



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 July 2013*

(Use of motor vehicles — Insurance against civil liability — Directive 72/166/EEC — Article 3(1) — Directive 84/5/EEC — Article 1(4), first subparagraph — Insolvency of the insurer — No payment of compensation by the body providing compensation)

In Case C-409/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Bíróság (Hungary), made by decision of 12 July 2011, received at the Court on 1 August 2011, in the proceedings

Gábor Csonka,

Tibor Isztli,

Dávid Juhász,

János Kiss,

Csaba Szontágh

v

Magyar Állam,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits, J.-J. Kasel, M. Safjan and M. Berger (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 26 September 2012,

after considering the observations submitted on behalf of:

— the Hungarian Government, by M.Z. Fehér, K. Veres and K. Szíjjártó, acting as Agents,

— the European Commission, by B. Simon, K.-P. Wojcik and K. Talabér-Ritz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 October 2012,

* Language of the case: Hungarian.

gives the following

Judgment

- 1 This request 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), as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p. 14) ('the First Directive').
- 2 The request has been made in proceedings brought by Messrs Csonka, Isztli, Juhász, Kiss and Szontágh against the Magyar Állam (Hungarian State) concerning the liability which, according to the applicants, the Hungarian State incurs as a result of the incorrect transposition of that directive into Hungarian law.

Legal context

European Union law

- 3 European Union legislation on insurance against civil liability in respect of the use of motor vehicles was codified by 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). However, that directive was not in force at the time of the facts in the case before the referring court, to which the directives in force before that codification are therefore applicable, in particular the First Directive and Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17), as amended by Directive 2005/14 ('the Second Directive').

The First Directive

- 4 It emerges from the second and third recitals in the preamble to the First Directive that that directive was adopted because of the fact that frontier controls of insurance cover against civil liability in respect of the use of motor vehicles, the purpose of which was to safeguard the interests of persons who might be the victims of accidents caused by such vehicles, came about as a result of the disparities between national requirements in that field and that 'these disparities [were] such as may impede the free movement of motor vehicles and persons within the Community', thus having 'a direct effect on the establishment and functioning of the common market'. The fifth recital to the First Directive emphasised the need for 'measures [to] be taken further to liberalise the rules regarding the movement of persons and motor vehicles travelling between Member States'.

- 5 To that end, Article 3(1) of the First Directive provided:

'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.'

- 6 Article 4 of the First Directive made it possible for Member States to derogate from Article 3 of that directive in respect of vehicles belonging to certain persons, or certain types of vehicle, or vehicles having a special plate.

The Second Directive

- 7 The sixth recital to the Second Directive stated that ‘it is necessary to make provision for a body to guarantee that the victim will not remain without compensation where the vehicle which caused the accident is uninsured or unidentified; ... it is important, without amending the provisions applied by the Member States with regard to the subsidiary or non-subsidiary nature of the compensation paid by that body and to the rules applicable with regard to subrogation, to provide that the victim of such an accident should be able to apply directly to that body as a first point of contact’ and that ‘... however, Member States should be given the possibility of applying certain limited exclusions as regards the payment of compensation by that body and of providing that compensation for damage to property caused by an unidentified vehicle may be limited or excluded in view of the danger of fraud’. The eighth recital to that directive added that ‘in order to alleviate the financial burden on that body, Member States may make provision for the application of certain excesses where the body provides compensation for damage to property caused by uninsured vehicles or, where appropriate, vehicles stolen or obtained by violence’.

- 8 Article 1(1) and (4) of the Second Directive provided:

‘1. The insurance referred to in Article 3(1) of [the First Directive] shall cover compulsorily both damage to property and personal injuries.

...

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.

The first subparagraph shall be without prejudice to the right of the Member States to regard compensation by the body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between the body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the victim establishing in any way that the person liable is unable or refuses to pay.’

- 9 Articles 1(6) and 2 of the Second Directive allowed Member States to exclude the payment of compensation by the body set up in accordance with Article 1(4) thereof in certain cases or to provide, where that body had paid compensation, for the application of certain excesses.
- 10 Article 1(7) of the Second Directive provided that ‘[e]ach Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by the body, without prejudice to any other practice which is more favourable to the victim’.

Hungarian law

- 11 Under Paragraphs 14 and 15 of Government Decree No 190/2004 on compulsory insurance against civil liability in respect of the use of motor vehicles (Korm. Rendelet a gépjármű üzemeltetőjének kötelező felelősségbiztosításról) (Governmental Decree No 190/2004), which was in force at the material time, the Kártalanítási Számlát Kezelő MABISZ GKI (Compensation fund of the consortium

of Hungarian insurers) intervened with subsidiary liability on behalf of the person responsible for the damage, for the purpose of providing compensation to the victim, only if the person responsible for the damage did not have compulsory insurance against civil liability arising from the use of motor vehicles when the accident occurred, or if the person using the vehicle which caused the damage was unknown, or if the damage was caused by a vehicle which had not been licensed for use on the roads or had been withdrawn from use.

- 12 Government Decree No 190/2004 was repealed by Paragraph 67 of Law No LXII of 2009 on compulsory insurance against civil liability arising from the use of motor vehicles (2009. évi LXII. törvény a kötelező gépjármű-felelősségbiztosításról).
- 13 That law, which entered into force on 1 January 2010, establishes a new compensation fund and provides, in Paragraph 29(3), that that fund ‘is to cover the claim which the victim of the damage has against an insurer which is subject to insolvency proceedings, account being taken of the detailed rules provided for under the insurance policy or laid down by law with respect to the assertion of rights to compensation’.

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

- 14 MÁV Általános Biztosító Egyesület (MÁV General Insurance Company) (‘MAV’) is an insurance company established in the form of a non-profit association which offered its members products at reduced rates, with the particularity that the parties insured with that company also assumed obligations as associates.
- 15 Between 2003 and 2008, the Pénzügyi Szervezetek Állami Felügyelete (State Financial Supervisory Authority) served on MAV 15 formal notices ordering it to comply with the legal rules governing its activities. As it was not possible to re-establish operating conditions compatible with the relevant legal requirements, that supervisory authority withdrew, with effect from 15 August 2008, MAV’s licence to engage in its activities. MAV, whose assets had disappeared, was declared insolvent.
- 16 As keepers of motor vehicles, the applicants in the main proceedings had taken out an insurance policy with MAV against civil liability arising out of the use of their vehicles.
- 17 In the course of the period from July 2006 to July 2008, they caused damage with their vehicles.
- 18 On account of its insolvency, MAV was unable to discharge its obligations as an insurer. Accordingly, the applicants in the main proceedings themselves had to pay the compensation for the damage caused by their vehicles.
- 19 They therefore brought an action for damages against Magyar Állam, based on the loss which they had claimed to have suffered as a result of the incorrect transposition of the First Directive into Hungarian law.
- 20 The applicants in the main proceedings submit that, although Hungarian law provides, with effect from 1 January 2010, for the payment of compensation by a body responsible for providing compensation for the damage caused by an insured vehicle in cases where the insurer is insolvent, that measure does not apply to the civil liability arising out of accidents which took place before that date, such as the accidents for which they are liable. They argue that, by not taking the measures necessary to ensure that, in the same circumstances, compensation was paid by a body providing compensation where damage took place before that date, Magyar Állam had acted in breach of its obligations under European Union law, in particular Article 3 of the First Directive, thus incurring liability itself.

21 In those circumstances, the Fővárosi Bíróság (Budapest Metropolitan Court), now the Fővárosi Törvényszék (Budapest Metropolitan Court), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) At the time when the applicants caused the damage, had the Magyar Állam implemented [the First Directive], specifically in the light of the obligations under Article 3 of that directive? Must the directive accordingly be regarded as having direct effect vis-à-vis the applicants?
- (2) Under the applicable [European Union] law, may an individual whose rights have been impaired as a result of the fact that the State had not implemented [the First Directive] require that State to comply with the directive by relying directly on the [European Union] legislation as against that State in order to obtain the guarantees which that State should have offered him on the basis of the directive?
- (3) Under the applicable [European Union] law, may an individual whose rights have been impaired as a result of the fact that [the First Directive] has not been implemented claim compensation for damage from the State by reason of its failure to implement that directive?
- (4) If [Questions 1, 2 and 3] are answered in the affirmative, does the liability incurred by Magyar Állam as a consequence of the harm caused lie towards the applicants or towards those adversely affected by the road traffic accidents caused by the applicants? ...
- (5) Can the State’s liability be put in issue if the damage has been brought about by a drafting error in the legislation?
- (6) Is Government Decree No 190/2004 ..., in force until 1 January 2010, compatible with [the First Directive], or has Hungary failed to transpose into Hungarian law the obligations laid down in that Directive?’

Consideration of the questions referred

The first part of Question 1 and Question 6

- 22 By those questions, the national court asks, in essence, whether Article 3(1) of the First Directive is to be interpreted as including, among the obligations which it imposes on Member States, that of establishing a body to ensure that compensation is provided to victims of road accidents in situations where, although the persons responsible for the damage had taken out insurance covering their civil liability in respect of the use of vehicles, the insurer has become insolvent.
- 23 According to the Court’s settled case-law, in interpreting a provision of European Union law, it is necessary to consider not only its wording but also the context in which that provision arises and the objectives pursued by the rules of which it is part (see, inter alia, Case C-219/11 *Brain Products* [2012] ECR, paragraph 13 and the case-law cited).
- 24 In that regard, it must be stated that Article 3(1) of the First Directive is framed in very general terms, in so far as they require each Member State to take ‘all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance’. As the Advocate General stated in point 26 of his Opinion, it is clear from that provision that Member States are required to establish, in their domestic legal systems, a general obligation to insure vehicles.

- 25 In view of the breadth of the wording of Article 3(1) of the First Directive, the scope of the obligation thus placed on the Member States must therefore be defined with a view to the context and the objectives of that provision.
- 26 In that regard, it must be pointed out that the First Directive is part of a series of directives which came progressively to define the obligations of Member States concerning civil liability in respect of the use of vehicles. According to the recitals to the First and Second Directives, the aim of those directives is, first, to ensure the free movement of vehicles normally based on European Union territory and of persons travelling in those vehicles and, secondly, 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, *inter alia*, Case C-300/10 *Marques Almeida* [2012] ECR, paragraph 26 and the case-law cited).
- 27 It is against that background that the First Directive, as supplemented by the Second Directive and a number of later directives, requires the Member States to ensure that civil liability in respect of the use of motor 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 (see, *inter alia*, *Marques Almeida*, paragraph 27 and the case-law cited).
- 28 Article 3(1) of the First Directive, read in the light of the later directives, accordingly requires each Member State to ensure, subject to the derogations allowed under Article 4 of that directive, that every owner or keeper of a vehicle normally based in its territory takes out a policy with an insurance company for the purpose of covering, at least up to the limits established by European Union law, his civil liability arising as a result of that vehicle.
- 29 The importance attached by the European Union legislature to the protection of victims moved it to supplement those arrangements by requiring Member States, under Article 1(4) of the Second Directive, to establish a body with the task of providing compensation, at least up to the limits laid down by European Union law, for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation under Article 1(1) of the Second Directive, which refers to Article 3(1) of the First Directive, has not been satisfied. In order to alleviate the financial burden to be borne by that body, Member States were free to exclude the payment of compensation by it in certain cases or to provide for excesses.
- 30 The payment of compensation by such a body was therefore considered to be a measure of last resort, envisaged only for cases in which the vehicle that caused the injury or damage is uninsured or unidentified or has not satisfied the insurance requirements referred to in Article 3(1) of the First Directive (Case C-442/10 *Churchill Insurance Company and Evans* [2011] ECR I-12639, paragraph 41).
- 31 As regards the determination of the actual circumstances in which the insurance obligation laid down in Article 3(1) of the First Directive may be regarded as not having been satisfied, it is significant – as the Advocate General stated in point 32 of his Opinion – that the European Union legislature did not confine itself to providing that the body must pay compensation in the event of damage caused by a vehicle for which the insurance obligation has not been satisfied in general, but made it clear that that was to be the case only in relation to damage caused by a vehicle for which the insurance obligation provided for in Article 3(1) of the First Directive has not been satisfied, that is to say, a vehicle in respect of which no insurance policy exists. Such a restriction is explained by the fact that Article 3(1) of the First Directive – as has been pointed out in paragraph 28 above – requires each Member State, subject to the derogations allowed under Article 4 of that directive, to ensure that every owner or keeper of a vehicle normally based in its territory takes out a policy with an insurance company for the purpose of covering, up to the limits established by European Union law, his civil liability arising

as a result of that vehicle. Viewed in that light, the very fact that damage has been caused by an uninsured vehicle attests to a breakdown in the system which the Member State was required to establish and justifies the payment of compensation by a national body providing compensation.

- 32 It follows from the foregoing that, contrary to the line of argument put forward by the applicants in the main proceedings, the payment of compensation by such a national body, as provided for under the First and Second Directives, cannot be regarded as the implementation of a guarantee scheme in respect of insurance against civil liability relating to the use of motor vehicles; rather, it is intended to take effect only in specific, clearly identified, sets of circumstances.
- 33 The insolvency of an insurer does not constitute a case which can be identified as one of those sets of circumstances. In such a situation, the insurance obligation has been satisfied.
- 34 However, as is apparent from Article 1(7) of the Second Directive, Member States may, as regards the conditions for the payment of compensation from the national compensation fund, adopt measures more favourable to the victims than those provided for under the directives on insurance against civil liability in respect of the use of motor vehicles. In that regard, it must be pointed out that, according to the information provided by the Hungarian Government, measures designed to remedy the situation brought about by MAV's insolvency were, during the proceedings before the Court, in course of preparation before the competent Hungarian bodies.
- 35 In view of all the foregoing considerations, the answer to the first part of Question 1 and to Question 6 is that Article 3(1) of the First Directive, read in the light of Article 1(4) of the Second Directive, must be interpreted as not including, among the obligations which that provision imposes on Member States, that of establishing a body to ensure that compensation is provided to victims of road accidents in situations where, although the persons responsible for the damage had taken out insurance covering their civil liability in respect of the use of motor vehicles, the insurer has become insolvent.

The second part of Question 1 and Questions 2, 3, 4 and 5

- 36 By those questions, the national court asks, first, whether Article 3 of the First Directive may be regarded as having direct effect and, secondly, under what circumstances individuals may cause Hungary to incur liability on account of damage which they have suffered as a result of the incorrect transposition of the First Directive into Hungarian law.
- 37 In view of the interpretation of the First Directive given in answer to the first part of Question 1 and to Question 6, the Member State concerned does not appear to have infringed European Union law.
- 38 In those circumstances, there is no need to reply to the second part of Question 1 or to Questions 2, 3, 4 or 5.

Costs

- 39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

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, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, read in the light 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, as amended by Directive 2005/14, must be interpreted as not including, among the obligations which that provision imposes on Member States, that of establishing a body to ensure that compensation is provided to victims of road accidents in situations where, although the persons responsible for the damage had taken out insurance covering their civil liability in respect of the use of motor vehicles, the insurer has become insolvent.

[Signatures]