which the victim is entitled to submit his comments.

51 Third, under the general rules on arbitration laid down by the Arbitration Acts, the victim may, in certain cases, appeal against the award to the High Court of Justice. That right of appeal is automatically available to a victim who alleges a serious irregularity affecting the arbitration. That right is also available to the victim, albeit subject to leave being granted by the High Court, if he alleges

infringement of a rule of law, which may include the question whether there was any evidence to support any particular conclusion of the arbitrator or whether any particular conclusion was one to which no arbitrator could reasonably have come upon the evidence considered.

52 Fourth, a victim may, subject to obtaining leave from the competent court, subsequently appeal to the Court of Appeal and then to the House of Lords.

53 As the United Kingdom Government observes, the procedure thus established by the Agreement gives the victim the advantages of speed and economy of legal costs. The United Kingdom Government claimed, without being contradicted, that the bulk of the costs incurred in relation to applications for compensation and gathering of relevant evidence are borne by the MIB, which makes contact with all the witnesses to the accident to obtain statements from them and endeavours to obtain all necessary medical or other expert evidence.

54 In the light of all the foregoing considerations, it must be held that the procedural arrangements laid down by the national law in question do not render it practically impossible or excessively difficult to exercise the right to compensation conferred on victims of damage or injury caused by unidentified or insufficiently insured vehicles by the Second Directive and thus comply with the principle of effectiveness referred to in paragraphs 45 and 46 of this judgment.

55 In view of the objective pursued by the Second Directive which, as stated in paragraphs 21 to 28 of this judgment, is to provide a simple mechanism for compensating victims, it further appears that the cumulative effect of the possibilities of review available under the procedure established in the United

Kingdom and also the practical advantages associated with that procedure confer on victims of damage or injury caused by unidentified or insufficiently insured vehicles a level of protection corresponding to that provided for by that directive.

56 Nevertheless it is important to stress that the procedure established must guarantee that, both in dealings with the MIB and before the arbitrator, victims are made aware of any matter that might be used against them and have an opportunity to submit their comments thereon.

57 It is for the national court to determine whether those conditions have been fulfilled in this case.

58 Subject to that reservation, it must be held that procedural arrangements such as those adopted in the United Kingdom are sufficient to provide the protection to which victims of damage or injury caused by unidentified or insufficiently insured vehicles are entitled under the Second Directive.

Payment of interest on sums paid by way of compensation

Observations of the Court

59 According to Mr Evans, a textual interpretation of Article 1(1) and (4) and Article 3(1) of the Second Directive shows that that directive requires victims of damage or injury caused by an unidentified vehicle and victims of damage or injury caused by identified and insured vehicles are treated in the same way.

Moreover, even if the Second Directive did not impose that rule, that obligation would stem from the general principle of equal treatment. However, that requirement is not fulfilled in the United Kingdom. In contrast to victims of identified and insured vehicles, victims of untraced vehicles do not obtain compensation that includes interest.

60 Referring to the judgment in Case C-271/91 *Marshall* [1993] ECR I-4367, paragraph 31, in which the Court held, with regard to discriminatory dismissal, that the award of interest must be regarded as an essential component of compensation, Mr Evans considers that that principle must apply to the compensation to be paid under the Second Directive to victims of damage or injury caused by unidentified vehicles.

61 The MIB states, as a preliminary point, that, in English law, damages and interest are assessed by the courts at the time of judgment, taking into account any fluctuations in monetary value up to that point. Section 35A of the Supreme Court Act 1981 admittedly gave the courts the power, under certain conditions, to award interest on damages, but that power can be exercised only in court proceedings.

62 The MIB and the United Kingdom Government submit that the aim of the two directives at issue is to provide specified minimum guarantees, but that they do not provide for uniformity in the legislation of the Member States. Neither directive contains any provision relating to the financial components of the compensation or requires equal treatment as between victims of identified vehicles and victims of unidentified vehicles.

63 The MIB and the United Kingdom Government also claim that there is no general principle of Community law that a requirement to pay a monetary amount by way of compensation due under Community law necessarily entails a requirement to pay interest.

64 The Commission refers to the absence, in both the First and Second Directives, of any express provision obliging the Member States to require the body responsible for paying compensation to victims of damage or injury caused by unidentified vehicles to pay interest to them. However, on the basis of a purposive interpretation of that directive and having regard to the case-law of the Court relating to non-contractual liability of the Community (Case C-238/78 *Ireks-Arkady* v *Council and Commission* [1979] ECR 2955, paragraph 20, and Case C-308/87 *Grifoni* v *EAEC* [1994] ECR I-341, paragraph 40) and relating to equal treatment for men and women (*Marshall*, cited above, paragraph 31), it inclines towards the view that the award of interest, under the applicable national rules, must be regarded as an essential component of the compensation referred to in Article 1(4) of the Second Directive.

Findings of the Court

65 First, it must be observed that the Second Directive contains no provision concerning interest on sums awarded by way of compensation for damage or injury caused by unidentified or insufficiently insured vehicles.

66 Under Article 1(4) of the Second Directive, the body responsible for paying compensation for such damage or injuries must do so at least up to the limits of the insurance obligation, so as to guarantee victims adequate compensation.

67 However, compensation for loss is intended so far as possible to provide restitution for the victim of an accident (*Grifoni*, cited above, paragraph 40).

68 Accordingly, compensation for loss cannot leave out of account factors, such as the effluxion of time, which may in fact reduce its value (see, to that effect, *Marshall*, cited above, paragraph 31).

69 In the absence of Community rules it is for the Member States to decide on the rules to be applied to areas covered by the Second Directive and in particular the question of the effluxion of time and definition of the period to be taken into account to guarantee the victims of damage or injury caused by unidentified or insufficiently insured vehicles the adequate compensation which that directive seeks to provide.

70 In that connection, the Member States are free, in order to compensate for the loss suffered by victims as a result of the effluxion of time, to choose between awarding interest or paying compensation in the form of aggregate sums which take account of the effluxion of time.

71 Accordingly, Article 1(4) of the Second Directive is to be interpreted as meaning that the compensation awarded for damage or injuries caused by an unidentified or insufficiently insured vehicle, paid by the body authorised for that purpose, must take account of the effluxion of time until actual payment of the sums awarded in order to guarantee adequate compensation for the victims. It is incumbent on the Member States to lay down the rules to be applied for that purpose.

Reimbursement of costs incurred in connection with the application for compensation

Observations submitted to the Court

72 Mr Evans submits that payment of the costs incurred in relation to an application for compensation constitutes an essential component of the right to compensation. He also relies on the case-law of the European Court of Human Rights, according to which the ECHR is intended to guarantee rights that are practical and effective (see European Court of Human Rights, *Airey* v. *Ireland,* judgment of 9 October 1979, Series A, No 32, § 24).

73 The other parties which have submitted observations repeat *mutatis mutandis* the considerations set out in connection with the first question regarding the award of interest as a component of the right to compensation (see paragraphs 60 to 63 of this judgment).

Findings of the Court

74 First, it is to be observed that the Second Directive contains no provision concerning reimbursement of costs incurred by the victims of damage or injury caused by unidentified or insufficiently insured vehicles in connection with their application to the body responsible for awarding compensation.

75 The view of most of the Member States is that the question of reimbursement of costs incurred in connection with the procedure for obtaining compensation is a procedural matter.

76 As pointed out in paragraph 45 of this judgment, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, in conformity with the principles of equivalence and effectiveness.

77 It is incumbent on the national court to verify whether, under the procedural arrangements adopted in the United Kingdom, those principles are complied with. In particular, it should assess whether, in view of the less advantageous position in which victims find themselves vis-à-vis the MIB and the conditions under which such victims are able to submit their comments on matters that may be used against them, it appears reasonable, or indeed necessary, for them to be given legal assistance.

78 In those circumstances, Article 1(4) of the Second Directive is to be interpreted as meaning that compensation awarded for damage or injury caused by an unidentified or insufficiently insured vehicle, paid by the body authorised for that purpose, is not required to include reimbursement of the costs incurred by victims in connection with the processing of their application for compensation except to the extent to which such reimbursement is necessary to safeguard the rights derived by victims from the Second Directive in conformity with the principles of equivalence and effectiveness. It is for the national court to consider whether that is the case under the procedural arrangements adopted in the Member State concerned.

Possible liability on the part of the Member State concerned

Observations submitted to the Court

79 Mr Evans submits that the conditions necessary to establish a claim for damages against the United Kingdom for failure to implement the Second Directive are

satisfied. The result prescribed by the directive manifestly entails the grant of a right to individuals, the victims of untraced or uninsured vehicles, a class to which the claimant clearly belongs. The extent of that right, namely entitlement to compensation from an authorised body, can be identified from the provisions of the directive. It is not necessary for the Court to consider the question of causality, this being a matter for the national court. Finally, the breach is sufficiently serious because the United Kingdom has failed to adopt any measure whatsoever to implement the directive.

80 For the United Kingdom Government, the first two alleged breaches, resulting from the absence of provisions concerning the award of interest and of provisions concerning reimbursement of expenses in connection with applications for compensation, at the very least raise certain questions. Also, it was reasonable for the United Kingdom to consider that the procedure established satisfied the requirement of effective judicial control. Finally, the alleged breach, consisting in failure properly to authorise the body responsible for compensating victims of damage or injury caused by unidentified vehicles, even if proved, would not in any event have caused Mr Evans to suffer any loss.

81 The Commission considers that it is for the national court to establish whether in this case there has been a sufficiently serious breach of Community law. In that connection, it emphasises, however, that there is no mention of interest and costs, as such, relating to the application for compensation in the Second Directive, that there is no case-law on those points and that the Commission has never previously raised them in relation to transposition of the Second Directive. It adds that the issue of the compatibility of the system established in the United Kingdom with the right of access to the courts calls for further clarification.

Findings of the Court

82 First, as the Court has repeatedly held, the principle of liability on the part of a Member State for damage caused to individuals as a result of breaches of Community law for which the State is responsible is inherent in the system of the Treaty (see, in particular, Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 35; Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 31, and Case C-424/97 *Haim* [2000] ECR I-5123, paragraph 26).

83 As to the conditions to be satisfied for a Member State to be required to make reparation for loss and damage caused to individuals as a result of breaches of Community law for which the State is responsible, the Court has held that these are threefold: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation incumbent on the State and the loss or damage sustained by the injured parties (*Haim*, cited above, paragraph 36).

84 If in light of the examination to be undertaken by the national court in accordance with the guidance given by the Court, the compensation system set up in the United Kingdom is found to be subject to one or more defects of transposition, then it will be incumbent on the national court to determine whether or not those defects have adversely affected Mr Evans.

85 If they have, it will then be necessary to determine whether the non-fulfilment of the United Kingdom's obligation to transpose the Second Directive is sufficiently serious.

86 In that connection, all the factors which characterise the situation must be taken into account. Those factors include, in particular, the clarity and precision of the rule infringed, whether the infringement or the damage caused was intentional or involuntary, whether any error of law was excusable or inexcusable, and the fact that the position taken by a Community institution may have contributed towards the adoption or maintenance of national measures or practices contrary to Community law (see *Haim*, cited above, paragraph 43).

87 Those criteria must in principle be applied by the national courts in accordance with the guidelines laid down by the Court (see, in particular, *Brasserie du Pêcheur and Factortame*, cited above, paragraphs 55 to 58).

88 Accordingly, it is incumbent on the national court, if examination of the existing compensation system discloses a defect in transposition of the Second Directive and if that defect has adversely affected Mr Evans, to determine whether the breach of that obligation of transposition is sufficiently serious.

Costs

89 The costs incurred by the United Kingdom Government and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the High Court of Justice of England and Wales, Queen's Bench Division, by order of 17 May 2000, hereby rules:

1. 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 is to be interpreted as meaning that:

— A body may be regarded as authorised by a Member State within the meaning of that provision where its obligation to provide compensation to victims of damage or injury caused by unidentified or insufficiently insured vehicles derives from an agreement concluded between that body and a public authority of the Member State, provided that the agreement is interpreted and applied as obliging the body to provide victims with the compensation guaranteed to them by Directive 84/5 and provided that victims may apply directly to that body.

— Procedural arrangements such as those adopted in the United Kingdom are sufficient to provide the protection to which victims of damage or injury caused by unidentified or insufficiently insured vehicles are entitled under Directive 84/5.

— The compensation awarded for damage or injuries caused by an unidentified or insufficiently insured vehicle, paid by the body authorised for that purpose, must take account of the effluxion of time until actual payment of the sums awarded in order to guarantee adequate compensation for the victims. It is incumbent on the Member States to lay down the rules to be applied for that purpose.

— The compensation awarded for damage or injury caused by an unidentified or insufficiently insured vehicle, paid by the body authorised for that purpose, is not required to include reimbursement of the costs incurred by victims in connection with the processing of their application for compensation except to the extent to which such reimbursement is necessary to safeguard the rights derived by victims from Directive 84/5 in conformity with the principles of equivalence and effectiveness. It is for the national court to consider whether that is the case under the procedural arrangements adopted in the Member State concerned.

2. It is incumbent on the national court, if examination of the existing compensation system discloses a defect in transposition of Directive 84/5 and if that defect has adversely affected Mr Evans, to determine whether the breach of that obligation of transposition is sufficiently serious.

Jann Edward von Bahr

Delivered in open court in Luxembourg on 4 December 2003.

R. Grass

Registrar

V. Skouris

President