Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

5 September 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Law applicable to non-contractual obligations – Regulation (EC) No 864/2007 – Article 16 – Overriding mandatory provisions – Road traffic accident – Rights to compensation recognised in respect of the family members of the deceased person – Principle of fairness for the purposes of compensation for non-material damage suffered – Assessment criteria)

In Case C-86/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), made by decision of 7 February 2023, received at the Court on 15 February 2023, in the proceedings

E.N.I.,

Y.K.I.

v

HUK-COBURG-Allgemeine Versicherung AG,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei (Rapporteur), J.-C. Bonichot, S. Rodin and L.S. Rossi, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– HUK-COBURG-Allgemeine Versicherung AG, by G.I. Ilieva and L.I. Todev, advokati,

– the Czech Government, by A. Edelmannová, M. Smolek and J. Vláčil, acting as Agents,

– the German Government, by J. Möller, P. Busche and M. Hellmann, acting as Agents,

* Language of the case: Bulgarian.

– the European Commission, by C. Georgieva and W. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 16 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40).

2 The request has been made in proceedings between E.N.I. and Y.K.I., Bulgarian nationals, and HUK-COBURG-Allgemeine Versicherung AG ('HUK-COBURG') concerning compensation by the latter, on the basis of compulsory civil liability in respect of the use of motor vehicles, for non-material damage suffered by E.N.I. and Y.K.I. as a result of the death of their daughter in a road traffic accident, which occurred in Germany.

Legal context

European Union law

The Rome II Regulation

3 According to recitals 6, 7, 14, 16 and 32 of the Rome II Regulation:

'(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [(OJ 2001 L 12, p. 1)] … and the instruments dealing with the law applicable to contractual obligations.

…

(14) The requirement of legal certainty and the need to do justice in individual cases are essential elements of an area of justice. This Regulation provides for the connecting factors which are the most appropriate to achieve these objectives. Therefore, this Regulation provides for a general rule but also for specific rules and, in certain provisions, for an "escape clause" which allows a departure from these rules where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country. This set of rules thus creates a flexible framework of conflict-of-law rules. Equally, it enables the court seised to treat individual cases in an appropriate manner.

…

(16) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. A connection with the country where the direct damage occurred (*lex loci damni*) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.

…

(32) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. In particular, the application of a provision of the law designated by this Regulation which would have the effect of causing non-compensatory exemplary or punitive damages of an excessive nature to be awarded may, depending on the circumstances of the case and the legal order of the Member State of the court seised, be regarded as being contrary to the public policy (*ordre public*) of the forum.'

4 Article 4(1) of that regulation provides:

'Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.'

5 Article 15(c) of that regulation provides:

'The law applicable to non-contractual obligations under this Regulation shall govern in particular:

…

(c) the existence, the nature and the assessment of damage or the remedy claimed;

…'

6 In accordance with Article 16 of that regulation, entitled 'Overriding mandatory provisions':

'Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.'

The Rome I Regulation

7 Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6), entitled 'Overriding mandatory provisions', provides, in paragraphs 1 and 2 thereof:

'1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.'

Bulgarian law

8 Liability in tort under Bulgarian law is governed by Articles 45 to 54 of the Zakon za zadalzheniyata i dogovorite (Law on obligations and contracts, DV No 275 of 22 November 1950), in the version applicable to the dispute in the main proceedings ('the ZZD').

9 Article 45 of the ZZD provides:

'(1) Any person who causes damage to another as a result of his or her wrongdoing shall compensate such damage.

(2) In all cases of damage resulting from unlawful action, wrongdoing shall be presumed unless proved otherwise.'

10 Article 52 of the ZZD provides:

'Compensation for non-material damage shall be determined by the court on the basis of fairness.'

German law

The BGB

11 Entitled 'Non-material damage', Paragraph 253 of the Bürgerliches Gesetzbuch (Civil Code), in the version applicable to the dispute in the main proceedings ('the BGB'), is worded as follows:

'(1) Money may be sought as compensation for non-material damage only in the cases specified by law.

(2) Where damages are to be paid on account of bodily injury, damage to health, freedom or sexual self-determination, fair compensation in monetary terms for non-material damage may also be sought.'

12 Paragraph 823 of the BGB, entitled 'Obligation to provide compensation for damage', provides, in subparagraph 1 thereof:

'Any person who, with intent or through negligence, unlawfully injures the life, body, health, freedom, property or other right of another person shall be obliged to compensate that other person for the resulting damage.'

Law on Road Traffic

13 Paragraph 7 of the Straßenverkehrsgesetz (Law on Road Traffic), in the version applicable to the dispute in the main proceedings, entitled 'Liability of the owner, unauthorised use of the vehicle', provides, in subparagraph 1 thereof:

'If, during the use of a motor vehicle, a person is killed, suffers physical injury or harm to his or her health, or if an item of property is damaged, the owner shall be required to provide compensation for the resulting damage to the injured party.'

14 Paragraph 11 of the Law on Road Traffic, in the version applicable to the dispute in the main proceedings, is entitled 'Extent of the obligation to provide compensation in the case of bodily injury'. That paragraph provides:

'In the event of bodily injury or damage to health, compensation shall be made by paying the costs of the cure as well as reimbursing the pecuniary loss which the injured person has suffered because, as a result of the injury, his or her earning capacity is permanently or temporarily brought to an end or reduced or his or her needs are increased on a temporary or permanent basis. Fair monetary compensation may also be claimed when the damage is not pecuniary in nature.'

Law on Insurance Contracts

15 Entitled 'Direct right of action', Paragraph 115 of the Gesetz über den Versicherungsvertrag (Law on Insurance Contracts) of 23 November 2007 (BGB1. 2007 I, p. 2631), in the version applicable to the dispute in the main proceedings, provides, in subparagraph 1 thereof:

'The third party may also assert his or her right to compensation against the insurer

1. in the case of insurance against civil liability putting into effect compulsory insurance under the Law on Compulsory Insurance …

…

The direct right of action exists within the framework of the insurer's obligation under the insurance relationship and, in so far as there is no obligation, within the framework of Paragraph 117(1) to (4). The insurer shall provide compensation in monetary terms. The insurer and the policyholder liable to provide compensation shall be jointly and severally liable.'

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

16 On 27 July 2014, the daughter of E.N.I. and Y.K.I., the appellants in the appeal on a point of law in the main proceedings ('the appellants in the main proceedings'), died in a road traffic accident in Germany. The person responsible for the accident was insured on the basis of compulsory civil liability with HUK-COBURG, an insurance company established in Germany.

17 On 25 July 2017, the appellants in the main proceedings brought an action against HUK-COBURG before the Sofiyski gradski sad (Sofia City Court, Bulgaria), seeking compensation of 250 000 Bulgarian leva (BGN) (approximately EUR 125 000) for each of them in respect of the non-material damage suffered as a result of the death of their daughter.

18 On 27 September 2017, HUK-COBURG paid an amount of EUR 2 500 as compensation to each parent for the damage caused by that death.

19 By its judgment of 23 December 2019, the Sofiyski gradski sad (Sofia City Court) upheld in part the claim of the appellants in the main proceedings by granting each of them compensation in the amount of BGN 100 000 (approximately EUR 50 000), from which the sum of approximately EUR 2 500 paid by the insurer was deducted.

20 That judgment was varied by the Apelativen sad – Sofia (Court of Appeal, Sofia, Bulgaria). That court dismissed the claim of the appellants in the main proceedings in its entirety, taking the view that they had not established that the mental pain and suffering sustained had caused pathological harm, which, under the German law applicable in accordance with Article 4(1) of the Rome II Regulation, is a prerequisite for compensation for non-material damage. That court rejected their argument that, pursuant to Article 16 of the Rome II Regulation, it was not German law that was applicable but the law of the forum, namely Article 52 of the ZZD. According to that court, the amounts already paid by HUK-COBURG do not constitute acknowledgment, on the part of the insurer, that the claims of the appellants in the main proceedings were well founded, and correspond to the 'small compensation' for non-material damage provided for in Paragraph 253(2) of the BGB.

21 The appellants in the main proceedings brought an appeal on a point of law against that judgment before the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), which is the referring court.

22 That court observes, first of all, that the German legislation that is applicable in the present case pursuant to Article 4 of the Rome II Regulation is identical to that at issue in the case which gave rise to the judgment of 15 December 2022, *HUK-COBURG-Allgemeine Versicherung* (C-577/21, EU:C:2022:992), which concerned the same road traffic accident as that at issue in the present case.

23 Next, the referring court states that, in that judgment, the Court of Justice held that that German legislation fell within the scope of the substantive national civil liability law to which 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) refers. According to the Court, that German legislation lays down an objective criterion which makes it possible to identify the non-material damage which may be the subject of compensation to a close family member of the

victim of a road traffic accident. The Court held that Directive 2009/103 did not preclude national legislation from imposing binding criteria for determining the non-material damage that may be compensated.

24 Lastly, the referring court states that, unlike that German legislation, which makes compensation for non-material damage subject to three conditions, namely that (i) the victim's own health has been adversely affected, (ii) that person is a close family member of the direct victim, and (iii) there is a causal relationship between the fault committed by the person responsible for the accident and that injury, the Bulgarian legislation, namely Article 52 of the ZZD, provides that compensation for non-material damage is to be determined by the court on the basis of fairness. According to the referring court, it follows from binding case-law of the Varhoven sad (Supreme Court, Bulgaria) and the Varhoven kasatsionen sad (Supreme Court of Cassation) that, under Bulgarian law, compensation is payable for all mental pain and suffering sustained by parents on the death of their child on account of a road traffic accident that has occurred as a result of a tort or delict, without it being necessary for the damage to have resulted in pathological harm to those parents. That court states that the amount of damages depends on the specific circumstances of the case in question, the amount usually awarded for non-material damage to a parent in respect of the death of his or her child in a road traffic accident at the time of the accident in 2014 amounting to approximately BGN 120 000 (approximately EUR 61 000). According to the referring court, even if the claim of the appellants in the main proceedings were to be granted and even if they had provided proof of pathological harm, the maximum amount of compensation that they could receive under German law would be EUR 5 000.

25 In those circumstances, the Varhoven kasatsionen sad (Supreme Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 16 of [the Rome II Regulation] be interpreted as meaning that a rule of national law, such as that at issue in the main proceedings, which provides for the application of a fundamental principle of the law of the Member State, such as the principle of fairness, in the determination of compensation for non-material damage in cases where the death of a close person has occurred as a result of a tort or delict, may be regarded as an overriding mandatory provision within the meaning of that article?'

Consideration of the question referred

26 By its question, the referring court asks, in essence, whether Article 16 of the Rome II Regulation must be interpreted as meaning that a national provision under which compensation for non-material damage suffered by the close family members of a person who died in a road traffic accident is determined by the court on the basis of fairness may be regarded as an 'overriding mandatory provision', within the meaning of that article.

27 In accordance with Article 4(1) of the Rome II Regulation, unless otherwise provided for in that regulation, the law applicable to a non-contractual obligation arising out of a tort or delict is to be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur. Article 15(c) of that regulation provides that the law applicable to a non-contractual obligation under that regulation is to govern, inter alia, the existence, the nature and the assessment of damage or the remedy claimed.

28 However, under Article 16 of the Rome II Regulation, nothing in that regulation is to restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

29 In the first place, it must be noted that it is apparent from the wording of Article 16 of the Rome II Regulation, first, that it provides for a derogation from the law applicable to the non-contractual obligation designated in accordance with the conflict-of-law rules laid down in that regulation, such as Article 4 and Article 15(c) thereof, inasmuch as Article 16 of that regulation authorises the application of the law of the Member State of the forum.

30 Accordingly, Article 16 of that regulation must be interpreted restrictively (see, by analogy, judgment of 31 January 2019, *Da Silva Martins*, C-149/18, EU:C:2019:84, paragraph 29 and the case-law cited).

31 In addition, the objective pursued by the Rome II Regulation consists, inter alia, as is apparent from its recitals 6, 14 and 16, in ensuring certainty as to the law applicable irrespective of the country in which the action is brought, improving the foreseeability of court decisions and ensuring a reasonable balance between the interests of the person claimed to be liable and those of the person who has sustained damage (judgment of 17 May 2023, *Fonds de Garantie des Victimes des Actes de Terrorisme et d'Autres Infractions (FGTI)*, C-264/22, EU:C:2023:417, paragraph 30). Accordingly, a broad interpretation of Article 16 of the Rome II Regulation would run counter to that objective.

32 Second, it is apparent from the wording of Article 16 that the derogation that it lays down applies where the provisions of the law of the forum 'are mandatory'.

33 Nevertheless, in order for those provisions to be applicable and to justify recourse to Article 16, it is necessary for the legal situation submitted for examination by the national court to have sufficiently close links with the Member State of the forum.

34 Departure from the foreign law designated by Article 4 of the Rome II Regulation therefore means, as the Advocate General observed in point 52 of his Opinion, that that court must first of all assess whether that legal situation has such links with that Member State.

35 Thus, if that legal situation has links with several Member States, it is possible that that court may have to find, in particular having regard to the links between that legal situation and the Member State whose law is designated pursuant to the conflict-of-law rules, that there are no sufficiently close links with the Member State of the forum.

36 In the present case, the appellants in the main proceedings, who are Bulgarian nationals domiciled in Bulgaria, brought proceedings before a court of that Member State. However, the road traffic accident as a result of which the daughter of the appellants in the main proceedings died occurred in Germany. The person responsible for that accident was insured with an insurance company established in that Member State. Furthermore, both the victim and the person responsible for that accident were Bulgarian nationals who had taken up residence in Germany, as is apparent from paragraphs 15 to 17 of the judgment of 15 December 2022, *HUK-COBURG-Allgemeine Versicherung* (C-577/21, EU:C:2022:992), which concerns, as noted in paragraph 22 above, the same road traffic accident. It is on the basis of those facts in particular that the referring court must ascertain whether there are sufficiently close links with Bulgaria in the case in the main proceedings.

37 In the second place, as regards the classification of a national rule as a '*disposition impérative dérogatoire*' ('overriding mandatory provision'), within the meaning of Article 16 of the Rome II Regulation, it must be recalled that that concept corresponds to that of a '*loi de police*' ('overriding mandatory provision'), within the meaning of Article 9 of the Rome I Regulation, so that the Court's interpretation of the latter concept applies also to the former, having regard to the requirement for consistency in the application of the Rome I and Rome II Regulations (see, to that effect, judgment of 31 January 2019, *Da Silva Martins*, C-149/18, EU:C:2019:84, paragraph 28).

38 Article 9 of the Rome I Regulation defines 'overriding mandatory provisions' as provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under that regulation.

39 According to case-law of the Court of Justice relating to Article 9 of that regulation, it is for the national court, in the course of its assessment of whether the national law is a 'mandatory rule', to take account not only of the exact terms of that law, but also of its general structure and of all the circumstances in which that law was adopted in order to determine whether it is mandatory in nature in so far as it appears that the legislature adopted it in order to protect an interest judged to be essential by the Member State concerned (judgment of 31 January 2019, *Da Silva Martins*, C-149/18, EU:C:2019:84, paragraph 30 and the case-law cited).

40 By analogy, in order to identify the existence of an 'overriding mandatory provision', within the meaning of Article 16 of the Rome II Regulation, the national court must find, on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which the national provision concerned was adopted, that it is of such importance in the national legal order that it justifies a departure from the law designated pursuant to Article 4 of that regulation (judgment of 31 January 2019, *Da Silva Martins*, C-149/18, EU:C:2019:84, paragraph 31). It follows from paragraphs 30 and 34 of that judgment that the application of an overriding mandatory provision requires that court to identify particularly important reasons that justify its application.

41 The application of such a provision therefore requires the national court to ascertain, first, in addition to the wording and general scheme of the national provision that is alleged to be mandatory, the grounds and the objectives that led to its adoption, in order to determine whether the national legislature intended to confer on that provision a mandatory nature. Thus, that court must examine whether that provision was adopted in order to protect one or more interests which the Member State of the forum considers to be essential and whether respect for that provision is regarded as crucial by that Member State for safeguarding those interests.

42 Second, it must follow from the assessment, by the national court, of the legal situation before it that the application of that provision is absolutely necessary in order to protect the essential interest concerned in the particular case.

43 It follows that the national court cannot have recourse to the derogation provided for in Article 16 of the Rome II Regulation if the objective of protecting the interest at issue pursued by the relevant provision of the law of the forum can also be achieved by applying the law designated pursuant to the conflict-of-law rules of that regulation.

44 In the third place, it must be noted that recourse, by the courts of the Member States, to overriding mandatory provisions is possible only in exceptional circumstances, where, as stated in recital 32 of the Rome II Regulation, 'considerations of public interest' justify it. In that regard, it is apparent from the definition of the concept of '*loi de police*' ('overriding mandatory provision'), recalled in paragraph 38 above, which, in the light of the case-law referred to in paragraph 37 above, has the same scope as that of '*disposition impérative dérogatoire*' ('overriding mandatory provision'), referred to in Article 16 of that regulation, that such a law or provision must necessarily envisage the protection of public interests of particular importance, such as those relating to the political, social or economic organisation of the Member State of the forum. Those interests are interests judged to be essential by that Member State, as is clear from the case-law cited in paragraph 39 above.

45 It is true that it follows from the reference, in recital 32 of the Rome II Regulation, to rules relating to the assessment of compensation for damage that the EU legislature did not exclude, as a matter of principle, the possibility that rules protecting individual interests may, where appropriate, be regarded as overriding mandatory provisions. It follows from the second part of that recital that the views underlying the rules on compensation for non-contractual damage in force in a Member State are capable of justifying the application of the law of the forum under Article 16 of that regulation.

46 However, having regard to the definition of the concept of '*loi de police*' ('overriding mandatory provision'), national provisions which are intended to protect individual interests cannot be applied, by a national court, as 'overriding mandatory provisions' unless the detailed analysis which that court is required to carry out shows clearly that the protection of the individual interests of a category of persons, at which those national provisions are aimed, corresponds to an essential public interest whose safeguarding those provisions ensure. As the Advocate General pointed out in point 62 of his Opinion, the existence of a sufficient link with such a public interest that is judged to be essential in the legal order of the Member State of the forum must be established.

47 In the present case, as is apparent from paragraph 40 above, Article 52 of the ZZD could be applied to the legal situation at issue in the main proceedings, instead of the German law which is in principle designated pursuant to Article 4 of the Rome II Regulation, only if its application were justified by particularly important reasons reflecting public interests judged to be essential in the Bulgarian legal order. In that regard, the referring court noted that the principle of fairness, given effect by Article 52 of the ZZD, is a fundamental principle of Bulgarian law and forms part of Bulgarian public policy. In so far as that provision is intended to protect the individual interests of a category of natural persons, it must be borne in mind that the detailed analysis which the national court must carry out also means that it must clearly show that that protection corresponds to an essential public interest whose safeguarding is ensured by that provision, with the result that respect for it is regarded as crucial by the Member State concerned.

48 Furthermore, although it is not for the Court of Justice to assess a national provision in the light of the criteria referred to in paragraph 40 above, it should be recalled that it follows from paragraph 43 above that recourse to the derogation provided for in Article 16 of the Rome II Regulation is excluded where the application of the law designated by that regulation also makes it possible to attain the objective of protecting the essential public interest that the relevant provision of the law of the forum is aimed at safeguarding.

49 In the present case, it is apparent from the request for a preliminary ruling that, while, pursuant to Article 52 of the ZZD, the court must determine compensation for the non-material damage 'on the basis of fairness', the German law provides, in turn, for the possibility of 'fair compensation' in respect of that damage, with the result that those sets of national rules appear to both be based on the principle of fairness.

50 However, it is apparent also from the request for a preliminary ruling, first, that the maximum amount of compensation which may be awarded under German law is approximately EUR 5 000, whereas the amount usually granted under Article 52 of the ZZD is approximately BGN 120 000 (approximately EUR 61 000). Nevertheless, as the Advocate General noted, in essence, in point 32 of his Opinion, the mere fact that the application of the law of the forum leads, with regard to the amount of compensation, to a different outcome from that which would have been reached by applying the law designated by the conflict-of-law rule does not permit the conclusion that the application of the latter law cannot achieve the objective of protecting the essential public interest that the relevant provision of the Member State of the forum is aimed, as the case may be, at safeguarding.

51 Second, it is apparent from the request for a preliminary ruling that, pursuant to Article 52 of the ZZD, pecuniary compensation could be granted systematically for mental pain and suffering, whereas the German law designated pursuant to Article 4 of the Rome II Regulation would allow compensation on that basis only where the tort or delict has led to pathological harm. Thus, subject to the verifications to be carried out by the referring court, that German law and the Bulgarian law appear to be based, in those two respects, on entirely different views as regards the right to compensation.

52 Consequently, it cannot be ruled out that, in identical cases, the victim could obtain, for the mental pain and suffering which he or she sustained and which has not given rise to any pathological harm, under Bulgarian law, compensation that could amount to approximately BGN 120 000 (approximately EUR 61 000), whereas, under German law, that person would not be able to obtain any compensation.

53 Therefore, it is for the referring court to determine whether the application of the German law, which does not provide for compensation for mental pain and suffering that does not entail pathological harm, makes it possible to attain the objective of protecting the essential public interest that Article 52 of the ZZD is aimed, as the case may be, at safeguarding.

54 Lastly, in the fourth place, it is important to recall that, according to the case-law of the Court, the law of a Member State which meets the requirement for minimum protection laid down by an EU directive may be rejected in favour of the law of the forum, owing to its mandatory nature, where the court before which the case has been brought finds, on the basis of a detailed assessment, that, in the course of the transposition of that directive, the legislature of the Member State of the forum judged it to be crucial, in its legal order, to grant the person in question protection going beyond that provided for by that directive, taking account in that regard of the nature and of the objective of such mandatory provisions (see, to that effect, judgment of 17 October 2013, *Unamar*, C-184/12, EU:C:2013:663, paragraphs 50 to 52).

55 Nevertheless, in paragraphs 34 to 37, 42 and 48 of the judgment of 15 December 2022, *HUK-COBURG-Allgemeine Versicherung* (C-577/21, EU:C:2022:992), the Court held, in essence, that, although it is for the Member States to ensure that compensation for non-material damage suffered by the next of kin of victims of road traffic accidents is covered by compulsory insurance

of at least the minimum amounts laid down by Directive 2009/103, that directive does not lay down specific requirements as regards the choice of a system of civil liability in order to determine the extent of the compensation to be awarded on the basis of the civil liability of the insured person, which is, essentially, governed by national law.

56 Accordingly, since that directive does not seek to harmonise the extent of the compensation for damage suffered by an indirect victim of a road traffic accident, and Article 52 of the ZZD, which seeks to determine the extent of the compensation for non-material damage suffered by such a victim, cannot therefore be regarded as having been adopted in the course of the transposition of that directive, Article 52 of that law is not covered by the situation envisaged by the case-law cited in paragraph 54 above.

57 It follows from all the foregoing that the answer to the question referred is that Article 16 of the Rome II Regulation must be interpreted as meaning that a national provision under which compensation for non-material damage suffered by the close family members of a person who died in a road traffic accident is determined by the court on the basis of fairness cannot be regarded as an 'overriding mandatory provision', within the meaning of that article, unless, where the legal situation in question has sufficiently close links with the Member State of the forum, the court before which the case has been brought finds, on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which that national provision was adopted, that respect for it is regarded as crucial in the legal order of the Member State, on the ground that it pursues an objective of safeguarding an essential public interest that cannot be achieved by the application of the law designated pursuant to Article 4 of that regulation.

Costs

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

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

Article 16 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

must be interpreted as meaning that a national provision under which compensation for non-material damage suffered by the close family members of a person who died in a road traffic accident is determined by the court on the basis of fairness cannot be regarded as an 'overriding mandatory provision', within the meaning of that article, unless, where the legal situation in question has sufficiently close links with the Member State of the forum, the court before which the case has been brought finds, on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which that national provision was adopted, that respect for it is regarded as crucial in the legal order of the Member State, on the ground that it pursues an objective of safeguarding an essential public interest that cannot be achieved by the application of the law designated pursuant to Article 4 of that regulation.

[Signatures]