JUDGMENT OF THE COURT (Second Chamber)

17 March 2011 *

In Case C-484/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal da Relação do Porto (Portugal), made by decision of 24 November 2009, received at the Court on 30 November 2009, in the proceedings

Manuel Carvalho Ferreira Santos

v

Companhia Europeia de Seguros SA,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev (Rapporteur), A. Rosas, A. Ó Caoimh and P. Lindh, Judges,

* Language of the case: Portuguese.

Advocate General: V. Trstenjak,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Portuguese Government, by L. Inez Fernandes, acting as Agent,

— the German Government, by T. Henze and J. Möller, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by L. Ventrella, avvocato dello Stato,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the European Commission, by N. Yerrell and M. Telles Romão, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 December 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360; 'the First Directive'), Article 2(1) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17; 'the Second Directive'), and 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 has been made in proceedings between Mr Carvalho Ferreira Santos ('Mr Carvalho') and Companhia Europeia de Seguros SA ('Europeia de Seguros') regarding the compensation payable by Europeia de Seguros, on the basis of civil liability in respect of the use of motor vehicles, for the damage suffered by Mr Carvalho when his vehicle was involved in a collision with a vehicle which was insured against civil liability by Europeia de Seguros.

Legal context

European Union law

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

'Each Member State shall … take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance. The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures.'

4 Article 2(1) of the Second Directive provides:

'Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3(1) of [the First Directive], which excludes from insurance the use or driving of vehicles by:

— persons who do not have express or implied authorisation thereto,

or

— persons who do not hold a licence permitting them to drive the vehicle concerned,

or

— persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned,

shall, for the purposes of Article 3(1) of [the First Directive], be deemed to be void in respect of claims by third parties who have been victims of an accident.

However the provision or clause referred to in the first indent may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen.

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

5 Article 1 of the Third Directive provides:

'Without prejudice to the second subparagraph of Article 2(1) of [the Second Directive], the insurance referred to in Article 3(1) of [the First Directive] shall cover

liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

...'

6 Article 4 of 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 (OJ 2005 L 149, p. 14), headed 'Amendment of Directive 90/232/EEC', provides:

'Directive 90/232/EEC shall be amended as follows:

...

(2) the following Article shall be inserted:

"*Article 1a*

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

...'

7 Article 12 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), headed 'Special categories of victim', provides:

'1. Without prejudice to the second subparagraph of Article 13(1), the insurance referred to in Article 3 shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle.

…

3. The insurance referred to in Article 3 shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law.

This Article shall be without prejudice either to civil liability or to the quantum of damages.'

National law

8 Article 503(1) of the Portuguese Civil Code states:

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

9 According to Article 504(1) of the Portuguese Civil Code:

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

10 Article 506 of the Portuguese Civil Code provides:

'1. If a collision between two vehicles causes damage in relation to one or both thereof, and neither driver is at fault in the accident, liability shall be apportioned in accordance with the extent to which the risk posed by each vehicle contributed to the damage; if the damage was caused by only one of those vehicles, without any fault on the part of either driver, only the person who caused that damage is obliged to pay compensation.

2. In the event of doubt, both vehicles shall be regarded as having contributed equally to the damage, and the drivers as equally at fault.'

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

11 On 5 August 2000, the moped driven by Mr Carvalho collided with a car driven by Mr Nogueira Teixeira. Mr Carvalho, who suffered cranioencephalic trauma, was taken to hospital and remained confined to bed for several months. Since then he has been unable to work.

12 Following that accident, Mr Carvalho brought an action against Europeia de Seguros, as insurer of Mr Nogueira Teixeira against civil liability in respect of the use of motor vehicles. By that action, Mr Carvalho claims EUR 154 456,36 in compensation for the material and non-material damage he suffered in that accident.

13 The referring court found that neither driver was at fault. Since a doubt remained regarding the extent of the contribution of the vehicles involved in the accident to the damage which occurred, Article 506(2) of the Portuguese Civil Code applied, with the result that the civil liability of each driver was fixed at 50 %.

14 According to that court, the liability of the driver of the vehicle which caused the damage is reduced in accordance with the contribution of the victim's vehicle to the occurrence of that damage. The limitation of that liability means that there is a proportionate limitation of the compensation payable to the victim by Europeia de Seguros, on the basis of insurance against civil liability in respect of the use of motor vehicles.

15 The referring court considers that the fact that a driver who is the victim of the accident himself contributed to the damage resulting from the collision does not thereby deprive him of his status as the injured party within the meaning of Article 1(2) of the First Directive. Thus, the driver who is the victim would be covered, with regard to compensation for personal injuries sustained, by the principle of the protection of victims of traffic accidents affirmed by the Court in Case C-537/03 *Candolin and Others* [2005] ECR I-5745.

16 On the basis of that principle, the referring court considers that the Court held that national law which allows the compensation payable to victims of traffic accidents to be reduced or limited on the ground that they contributed to the damage they have suffered infringes European Union ('EU') law because it deprives Article 3(1) of the First Directive, Article 2(1) of the Second Directive, and Article 1 of the Third Directive of their effectiveness.

17 The referring court considers in particular that, while acknowledging that civil liability is an area which remains within the competence of the Member States, the Court made clear that they must exercise their powers in compliance with EU law, which permits the compensation payable to the victim by means of the compulsory insurance against civil liability in respect of the use of motor vehicles to be reduced only in exceptional circumstances on the basis of an assessment of his particular case.

18 In the light of that case-law of the Court, the referring court has doubts concerning the compatibility of the civil liability rules applicable in the main proceedings with the abovementioned provisions of EU law.

19 In those circumstances, the Tribunal da Relação do Porto (Court of Second Instance, Porto) (Portugal) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'In a motor vehicle collision in which none of the drivers is liable for the accident on the basis of fault, and which has caused personal injury and material loss to one of the drivers (the injured party claiming compensation), is it contrary to Community law, in particular Article 3(1) of the [First Directive], Article 2(1) of the [Second Directive] and Article 1 of the [Third Directive], as those provisions have been interpreted by the [Court], for it to be possible to apportion liability for risk (Article 506(1) and (2) of the Civil Code) with a direct impact on the amount of compensation to be awarded to the injured party for the material and non-material loss resulting from the personal injuries suffered (since that apportionment of liability for risk will entail a commensurate reduction in the amount of compensation)?'

Consideration of the question referred

20 By its question, the referring court wishes to know, essentially, whether Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive must be interpreted as precluding national provisions which, in the case of a collision between two motor vehicles which has caused damage, where neither driver is at fault, apportions the liability for such damage in accordance with the extent of the contribution of each of those vehicles to the occurrence of the damage and, in the event of doubt in that regard, fixes the contributions at parity.

21 The Portuguese Government explains that the victim's right of compensation is directly and proportionately linked, pursuant to Articles 483 and 499 of the Portuguese Civil Code, to the share of civil liability determined according to Article 506 of that code.

22 The German, Italian and Austrian Governments submit that it is apparent both from the objective and the wording of the First and Second Directives that they do not aim to harmonise Member States' rules on civil liability. The objective of the EU legislature was to regulate the extent of compulsory insurance against civil liability in respect of the use of motor vehicles and not the rules of civil liability applicable to accidents involving those vehicles.

23 According to those governments, it follows that the compatibility with EU law of the criteria for allocation of damage defined by national law on civil liability does not fall within the scope of the First and Second Directives. Furthermore, the application of those directives presupposes that the question of the determination of the extent of damage for which reparation can be made has already been resolved by the law on civil liability.

24 In that regard, it should be noted that the preambles to the First and Second Directives show that their aim is, first, to ensure the free movement of vehicles normally based on EU territory and of persons travelling in those vehicles and, second, to guarantee that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred (see Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 13, and Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711, paragraph 24).

25 For that purpose, according to the eighth recital in its preamble, the First Directive established a system based on the presumption that vehicles normally based on EU territory are covered by insurance. Article 3(1) of that directive thus provides that Member States are to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in their territory is covered by insurance (*Mendes Ferreira and Delgado Correia Ferreira*, paragraph 25).

26 The original version of that article however left it to the Member States to determine the extent of the liability covered and the terms and conditions of the compulsory insurance against civil liability in respect of the use of motor vehicles. In order to reduce the disparities which continued to exist between the laws of the Member States as regards the extent of the obligation to insure, as stated in the third recital in the preamble to the Second Directive, Article 1 of the Second Directive required civil liability for damage to property and personal injuries to be compulsorily covered up to specified sums, and Article 1 of the Third Directive extended that obligation to provide cover for personal injuries to passengers other than the driver (*Mendes Ferreira and Delgado Correia Ferreira*, paragraph 26).

27 Article 3(1) of the First Directive, as amplified and supplemented by the Second and Third Directives, thus requires the Member States to ensure that civil liability in respect of the use of vehicles normally based in their territory is covered by insurance, and specifies, inter alia, the types of damage and the third-party victims to be covered by that insurance (*Mendes Ferreira and Delgado Correia Ferreira*, paragaph 27).

28 The Court has already ruled on the consequences to be drawn from that obligation with regard to the compensation, by means of compulsory insurance against civil liability in respect of the use of motor vehicles, for damage to third-party victims, on the basis of the civil liability of the insured person.

29 Thus, in view of the aim of protecting victims, which is restated many times in the directives at issue, the Court has held that Article 3(1) of the First Directive precludes an insurer against civil liability in respect of the use of motor vehicles from relying on statutory provisions or contractual clauses in order to refuse to compensate third-party victims of an accident caused by the insured vehicle (*Ruiz Bernáldez*, paragraph 20, and *Candolin and Others*, paragraph 18).

30 The Court has also held that the first subparagraph of Article 2(1) of the Second Directive simply repeats that obligation with respect to provisions or clauses in an insurance policy excluding from insurance cover against civil liability in respect of motor vehicles damage caused to third parties as a result of the use or driving of the insured vehicle by persons not authorised to drive the vehicle, persons not holding a driving licence or persons in breach of the statutory technical requirements concerning the condition and safety of the vehicle (*Ruiz Bernáldez*, paragraph 21, and *Candolin and Others*, paragraph 19).

31 It should however be noted that the obligation to provide insurance cover against civil liability for damage caused to third parties by motor vehicles is separate from the extent of the compensation to be afforded to them on the basis of the civil liability of the insured person. Whereas the former is defined and guaranteed by EU legislation, the latter is, essentially, governed by national law (see, to that effect, Case C-356/05 *Farrell* [2007] ECR I-3067, paragraph 32).

32 In that regard, the Court has already held that it is apparent from the aim of the First, Second and Third Directives, and from their wording, that they do not seek to harmonise the rules of the Member States governing civil liability and that, as EU law stands at present, the Member States are free to determine the rules of civil liability applicable to road accidents (*Candolin and Others*, paragraph 24, and *Farrell*, paragraph 33).

33 It is apparent from the wording of Article 3(1) of the First Directive that the EU legislature did not wish to specify the type of civil liability, whether liability for fault or liability for risk, in respect of the use of the vehicles, which must be covered by compulsory insurance.

34 However, Member States are obliged to ensure that the civil liability arising under their domestic law is covered by insurance which complies with the provisions of the three abovementioned directives (*Farrell*, paragraph 33).

35 Furthermore, with regard to the law concerning civil liability, the Court has also held that the Member States must exercise their powers in that field in compliance with EU law and, in particular, with Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive (*Candolin and Others*, paragraph 27, and *Farrell*, paragraph 34).

36 The national provisions regarding the law on civil liability which govern compensation for road accidents cannot, therefore, deprive those provisions of their effectiveness (*Candolin and Others*, paragraph 28, and *Farrell*, paragraph 34).

37 That would be the case if the victim's responsibility for the damage suffered by him, as it results from an assessment in accordance with the national law on civil liability of his contribution to the occurrence of that damage, resulted in the automatic exclusion or disproportionate limitation of his right to compensation by means of compulsory insurance against civil liability in respect of the use of motor vehicles for the damage caused by the insured person.

38 In that regard, the Court has held that 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 by means of compulsory insurance against civil liability in respect of the use of motor vehicles solely on the basis of his contribution to the occurrence of that damage. It is only in exceptional circumstances that, on the basis of an individual assessment and in compliance with EU law, the extent of such a right may be limited in a proportionate manner (*Candolin and Others*, paragraph 30, and *Farrell*, paragraph 35).

39 In the present case, the main proceedings concern the compensation, on the basis of civil liability, for the damage suffered by the driver of a motor vehicle which collided with another motor vehicle, where neither driver was at fault. In contrast to the facts which led to the judgments in *Candolin and Others*, and in *Farrell*, the reduction of the compensation for the damage suffered by the driver stems not from a limitation of the insurance cover against civil liability, but from a limitation of the insured person's civil liability under the applicable civil liability rules.

40 Under Article 506(1) of the Portuguese Civil Code, if a collision between two vehicles causes damage, and neither driver is at fault, the drivers' civil liability is to be apportioned in accordance with the contribution of each vehicle to the occurrence of that damage. In the event of doubt as to the extent of the contribution of the vehicles to

the occurrence of the damage, Article 506(2) of the Portuguese Civil Code provides for the contributions to be fixed at parity.

41 In other words, the national legislation applicable to the main proceedings seeks to apportion the civil liability for damage caused by a collision between two motor vehicles, where neither driver is at fault.

42 As stated by the Portuguese Government, that apportionment of liability will determine the compensation payable by each driver, on the basis of their respective civil liability, for the damage caused by the collision.

43 Contrary to the respective legal contexts which led to the judgments in *Candolin and Others*, and in *Farrell*, Article 506 of the Portuguese Civil Code does not automatically exclude or limit disproportionately the right of the victim, in the present case that of the driver of a motor vehicle who suffered personal injury in a collision with another motor vehicle, to compensation by means of compulsory insurance against civil liability in respect of the use of motor vehicles. That provision confines itself to providing that civil liability is apportioned in accordance with the contribution of each of the vehicles to the occurrence of the damage which, consequently, influences the amount of compensation.

44 Thus, it must be held that that provision does not affect the obligation under EU law to ensure that civil liability arising under national law is covered by insurance which complies with the provisions of the three abovementioned directives.

45 That conclusion is moreover confirmed by Article 1a of the Third Directive, inserted in that directive by Directive 2005/14 which contains a reference, with regard to personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised road-users, to national civil law. Since that provision provides that such damage is covered by compulsory insurance against civil liability in respect of the use of motor vehicles to the extent that the injured parties are entitled to compensation in accordance with national law, no different conclusion can be reached with regard to the driver of a motor vehicle, where he is both the victim of the accident and jointly responsible for the personal injuries which he suffered as a result of an accident involving another vehicle. In that regard, it is also apparent from Article 12 of Directive 2009/103 that coverage by compulsory insurance of damage caused to special categories of victims, including non-motorised users and passengers, is without prejudice either to civil liability or to the quantum of damages.

46 In the light of the above considerations, the answer to the question referred is that Article 3(1) of the First Directive, Article 2(1) of the Second Directive and Article 1 of the Third Directive must be interpreted as not precluding national provisions which, in the case of a collision between two motor vehicles which has caused damage, where neither driver is at fault, apportions the liability for that damage in accordance with the extent of the contribution of each of those vehicles to the occurrence of the damage and, in the event of doubt in that regard, fixes the contributions at parity.

Costs

47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, Article 2(1) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and Article 1 of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, must be interpreted as not precluding national provisions which, in the case of a collision between two motor vehicles which has caused damage, where neither driver is at fault, apportions the liability for that damage in accordance with the extent of the contribution of each of those vehicles to the occurrence of the damage and, in the event of doubt in that regard, fixes the contributions at parity.

[Signatures]