JUDGMENT OF THE COURT (Fifth Chamber)
14 September 2000 *

In Case C-348/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal da Comarca de Setúbal (Portugal) for a preliminary ruling in the proceedings pending before that court between

Vitor Manuel Mendes Ferreira and Maria Clara Delgado Correia Ferreira

and

Companhia de Seguros Mundial Confiança SA,

on the interpretation of the 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) and the 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),

* Language of the case: Portuguese.

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, President of the Chamber, L. Sevón (Rapporteur), P.J.G. Kapteyn, P. Jann and H. Ragnemalm, Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Mr Mendes Ferreira and Mrs Delgado Correia Ferreira, by M.H. Macau Ferreira, of the Montemor-o-Novo Bar,

— Companhia de Seguros Mundial Confiança SA, by J. Geraldes, of the Lisbon Bar,

— the Italian Government, by U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, and O. Fiumara, Avvocato dello Stato,

— the Commission of the European Communities, by A. Caeiro, Principal Legal Adviser, and F. de Sousa Fialho, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 21 October 1999,

gives the following

Judgment

1 By order of 15 July 1998, received at the Court on 24 September 1998, the Tribunal da Comarca de Setúbal (District Court, Setúbal) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) seven questions on the interpretation of the 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') and the 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, hereinafter 'the Third Directive').

2 Those questions were raised in proceedings between Mr Mendes Ferreira and Mrs Delgado Correia Ferreira and the insurance company Companhia de Seguros Mundial Confiança SA (hereinafter 'Mundial Confiança') concerning compensation for losses which Mr and Mrs Ferreira sustained as a result of a road-traffic accident.

The relevant Community legislation

3 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 (II), p. 360, hereinafter 'the First Directive') provides as follows:

'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 1(1) and (2) of the Second Directive provides 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.'

5 Article 3 of the Second Directive provides as follows:

'The members of the family of the insured person, driver or any other person who is liable under civil law in the event of an accident, and whose liability is covered by the insurance referred to in Article 1(1) shall not be excluded from insurance in respect of their personal injuries by virtue of that relationship.'

6 Article 5 of the Second Directive, as amended by Annex I, Part IX F, entitled 'Insurance' of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23, 218, hereinafter 'the Act of Accession') provides as follows:

'Member States shall amend their national provisions to comply with this Directive not later than 31 December 1987....

2. The provisions thus amended shall be applied not later than 31 December 1988.

3. Notwithstanding paragraph 2:

(a) the Kingdom of Spain, the Hellenic Republic and the Portuguese Republic shall have a period until 31 December 1995 in which to increase guarantees to the levels required by Article 1(2). If they avail themselves of this option the guarantee must reach, by reference to the amounts laid down in that Article:

— more than 16 %, not later than 31 December 1988,

— 31 %, not later than 31 December 1992;

...'

7 Under the first paragraph of Article 1 of the Third Directive, 'the insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover liability for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle'.

8 Article 6 of the Third Directive provides as follows:

'1. Member States shall take the measures necessary to comply with this Directive not later than 31 December 1992....

2. By way of exception from paragraph 1:

— the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic have until 31 December 1995 to comply with Articles 1 and 2,

...'

The main proceedings and the relevant national legislation

9 The order for reference states that on 12 February 1995 a road-traffic accident occurred involving a motor vehicle belonging to Mr Mendes Ferreira and driven by one of his sons in which another of his sons, aged 12, travelling in the same vehicle, was fatally injured. No other vehicle was involved in the accident and, according to the order for reference, the driver of the vehicle was not at fault.

10 By a contract of insurance, Mr Mendes Ferreira had transferred any civil liability in respect of the use of the vehicle to Mundial Confiança.

11 Mr Mendes Ferreira and his wife brought an action before the national court seeking an order requiring Mundial Confiança to compensate them for their loss. The insurance company defends that claim on the ground that, under Portuguese law as it stood at the relevant time, it was not under any obligation to pay compensation.

12 It appears from the order for reference that Article 504(2) of the Portuguese Civil Code, in the version in force at the time of the accident, provided that, in the case of transport provided free of charge, the party providing the transport was generally liable only for damage or loss caused by fault on his part. That provision was most commonly interpreted by Portuguese courts as meaning that a passenger carried free of charge was required to prove fault on the part of the driver of the vehicle in order to obtain any compensation.

13 The national court states that, in order to bring Portuguese law into line with the Third Directive, and in particular with Article 1 thereof, Article 504 of the Portuguese Civil Code was amended by Decree-Law No 14/96 of 6 March 1996, paragraph 3 of which now enables passengers carried free of charge to bring civil liability actions based on materialisation of risk, albeit only in respect of personal injury.

14 The national court also points out that, even if Portuguese law as it stood at the time of the accident recognised the right of passengers carried free of charge to obtain compensation in the case of liability for materialisation of risk, the fact remains that, under Article 508(1) of the Portuguese Civil Code, the maximum amount of compensation payable to the victim of a road-traffic accident, in the absence of any fault on the part of the person responsible, was twice the figure that may be awarded by Portuguese courts of second instance. Since that figure, which was fixed in 1987 and has not been revised since that time, is PTE 2 000 000, the maximum amount of compensation payable in the absence of fault is PTE 4 000 000.

15 The national court wonders whether, having regard to Article 1(2) and Article 5(3), of the Second Directive, as amended by the Act of Accession, the Member States may fix maximum limits for the compensation of victims of accidents where the driver responsible was not at fault that are lower than the minimum amounts of compulsory insurance cover laid down by the Second Directive. It points out that the Second Directive makes no distinction between

civil liability on the basis of fault on the part of the driver and liability based on risk.

16 In those circumstances, the Tribunal da Comarca de Setúbal stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Does Article 3 of Directive 84/5/EEC require compulsory civil liability motor vehicle insurance to cover injury caused to the members of the family of the insured person or of the driver of the vehicle even where they are carried free of charge and where only civil liability, without fault, for materialisation of risk arises, or may the Member States exclude the award of compensation in such cases?

2. Do the amounts of minimum cover laid down by Article 1(2) of Directive 84/5/EEC also apply to cases where civil liability, without fault, for materialisation of risk arises, or may the Member States lay down maximum limits, for compensation in cases where there is no fault on the part of the driver of the vehicle responsible for the accident, that are lower than the minimum amounts laid down in Article 1(2)?

3. Must national courts interpret domestic law in such a way as to render it consistent with a Community directive where the directive has been imperfectly transposed or where [incompatible] pre-existing provisions of domestic law remain in force?

4. Must national courts interpret domestic law in such a way as to render it consistent with a Community directive even where such interpretation is

contrary to the normal meaning and scope of its provisions of domestic law, or where such interpretation is consistent with the intentions of the national legislature but that intention has not been properly expressed in the legal text in question?

5. Must national courts interpret domestic law in such a way as to render it consistent with a Community directive even in disputes involving only private individuals?

6. Must national courts interpret domestic law in a way which is consistent with Article 1 of Directive 90/232/EEC, even with regard to an accident which occurred before the expiry of the period allowed for transposition of that provision into domestic law?

7. In the event that it is not possible to interpret domestic law in such a way as to render it consistent with a directive, does the primacy of Community law require national courts to disapply provisions of domestic law which are inconsistent with that directive, even in disputes involving only private individuals?'

The first question

17 By its first question the national court is essentially asking whether Article 3 of the Second Directive requires compulsory civil liability motor-vehicle insurance to cover personal injury to passengers who are members of the family of the insured person, of the driver of the vehicle or of any other person who incurs civil liability for an accident and whose liability is covered by compulsory motor-vehicle insurance (hereinafter 'members of the family of the insured person or of the

driver'), where they are carried free of charge, irrespective of any fault on the part of the driver of the vehicle which caused the accident.

18 The applicants in the main proceedings argue that Article 3 of the Second Directive and Article 1 of the Third Directive provide for civil liability for risk as regards cover for passengers in motor vehicles carried free of charge and members of the family of the driver. Those provisions, they maintain, have direct effect and prevail over domestic law.

19 Mundial Confiança maintains that the national court is confusing compulsory insurance against civil liability in respect of motor vehicles, which is governed by the various directives, with private-law rules governing civil liability, which have not been the subject of any harmonisation. The sole purpose of Article 3 of the Second Directive, it submits, is to have the Member States remove any unequal treatment considered to be unfair in the area of domestic law on compulsory civil liability motor-vehicle insurance, and that this is clear from the recitals to the Second Directive.

20 Mundial Confiança maintains that, given that the new Portuguese regulation on compulsory insurance against civil liability in respect of motor vehicles, namely Decree-Law No 522/85 of 31 December 1985, removed the exclusion of cover for members of the family of the insured person or of the driver which existed under the prior legislation, the Portuguese Republic properly transposed Article 3 of the Second Directive at the time of its accession to the Communities.

21 The Italian Government argues that it is clear from Article 3 of the Second Directive that, as far as personal injury is concerned, the members of the family of the insured person or of the driver cannot be excluded from insurance cover on the ground of their family relationship, whether or not they are passengers. Moreover, both the Italian Government and the Commission submit that the

three directives governing insurance against civil liability clearly take no account of the presence or absence of any fault on the part of the driver and make no distinction between liability arising through fault and liability arising through materialisation of risk.

22 The Commission submits that Article 3 of the Second Directive is to be interpreted as meaning that, if the domestic law applicable requires cover to extend to passengers who are not members of the family of the insured person or of the driver of the vehicle, any legal or contractual provision which excludes a family member injured in a road-traffic accident from such cover is inapplicable. On the other hand, if domestic law does not require passengers to be covered, Article 3 of the Second Directive does not require cover to be extended to the members of the family of the insured person or of the driver.

23 On this point, it should be observed first of all that it is clear from the aim of the three directives governing insurance against civil liability in respect of the use of motor vehicles and from their wording that they do not seek to harmonise the rules of the Member States governing civil liability.

24 As the Court held in Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, at paragraphs 13 to 16, the preambles to the directives in question show that their aim is, first, to ensure the free movement of vehicles normally based on Community 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 Community the accident occurred (see, more particularly, the fifth recital in the preamble to the Second Directive and the fourth recital in the preamble to the Third Directive).

25 For that purpose, the First Directive established a system based on the presumption that vehicles normally based on Community territory are covered

by insurance (see the eighth recital). Article 3(1) of the First 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.

26 However, the original version of that article left it to the Member States to determine the damage covered and the terms and conditions of the compulsory insurance against civil liability. 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 (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 3 of that directive provided that, as regards personal injuries, the members of the family of the insured person or of the driver may not be excluded from cover on the ground of their family relationship. Article 1 of the Third Directive extended that obligation to provide cover for personal injuries to passengers other than the driver.

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 loss or injury and the third-party victims to be covered by that insurance. On the other hand, that provision does not state what type of civil liability, for risk or for fault, is to be covered.

28 In the absence of any Community rules defining the type of civil liability in respect of the use of vehicles to be covered by compulsory insurance, it is in principle for the Member States to lay down the system of civil liability applicable to road-traffic accidents.

29 It follows that, as Community law stands at present, the Member States are free to determine the type of civil liability applicable to road-traffic accidents. However, they must ensure that the civil liability arising under their domestic law is covered by insurance which complies with the provisions of the three directives in question.

30 Next, as far as concerns compensation for losses or injuries caused to members of the family of the insured person or of the driver, Article 3 of the Second Directive provides that those persons are not to be excluded from insurance in respect of their personal injuries by virtue of that relationship. It is clear from the ninth recital of the preamble to the Second Directive that Article 3 aims to provide the members of the family of the insured person or of the driver with protection comparable to that afforded to other third-party victims.

31 Third-party victims of an accident cannot, therefore, be excluded from compulsory motor-vehicle insurance for the simple reason that they are members of the family of the insured person or of the driver. Compulsory motor-vehicle insurance must, therefore, enable members of the family of the insured person or of the driver who are victims of an accident caused by a motor vehicle to obtain compensation for personal injuries on the same conditions as any other third-party victim of such an accident.

32 Consequently, if a Member State's domestic law imposes compulsory insurance cover in respect of personal injuries to passengers who are not family members and who are carried free of charge, whether or not there is any fault on the part of the driver of the vehicle which caused the accident, it must impose the same cover in respect of personal injuries to passengers who are members of the family of the insured person or of the driver. On the other hand, if that Member State's domestic law does not impose compulsory cover in respect of personal injuries to passengers who are not family members, Article 3 of the Second Directive does

not require it to impose compulsory cover for personal injuries to passengers who are members of the family of the insured person or of the driver.

33 The accident which gave rise to the main proceedings occurred in fact on 12 February 1995, before the date on which the period laid down by the Third Directive for transposition by the Portuguese Republic expired, which was on 31 December 1995. That directive cannot therefore be relied on by individuals before national courts (see Case C-316/93 *Vaneetveld* [1994] ECR I-763, paragraph 16).

34 However, although Article 1 of the Third Directive extended the compulsory insurance cover imposed by Article 3(1) of the First Directive, as amplified and supplemented by the Second Directive, to personal injuries to passengers other than the driver, it is clear from paragraphs 27 to 29 above that it does not specify the type of civil liability to be covered by the compulsory motor-vehicle insurance.

35 The answer to the first question must therefore be that Article 3 of the Second Directive requires compulsory insurance against civil liability in respect of the use of motor vehicles to cover personal injuries to passengers who are members of the family of the insured person or of the driver, where those passengers are carried free of charge, whether or not there is any fault on the part of the driver of the vehicle which caused the accident, only if the domestic law of the Member State concerned requires such cover in respect of personal injuries caused in the same conditions to other third-party passengers.

The second question

36 By its second question, the national court asks whether Articles 1(2) and 5(3) of the Second Directive, as amended by the Act of Accession, preclude national laws laying down maximum amounts of compensation that are lower than the minimum amounts of cover laid down by those provisions where, in the absence of fault on the part of the driver of the vehicle which caused the accident, only civil-law liability for materialisation of risk arises.

37 The applicants in the main proceedings and the Italian Government submit that the minimum amounts of cover laid down in Article 1(2) of the Second Directive apply to situations in which liability arises under civil law for materialisation of risk and that the Member States may not lay down maximum limits for compensation which are lower than those minimum amounts. The Italian Government adds that, as far as the minimum amounts are concerned, there is no difference between liability arising through fault and liability arising through materialisation of risk.

38 The Commission argues that none of the three directives decides anything about the type of liability. The domestic system may therefore be one based on risk or one based on fault. Nevertheless, Article 1(2) of the Second Directive should be interpreted as meaning that, once liability is established, then, having regard to the principle that compensation must cover the loss and injury actually caused, the minimum levels of cover laid down in Article 1(2) must be provided, regardless of the type of liability applicable.

39 As far as this point is concerned, it is clear from paragraphs 27 and 28 above that Article 3(1) of the First Directive, as amplified and supplemented by the Second and Third Directives, in particular by Article 1 of the Second Directive, does not specify the type of liability, based on risk or on fault, to be covered by the compulsory motor-vehicle insurance. In so far as the Community rules do not

govern that question, it is in principle a matter for the Member States to determine the system of liability applicable in the case of road-traffic accidents.

40 However, it is clear from paragraph 29 above that the civil liability which, under the domestic law of the Member State in question, applies to road-traffic accidents must be covered by insurance and that that insurance must adhere to the minimum amounts of cover laid down in Articles 1(2) and 5(3) of the Second Directive, as amended by the Act of Accession. Consequently, in the case of accidents to which that type of civil liability attaches, the Member State's domestic law may not lay down maximum limits for compensation which are lower than the said minimum amounts.

41 The answer to be given to the second question must therefore be that Articles 1(2) and 5(3) of the Second Directive, as amended by the Act of Accession, preclude domestic laws laying down maximum amounts of compensation that are lower than the minimum amounts of cover laid down by those provisions where, in the absence of fault on the part of the driver of the vehicle which caused the accident, only civil liability for materialisation of risk arises.

The third, fourth, fifth, sixth and seventh questions

42 In view of the answers given to the first and second questions, the third, fourth, fifth, sixth and seventh questions, which concern the duty to interpret domestic provisions in a way consistent with Community law and the direct effect of the provisions of the Second and Third Directives in point, are irrelevant in determining the case before the national court. It is not therefore necessary for the Court to consider them.

Costs

43 The costs incurred by the Italian 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 Tribunal da Comarca de Setúbal by order of 15 July 1998, hereby rules:

1. **Article 3 of the 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, requires compulsory insurance against civil liability in respect of the use of motor vehicles to cover personal injuries to passengers who are members of the family of the insured person, of the driver of the vehicle or of any other**

person who incurs civil liability for an accident and whose liability is covered by compulsory motor-vehicle insurance, where those passengers are carried free of charge, whether or not there is any fault on the part of the driver of the vehicle which caused the accident, only if the domestic law of the Member State concerned requires such cover in respect of personal injuries caused in the same conditions to other third-party passengers.

2. Articles 1(2) and 5(3) of Directive 84/5, as amended by Annex I, Part IX F, entitled 'Insurance', of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties, preclude domestic laws laying down maximum amounts of compensation that are lower than the minimum amounts of cover laid down by those provisions where, in the absence of fault on the part of the driver of the vehicle which caused the accident, only civil liability for materialisation of risk arises.

Edward Sevón Kapteyn

Jann Ragnemalm

Delivered in open court in Luxembourg on 14 September 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber