Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

20 May 2021 *

(Reference for a preliminary ruling – Insurance against civil liability in respect of the use of motor vehicles – Directive 2009/103/EC – Article 3 – Compulsory cover of damage to property – Scope – Legislation of a Member State limiting the obligation to cover the costs of towing a vehicle involved in an accident to the costs incurred in the territory of that Member State and limiting the costs of parking to those made necessary by reason of a criminal investigation or for any other reason)

In Case C-707/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for the central district of Łódź, Poland), made by decision of 2 September 2019, received at the Court on 23 September 2019, in the proceedings

K.S.

v

A.B.,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič, E. Juhász, C. Lycourgos and I. Jarukaitis (Rapporteur), Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– A.B., by M. Samocik, radca prawny,

– the Polish Government, by B. Majczyna, acting as Agent,

– the Latvian Government, initially by V. Soņeca and K. Pommere, and subsequently by K. Pommere, acting as Agents,

* Language of the case: Polish.

– the Austrian Government, by J. Schmoll and M. Winkler-Unger, acting as Agents,

– the European Commission, by H. Tserepa-Lacombe and B. Sasinowska, 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 3 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 K.S. and A.B. concerning a claim for reimbursement of parking costs in Latvia and towing costs to Poland of a vehicle and a semi-trailer damaged following a motor vehicle accident in Latvia.

Legal context

EU law

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

‘(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 Union]. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of [EU] 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 European Union] accidents occur.’

4 Article 1 of that directive, entitled ‘Definitions’, is worded as follows:

‘For the purposes of this Directive:

1. “vehicle” means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled;

2. “injured party” means any person entitled to compensation in respect of any loss or injury caused by vehicles;

…’

5 Article 3 of that directive, 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.

Each Member State shall take all appropriate measures to ensure that the contract of insurance also covers:

(a) according to the law in force in other Member States, any loss or injury which is caused in the territory of those States;

…

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

Latvian law

6 Article 28 of the Sauszemes transportlīdzekļu īpašnieku civiltiesiskās atbildības obligātās apdrošināšanas likums (Law on compulsory insurance against civil liability of owners of motor vehicles) of 7 April 2004 (*Latvijas Vēstnesis*, 2004, No 65), in the version applicable to the dispute in the main proceedings (‘the Latvian Law on compulsory motor insurance’) provides as follows:

‘The costs of evacuating the vehicle or its remaining parts include the costs of evacuating the vehicle or its remaining parts from the road accident location to the place of residence of the owner or authorised user who was driving the vehicle at the time of the road accident or to a place of repair in the territory of the Republic of Latvia. If, in connection with a criminal investigation or for any other reason, the vehicle or its remaining parts must remain in a car park, the damage covered by the claim shall also include the costs of removing the vehicle or its remaining parts to an appropriate car park and the fee for parking services.’

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

7 On 30 October 2014, a motor vehicle accident occurred in the town of K. (Latvia), in the course of which a vehicle and its semi-trailer, belonging to K.S. and registered in Poland, were damaged. As a result of the damage incurred, the vehicle and semi-trailer were removed to a car park for parking and subsequently towed to Poland.

8 The costs of parking the vehicle and semi-trailer in Latvia amounted to 6 020 zlotys (PLN) (approximately EUR 1 292) and the costs of towing them to Poland amounted to PLN 32 860 (approximately EUR 7 054).

9 Following a claim for reimbursement submitted by K.S., A.B., the insurance company with which the party responsible for the accident was insured against civil liability, paid K.S. compensation of PLN 4 492.44 (approximately EUR 964) in respect of the towing costs in Latvia. However, A.B. refused to pay any compensation for the costs of parking in Latvia and for towing outside Latvian territory.

10 On 23 January 2017, K.S. brought an action before the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for the central district of Łódź, Poland), the referring court, seeking an order that A.B. pay him, together with default interest, the total sum of PLN 28 527.56 (approximately EUR 6 124) for the towing costs outside Latvian territory and the sum of PLN 6 020 (approximately EUR 1 292) for the costs of parking in Latvia.

11 In its defence, A.B. submitted that, in accordance with the applicable Latvian law, it was required only to reimburse the costs of towing incurred in Latvian territory and the costs of parking related to a criminal investigation or other proceedings.

12 The referring court notes, as a preliminary point, that, in accordance with the Convention on the Law Applicable to Traffic Accidents, concluded in The Hague on 4 May 1971, the law applicable to the dispute before it is the law of the State in which the accident occurred, that is to say, Latvian law.

13 Given that Article 28 of the Latvian Law on compulsory motor insurance does not provide for the obligation to cover either the costs of towing a damaged vehicle, where the towing takes place outside Latvian territory, or the costs of parking an immobilised vehicle, unless those costs are justified by a criminal investigation or for any other reason, the referring court is uncertain as to the scope of Article 3 of Directive 2009/103, which imposes on Member States a general obligation to ensure that civil liability arising from the use of vehicles is covered by insurance.

14 It observes that Article 3 of that directive does not specify the extent of compulsory insurance cover which each Member State must provide for in connection with civil liability in respect of the use of vehicles, the second paragraph of that provision stating only that the extent of the liability covered and the terms and conditions of the cover are to be determined on the basis of 'the measures referred to in the first paragraph', which requires each Member State to take 'all appropriate measures'.

15 The referring court is therefore uncertain whether the term 'all appropriate measures' must be interpreted as meaning that each Member State must provide that all damage is to be covered by compulsory insurance.

16 In that regard, it emphasises that the scope of that wording seems to it to be less forceful in its Polish-language version than in the English- and French-language versions. In any event, Polish case-law and academic writing in the field of insurance against civil liability in respect of motor vehicles support the principle of full compensation for damage.

17 The referring court notes that, in accordance with the fourth paragraph of Article 3 of Directive 2009/103, insurance against civil liability in respect of the use of vehicles covers compulsorily both damage to property and personal injuries. According to the referring court, there is no doubt that towing and parking costs, such as those at issue in the main proceedings, constitute

damage to property arising from the accident. The condition relating to a causal link is therefore, from its point of view, undoubtedly satisfied and the outcome of the dispute before it depends only on the interpretation of the Latvian Law on compulsory motor insurance.

18 However, it finds, the literal interpretation of Article 28 of that law may not be compatible with the purpose of Article 3 of Directive 2009/103, given that it could lead to a situation in which insurance against civil liability does not cover damage to property resulting from a motor vehicle accident.

19 A person established in a Member State other than Latvia who is the victim of a motor vehicle accident in that latter Member State could be deprived of his or her right to compensation for damage to property consisting of the costs of towing that person's damaged vehicle to his or her State of origin and of the costs of necessary parking of that vehicle in Latvian territory until it has been towed away for purposes of repair.

20 In those circumstances, the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for the central district of Łódź) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 3 of Directive [2009/103] be interpreted as meaning that, within the framework of "all appropriate measures", each Member State should make insurance undertakings fully liable under insurance against civil liability, including for consequences of damage in the form of the need to tow the victim's vehicle to his or her home country and the cost of necessary parking of vehicles?

(2) If the answer to the above question is affirmative – can this liability be limited in any way by the laws of the Member States?'

Consideration of the questions referred

21 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3 of Directive 2009/103 must be interpreted as precluding a national provision under which compulsory insurance against civil liability in respect of the use of motor vehicles covers compulsorily damage consisting of the costs of towing the damaged vehicle and the costs of necessary parking of that vehicle only in so far as that towing takes place within that Member State and that parking is necessary in connection with a criminal investigation or for any other reason, and, if so, whether that article must be interpreted as meaning that a Member State may limit that liability in any way.

22 In that regard, it should be recalled that the first paragraph of Article 3 of Directive 2009/103 provides that each Member State must 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. In addition, the second paragraph of Article 3 states that the extent of the liability covered and the terms and conditions of the cover are to be determined on the basis of the measures referred to in the first paragraph, while the last paragraph of that article provides that the insurance referred to in the first paragraph must cover compulsorily both damage to property and personal injuries.

23 The obligation to provide insurance cover against civil liability for damage caused to third parties by motor vehicles is distinct 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 (judgment of 23 October 2012, *Marques Almeida*, C-300/10, EU:C:2012:656, paragraph 28 and the case-law cited).

24 Thus, EU legislation does not seek to harmonise the rules of the Member States governing civil liability and the Member States are, in principle, free to determine the rules of civil liability applicable to road accidents (see, to that effect, judgment of 23 October 2012, *Marques Almeida*, C-300/10, EU:C:2012:656, paragraph 29 and the case-law cited).

25 Consequently, as EU law currently stands, in relation to their civil liability insurance schemes, the Member States remain, in principle, free to determine, in particular, which damage caused by motor vehicles must be compensated, the extent of such compensation and the persons who are entitled to it (see, to that effect, judgment of 24 October 2013, *Drozdovs*, C-277/12, EU:C:2013:685, paragraph 32).

26 However, the Member States must exercise their powers in that field in compliance with EU law and the national provisions which govern compensation for road traffic accidents may not deprive EU legislation of its effectiveness (see, to that effect, judgment of 23 October 2012, *Marques Almeida*, C-300/10, EU:C:2012:656, paragraph 31 and the case-law cited).

27 In addition, it must be recalled that Directive 2009/103 seeks to ensure the protection of victims of accidents caused by motor vehicles, an objective which has consistently been pursued and reinforced by the EU legislature (see, to that effect, judgment of 4 September 2018, *Juliana*, C-80/17, EU:C:2018:661, paragraph 47) and that it is also clear from recitals 2 and 20 of that directive that insurance against civil liability in respect of the use of motor vehicles has 'an impact on the free movement of persons and vehicles'. The Court has stated in this regard that the aim of EU legislation concerning insurance against civil liability in respect of the use of vehicles, including Directive 2009/103, is, on the one hand, to ensure the free movement of vehicles normally based on European Union territory and of persons travelling in those vehicles, and, on the other hand, to guarantee that the victims of accidents caused by those vehicles will receive comparable treatment irrespective of where in the European Union the accidents occurred (see, to that effect, judgments of 23 October 2012, *Marques Almeida*, C-300/10, EU:C:2012:656, paragraph 26 and the case-law cited, and of 20 June 2019, *Línea Directa Aseguradora*, C-100/18, EU:C:2019:517, paragraph 33 and the case-law cited).

28 In the present case, it is apparent from the information provided by the referring court that, although Article 28 of the Latvian Law on compulsory motor insurance requires the civil liability insurer to cover the costs of towing the damaged vehicle or its remaining parts from the accident location to the place of residence of the owner or authorised user who was driving the vehicle at the time of the motor vehicle accident, or to the place of repair of that vehicle, that obligation, however, applies only when the towing takes place in Latvian territory. In addition, although that article requires the civil liability insurer to cover the costs of parking the damaged vehicle, that is only on condition that they were necessary 'in connection with a criminal investigation or for any other reason'.

29 In this respect, as regards, in the first place, the costs of towing, it is clear that the legislation of a Member State such as that at issue in the main proceedings may lead to a situation in which a person whose vehicle, normally based in another Member State, is damaged as a result of an

accident which occurred in the territory of the first Member State and for which civil liability in respect of the use of a vehicle normally based in that first Member State has been incurred, obtains from the insurer of that civil liability only a portion of the compensation for damage to property provided for in respect of damage caused to vehicles normally based in the territory of the first Member State.

30 In so far as such legislation provides for cover only of the costs of towing incurred in the territory of the Member State in question, it follows that a person in a situation such as that of K.S. will find those costs of towing at least in part excluded from cover where the vehicle is towed to and repaired in the Member State in which that person is resident. By contrast, for a similar accident suffered by a person whose place of residence is in the Member State in which the accident occurs, that person will benefit from full cover from that insurer of the costs of towing the vehicle to the place of his or her residence or of the repair of the vehicle in that Member State.

31 It is settled case-law that a provision of national law under which a distinction is drawn on the basis of residence is liable to operate mainly to the detriment of nationals of other Member States, as non-residents are in the majority of cases foreign nationals (see, by analogy, judgment of 6 February 2014, *Navileme and Nautizende*, C-509/12, EU:C:2014:54, paragraph 14 and the case-law cited).

32 It must thus be held that legislation such as that at issue in the main proceedings discriminates between injured parties by virtue of their Member State of residence.

33 While it is true that the first paragraph of Article 3 of Directive 2009/103, in so far as that provision refers to 'all appropriate measures', does not provide that each Member State must make insurance undertakings fully liable under compulsory insurance against civil liability, the fact remains that a limitation of compulsory insurance cover for damage caused by motor vehicles cannot be justified solely on the basis of the Member State of residence of the injured party. The fact that the injured party is resident in a Member State other than that in which the accident occurred cannot, in itself, justify different treatment concerning the cover of the damage by the insurer, having regard to the objectives of protection pursued by that directive, as referred to in paragraph 27 of this judgment.

34 That finding is, however, without prejudice to the right of each Member State to limit, without using criteria relating to its territory, the reimbursement of the costs of towing, in particular where the technical means of providing compensation are accessible at a place which is significantly closer than the place to which towing is sought and the costs of towing to another Member State therefore appear to be disproportionate.

35 In the second place, as regards the costs of parking, it is not apparent from the file before the Court that the national legislation at issue in the main proceedings, in so far as it provides for the costs incurred in respect of parking to be covered where that parking is necessary 'in connection with a criminal investigation or for any other reason', makes any distinction between persons who have their place of residence in Latvia and those who have their place of residence in another Member State. It is, however, a matter for the referring court to determine whether the circumstances at issue in the main proceedings form part of a situation in which parking of the vehicle must be regarded as having been 'necessary' for 'any other reason', and whether there is in fact no difference in treatment in that regard on the basis of the place of residence of the owner or holder of the damaged vehicle.

36 In the light of all of the foregoing considerations, the answer to the questions referred is that Article 3 of Directive 2009/103 must be interpreted:

– as precluding a provision of a Member State under which compulsory insurance against civil liability in respect of the use of motor vehicles covers compulsorily damage consisting of the costs of towing the damaged vehicle only in so far as that towing takes place in the territory of that Member State. That finding is without prejudice to the right of that Member State to limit the reimbursement of the costs of towing, without using criteria relating to its territory; and

– as not precluding a provision of a Member State under which that insurance covers compulsorily damage consisting of the costs of parking the damaged vehicle only if that parking was necessary in connection with a criminal investigation or for any other reason, provided that that limitation of cover applies without any difference in treatment depending on the Member State of residence of the owner or holder of the damaged vehicle.

Costs

37 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 (Fifth Chamber) hereby rules:

Article 3 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 precluding a provision of a Member State under which compulsory insurance against civil liability in respect of the use of motor vehicles covers compulsorily damage consisting of the costs of towing the damaged vehicle only in so far as that towing takes place in the territory of that Member State. That finding is without prejudice to the right of that Member State to limit the reimbursement of the costs of towing, without using criteria relating to its territory; and**

– **as not precluding a provision of a Member State under which that insurance covers compulsorily damage consisting of the costs of parking the damaged vehicle only if that parking was necessary in connection with a criminal investigation or for any other reason, provided that that limitation of cover applies without any difference in treatment depending on the Member State of residence of the owner or holder of the damaged vehicle.**

[Signatures]