Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

30 April 2025 *

(Reference for a preliminary ruling – Insurance against civil liability in respect of the use of motor vehicles – Directive 2009/103/EC – Article 13(2) – Compensation scheme – Road traffic accident involving a stolen vehicle – Burden of proof in relation to the injured party's knowledge of the theft of that vehicle – Body responsible for compensation – National legislation interpreted in such a way as to place the burden of proof on the injured party – Obligation to interpret national law in conformity with EU law)

In Case C-370/24 [Nastolo], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale ordinario di Lodi (District Court, Lodi, Italy), made by decision of 20 May 2024, received at the Court on 23 May 2024, in the proceedings

AT

v

CT,

THE COURT (Ninth Chamber),

composed of N. Jääskinen, President of the Chamber, M. Condinanzi and R. Frendo (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– AT, by A. Egidi and A.E. Lunghi, avvocati,

– CT, by L. Leo, avvocata,

* Language of the case: Italian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

– the European Commission, by G. Conte, G. Goddin and A. Manzaneque Valverde, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).

2 The request has been made in proceedings between, on the one hand, AT, a natural person injured in a road traffic accident, and, on the other hand, CT, the undertaking designated by the Fondo di garanzia per le vittime de la strada (Guarantee Fund for Road Accident Victims; 'the FGVS'), concerning compensation for the harm suffered by AT as a result of that accident.

Legal context

European Union law

3 Recitals 1, 2 and 20 of Directive 2009/103 state:

'(1) 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 1972 L 103, p. 1)], 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)], 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)] and Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 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 amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) [(OJ 2000 L 181, p. 65)] have been substantially amended several times. In the interests of clarity and rationality those four Directives should be codified, as well as 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)].

(2) Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings as it constitutes an important part of non-life insurance business in the [European] Community. Motor

insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the internal market in motor insurance.

…

(20) Motor vehicle accident victims should be guaranteed comparable treatment irrespective of where in the Community accidents occur.'

4 Article 3 of Directive 2009/103, entitled 'Compulsory insurance of vehicles', provides:

'Each Member State shall, subject to Article 5, 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 the measures referred to in the first paragraph.

…

The insurance referred to in the first paragraph shall cover compulsorily both damage to property and personal injuries.'

5 Article 10 of that directive, entitled 'Body responsible for compensation', provides:

'1. 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 Article 3 has not been satisfied.

…

2. …

Member States may, however, 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 13 of that directive, entitled 'Exclusion clauses', provides, in paragraphs 1 and 2:

'1. Each Member State shall take all appropriate measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 shall be deemed to be void in respect of claims by third parties who have been victims of an accident where that statutory provision or contractual clause excludes from insurance the use or driving of vehicles by:

(a) persons who do not have express or implied authorisation to do so;

(b) persons who do not hold a licence permitting them to drive the vehicle concerned;

(c) persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned.

However, the provision or clause referred to in point (a) of the first subparagraph 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.

2. In the case of vehicles stolen or obtained by violence, Member States may provide that the body specified in Article 10(1) is to pay compensation instead of the insurer under the conditions set out in paragraph 1 of this Article. …

…'

Italian law

7 Article 283(1) and (2) of decreto legislativo n. 209 – Codice delle assicurazioni private (Legislative Decree No 209 establishing the Private Insurance Code) of 7 September 2005 (GURI No 239 of 13 October 2005, Ordinary Supplement No 163), in the version applicable to the dispute in the main proceedings, provides:

'1. The Guarantee Fund for Road Accident Victims, set up within the [Concessionaria Servizi Assicurativi Pubblici SpA (Consap)], shall pay compensation for damages caused by the use of vehicles and vessels, for which insurance is compulsory, in cases where:

…

(d) the vehicle is being used against the will of its owner, …

2. In the case referred to in paragraph 1(d), compensation shall be payable, in respect of both personal injuries and material damage, only to non-travelling third parties and to passengers travelling against their will or who have no knowledge of the unlawful use of the vehicle.'

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

8 On 6 January 2016, AT was invited into a car – as a passenger – which the driver had in his possession. During the journey, a road traffic accident occurred in Lodi (Italy). The two occupants of that car had to be transported to hospital, AT having suffered significant physical injuries.

9 It is apparent from the order for reference that the driver tested positive for cocaine, opiates and tetrahydrocannabinol. In addition, in their report, the local police officers found that the car had been stolen.

10 As a result, the driver and AT were prosecuted for the offence of handling stolen goods. At the end of those proceedings, AT was acquitted because she was not the perpetrator of the offence. In the meantime, the driver died.

11 On 11 February 2022, AT brought an action before the Tribunale ordinario di Lodi (District Court, Lodi, Italy), which is the referring court, against the heir of the driver and CT, in its capacity as an undertaking designated by the FGVS, seeking compensation for the harm suffered as a result of the accident; it was quantified in the amount of EUR 233 076, together with interest and following adjustment.

12 CT submits before the referring court, first, that the compensation provided for in Article 283 of the Private Insurance Code, in the version applicable to the dispute in the main proceedings, is payable only to passengers who had no knowledge that, at the time of the accident, they were in a vehicle the use of which was unlawful and, second, that, according to the case-law of the Corte suprema di cassazione (Supreme Court of Cassation, Italy), it is for the injured party to prove that he or she did not know the use of that vehicle was unlawful. In that context, CT argues that the judgment acquitting AT is irrelevant.

13 AT submits that Article 13 of Directive 2009/103 is sufficiently clear in that it imposes the burden of proof on the FGVS. In addition, it requests that the national provision which is in conflict with EU law be disapplied.

14 The referring court states that the Corte suprema di cassazione (Supreme Court of Cassation) and the courts ruling on the substance of the case interpret the national legislation applicable in the main proceedings as meaning that the burden of proving the lack of knowledge of the unlawfulness of the origin of the vehicle concerned lies with the injured party, as a constituent element of his or her claim for compensation.

15 In that regard, the Corte suprema di cassazione (Supreme Court of Cassation) held that to impose on the injured party the burden of proving that he or she acted in good faith comes within the discretion which the Member State concerned enjoys in implementing Directive 2009/103. In addition, the objective pursued by national law remains identical to that pursued by EU law, namely to preclude a person who knew that the vehicle concerned was stolen from being paid compensation.

16 Consequently, the referring court considers it useful to ask the Court to rule on the interpretation of Article 13 of Directive 2009/103. That article allows Member States to provide that the body specified in Article 10(1) of that directive is to pay compensation to the victim of an accident caused by a stolen vehicle. However, even though the national legislature made provision for the payment of compensation by that body, that directive does not contain any provision which expressly states that the burden of proving that the injured party knew that the vehicle concerned was being used unlawfully lies with that body. The second subparagraph of Article 13(1) of Directive 2009/103 refers only to the specific case where a claim is made against an insurance company.

17 However, according to that court, a combined reading of the second subparagraph of Article 10(2) of Directive 2009/103 and Article 13(2) of that directive suggests that it is for the body specified in Article 10(1) of that directive to prove that the vehicle concerned was stolen.

18 Similarly, the referring court is of the view that the general principle that the injured party is always entitled to compensation (*vulneratus ante omnia reficiendus*) – which underpins all the EU rules on compulsory motor vehicle insurance and on which the Court has frequently based its decisions on the matter – also weighs in favour of an interpretation of Article 13 of Directive 2009/103 to that effect. Thus, assuming that the *ratio legis* of that article is to allow the innocent injured party to have access to fair compensation, it would be difficult to hold that person responsible for proving a circumstance which is almost impossible to demonstrate.

19 In addition, the principle of effectiveness of EU law may be undermined should the person seeking compensation for the harm he or she suffered be required to provide evidence of a negative circumstance, which it may even be almost impossible to establish.

20 Last, according to the referring court, Article 13 of Directive 2009/103 has not yet been interpreted by the Court. It has so far only been called upon to rule on the interpretation to be given to the earlier legislation on the matter, repeatedly holding that statutory provisions or contractual clauses which have the effect of excluding the applicability of an insurance policy may be invoked against the victims of an accident only 'where the insurer can prove that the persons who voluntarily entered the vehicle which caused the [damage or] injury knew that it was stolen'.

21 In those circumstances, the Tribunale ordinario di Lodi (District Court, Lodi) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 13 of Directive [2009/103] to be interpreted as meaning that, in the case of a road traffic accident involving a passenger travelling in a stolen vehicle, it is for the body responsible for providing compensation within the meaning of Article 10 of [that directive] to prove that the injured party knew that the vehicle had been stolen?

(2) If so, does that provision, as thus interpreted, preclude legislation, such as the Italian legislation, interpreted and applied as meaning that the burden of proof is on the injured passenger?'

Consideration of the questions referred

22 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 13(2) of Directive 2009/103 must be interpreted as meaning that, first, it is for the body specified in Article 10(1) of that directive to prove, in order to discharge itself from its obligation to pay compensation, that, in the event of a road traffic accident, the injured party having voluntarily entered the vehicle which caused the damage or injury knew that it was stolen and, second, it precludes national case-law which interprets national legislation as meaning that, in such a situation, it is for that person to prove that he or she did not know that that vehicle had been stolen in order to obtain compensation for the harm he or she suffered.

23 The first paragraph of Article 3 of Directive 2009/103 provides that each Member State is, subject to Article 5 of that directive, 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.

24 In that regard, under Article 10 of Directive 2009/103, 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 vehicle or a vehicle for which the insurance obligation provided for in Article 3 of that directive has not been satisfied.

25 The first subparagraph of Article 13(2) of Directive 2009/103 provides that, in the case of vehicles stolen or obtained by violence, Member States may provide that the body specified in Article 10(1) thereof 'is to pay compensation instead of the insurer under the conditions set out in paragraph 1 of [Article 13]'.

26 It should be noted that it is clear from the wording of the first subparagraph of Article 13(2) of Directive 2009/103 that the EU legislature intended to apply to that body the conditions and limitations applicable to insurers under Article 13(1) of that directive.

27 In the present case, it is apparent from the order for reference that the Italian Republic opted for the payment of compensation by the body specified in Article 10(1) of Directive 2009/103 in the event of damage or injury caused by vehicles used against the will of their owner.

28 Where a Member State has opted for the payment of compensation by that body in the event of damage or injury caused by stolen vehicles, it is required, in accordance with Article 13(2) of that directive, inter alia, to observe the conditions laid down in Article 13(1) of that directive.

29 In that regard, under the first subparagraph of Article 13(1) of Directive 2009/103, a civil liability motor insurance company may not refuse to compensate third party victims of an accident caused by an insured vehicle by relying on statutory provisions or contractual clauses contained in an insurance policy excluding from insurance against civil liability in respect of motor vehicles damage or injury caused to third party victims as a result of the use or driving of the insured vehicle by persons who do not have authorisation to drive that vehicle, by persons who do not hold a driving licence or by persons who are in breach of the statutory technical requirements concerning the condition and safety of that vehicle (judgment of 19 September 2024, *Matmut*, C-236/23, EU:C:2024:761, paragraph 33).

30 By way of derogation from that first subparagraph, the second subparagraph of Article 13(1) of Directive 2009/103 provides that certain victims may not be compensated by the insurance company, in the light of the situation which they have themselves created, namely in cases where the vehicle which caused the damage or injury was used or driven by persons who did not have express or implied authorisation to do so and where third party victims voluntarily entered that vehicle, knowing that it had been stolen (judgment of 19 September 2024, *Matmut*, C-236/23, EU:C:2024:761, paragraph 34).

31 In that regard, it should be noted that, since the second subparagraph of Article 13(1) of Directive 2009/103 establishes a derogation from a general rule, that provision must be interpreted strictly (order of 13 October 2021, *Liberty Seguros*, C-375/20, EU:C:2021:861, paragraph 61 and the case-law cited).

32 Any other interpretation would allow Member States to limit compensation to third party victims of a road traffic accident to certain circumstances, which Directive 2009/103 is intended precisely to avoid (order of 13 October 2021, *Liberty Seguros*, C-375/20, EU:C:2021:861, paragraph 62 and the case-law cited).

33 In the light of those considerations, the Court has held that the first subparagraph of Article 13(1) of that directive must be interpreted as meaning that a statutory provision or a contractual clause contained in an insurance policy, which excludes from insurance the use or driving of vehicles, can be invoked against third party victims of a road traffic accident only in cases where the insurer can prove that individuals who willingly entered the vehicle which caused the damage or injury did so in the knowledge that it had been stolen (order of 13 October 2021, *Liberty Seguros*, C-375/20, EU:C:2021:861, paragraph 63 and the case-law cited).

34 It follows that, in the light of the wording of Article 13(2) of Directive 2009/103, where a Member State has opted for the payment of compensation by the body specified in Article 10(1) of Directive 2009/103 in the event of damage or injury caused by stolen vehicles, it is for that Member State to prove that the injured parties who voluntarily entered the vehicle which caused the damage or injury knew that that vehicle was stolen in order to be able to invoke against those victims a statutory provision or a contractual clause contained in an insurance policy, which excludes from that insurance the use or driving of vehicles, in such circumstances.

35 That finding is confirmed both by the context of Article 13(2) of Directive 2009/103 and by the objectives pursued by that directive, which, according to the Court's settled case-law, must be taken into account when interpreting that provision (see, by analogy, judgment of 18 December 2019, *IT Development*, C-666/18, EU:C:2019:1099, paragraph 37).

36 As regards the context of Article 13(2) of Directive 2009/103, the finding that the burden of proof in question lies with the body specified in Article 10(1) of that directive is also consistent with the second subparagraph of Article 10(2) thereof, according to which it is for that body, in order to exclude its obligation to pay compensation, to prove that injured parties who voluntarily entered the vehicle which caused the damage or injury knew that that vehicle was uninsured. Thus, in such a situation, the burden of proving knowledge of the fact that that vehicle was not insured is also borne by that body and not by the victim of the road traffic accident.

37 So far as concerns the objectives pursued by Directive 2009/103, it should be borne in mind that, as stated in recital 1 thereof, that directive codified Directive 72/166, Second Directive 84/5, Third Directive 90/232, Directive 2000/26 and Directive 2005/14. Those directives progressively defined the obligations of Member States with respect to compulsory insurance. They are intended, first, to ensure the free movement of vehicles normally based in the territory of the European Union 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 (judgment of 19 September 2024, *Matmut*, C-236/23, EU:C:2024:761, paragraph 29 and the case-law cited).

38 In addition, it is apparent from recitals 2 and 20 of Directive 2009/103 that that directive pursues, in essence, the same objectives as those of those directives (see, to that effect, judgment of 19 September 2024, *Matmut*, C-236/23, EU:C:2024:761, paragraph 30 and the case-law cited).

39 The development of the EU legislation concerning compulsory insurance shows that the objective of protecting the victims of accidents caused by vehicles has continuously been pursued and reinforced by the EU legislature (judgment of 19 September 2024, *Matmut*, C-236/23, EU:C:2024:761, paragraph 31 and the case-law cited).

40 Thus, having regard to the objective of protecting victims of road traffic accidents caused by motor vehicles, pursued by Directive 2009/103, the victim of a road traffic accident cannot be required to prove that he or she did not know that the vehicle in which he or she entered had been stolen, since such a burden of proof would run counter to that objective.

41 Therefore, in the light of the information available to the Court, national case-law which places the burden of proving lack of knowledge of the unlawfulness of the origin of the vehicle which caused the road traffic accident on the victim of that accident, as a constituent element of his or her claim for compensation, does not appear, subject to the verifications which it will be for the referring court to carry out, to comply with the requirements stemming from Article 13(2) of Directive 2009/103.

42 In order to give a useful answer to the referring court, it is necessary to clarify the obligations incumbent on the national court in the event that the national case-law is not consistent with Article 13(2) of Directive 2009/103.

43 It must be borne in mind that, as the Court has consistently held, when national courts apply domestic law, they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive at issue in order to achieve the result sought by that directive and consequently comply with the third paragraph of Article 288 TFEU. That obligation to interpret national law in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (judgment of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, paragraph 41 and the case-law cited).

44 Moreover, the Court has ruled on numerous occasions that the principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive at issue is fully effective and to achieving an outcome consistent with the objective pursued by it (judgment of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, paragraph 42).

45 In that context, the Court has held that the obligation to interpret national law in conformity with EU law requires national courts, including those adjudicating at last instance, to change settled national case-law, where necessary, if it is based on an interpretation of domestic law that is incompatible with the objectives of a directive. Consequently, a national court cannot, in particular, validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law, for the sole reason that that provision has consistently been interpreted in a way that is incompatible with EU law (see, to that effect, judgment of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, paragraphs 43 and 44).

46 Thus, it will be for the referring court to ensure that Directive 2009/103 is given full effect, and if necessary to disapply, of its own motion, the interpretation adopted by the Italian courts, in so far as that interpretation is not consistent with EU law (see, by analogy, judgment of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, paragraph 44 and the case-law cited).

47 However, that obligation to interpret national law in conformity with EU law is limited by the general principles of law, particularly that of legal certainty, in the sense that it cannot serve as the basis for an interpretation of national law *contra legem* (judgment of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, paragraph 45).

48 In that regard, although it is not for the Court to rule on the interpretation of Italian law, it should nevertheless be noted that, according to the national case-law referred to in the order for reference, the national rule under which the burden of proof in question lies on the injured party is not clearly expressed in Article 283 of Legislative Decree No 209. If that is indeed the case, an interpretation consistent with Directive 2009/103 cannot be regarded as *contra legem*.

49 In the light of all the foregoing considerations, the answer to the questions referred is that Article 13(2) of Directive 2009/103 must be interpreted as meaning that, first, it is for the body specified in Article 10(1) of that directive to prove, in order to discharge itself from its obligation to pay compensation, that, in the event of a road traffic accident, the injured party who voluntarily entered the vehicle which caused the damage or injury knew that it was stolen and, second, it precludes national case-law which interprets national legislation as meaning that, in such a situation, it is for that person to prove that he or she did not know that that vehicle had been stolen in order to obtain compensation for the harm he or she suffered.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Ninth Chamber) hereby rules:

Article 13(2) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability

must be interpreted as meaning that, first, it is for the body specified in Article 10(1) of that directive to prove, in order to discharge itself from its obligation to pay compensation, that, in the event of a road traffic accident, the injured party who voluntarily entered the vehicle which caused the damage or injury knew that it was stolen and, second, it precludes national case-law which interprets national legislation as meaning that, in such a situation, it is for that person to prove that he or she did not know that that vehicle had been stolen in order to obtain compensation for the harm he or she suffered.

[Signatures]