ORDER OF THE COURT (Third Chamber)
24 October 2002 *

In Case C-233/01,

REFERENCE to the Court under Article 234 EC by the Giudice di pace di Palermo (Italy) for a preliminary ruling in the proceedings pending before that court between

Riunione Adriatica di Securtà SpA (RAS)

and

Dario Lo Bue,

on the interpretation of Article 8(3) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3), in its version resulting from Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws,

* Language of the case: Italian.

regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1), and of Articles 29 and 39 of Directive 92/49,

THE COURT (Third Chamber),

composed of: J.-P. Puissochet, President of the Chamber, F. Macken and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after informing the national court that the Court proposes to give its decision by reasoned order pursuant to Article 104(3) of its Rules of Procedure,

after inviting the interested parties referred to in Article 20 of the EC Statute of the Court of Justice to submit any observations they might have in that regard,

upon hearing the Advocate General,

makes the following

Order

1 By order of 4 May 2001, received at the Court on 18 June 2001, the Giudice di pace di Palermo (Magistrate's Court of Palermo) referred to the Court for a preliminary ruling under Article 234 EC four questions on the interpretation of Article 8(3) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3), in its version resulting from Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1, hereinafter 'Directive 73/239'), and of Articles 29 and 39 of Directive 92/49.

2 Those questions were raised in a dispute between an insurance company, Riunione Adriatica di Securtà SpA (hereinafter 'RAS'), and Mr Lo Bue concerning the amount of the insurance premium payable by him under a contract relating to compulsory insurance for third-party liability in connection with the use of motor vehicles.

Relevant provisions

Community legislation

3 Article 6 of Directive 92/49, which appears in Title II headed 'The taking up of the business of insurance', provides as follows:

'Article 8 of Directive 73/239/EEC shall be replaced by the following:

"Article 8

...

3. Nothing in this Directive shall prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and communication of any other documents necessary for the normal exercise of supervision.

Member States shall not, however, adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums and forms and other printed documents which an undertaking intends to use in its dealings with policyholders.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

...".'

4 Article 29 of Directive 92/49, which appears in Title III headed 'Harmonisation of the conditions governing the business of insurance', provides:

'Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policyholders. They may only require non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an undertaking's carrying on its business.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.'

5 In Title IV of Directive 92/49, headed 'Provisions relating to right of establishment and the freedom to provide services', Article 39(2) and (3) provides as follows:

'2. The Member State of the branch or of the provision of services shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an undertaking intends to use in its dealings with policyholders. It may only require an undertaking that proposes to carry on insurance business within its territory, under the right of establishment or the freedom to provide services, to effect non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an undertaking's carrying on its business.

3. The Member State of the branch or of the provision of services may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.'

Italian legislation

6 Article 2(2) to (5) of Decree-Law No 70 of 28 March 2000 containing urgent provisions to limit inflationary pressures (*GURI* No 73 of 28 March 2000, p. 4),

as amended by Law No 137 of 26 May 2000 converting into law the said Decree-Law with amendments (*GURI* No 122 of 27 May 2000, p. 4) (hereinafter 'the Decree-Law'), provides:

'2. In respect of compulsory insurance policies covering third-party liability in connection with the use of motor vehicles and boats which are renewed within one year of the date of entry into force of this Decree under terms providing for differential premium rates based on the claims record, insurance undertakings may not apply any increase in premium rates to policyholders to whom no accident caused by the driver is attributable during the most recent reference period. In the case of policies taken out within one year of such date on terms providing for differential premium rates based on the claims record, the premium rates in force on that date shall be applied.

2(a). Paragraph 2 above shall apply, from the date of the entry into force of this Decree, to insurance contracts for automobiles, mopeds and motorcycles, which apply the scales of premium referred to in Article 12 of Law No 990 of 24 December 1969, as well as to contracts proposed by telephone, fax or e-mail, and to contracts which do not provide for automatic renewal or which are terminated by the undertaking, if they are entered into afresh with the same insurer.

3. For a period of one year from the date of entry into force of this Decree, insurance undertakings may not alter the number of discount categories, the coefficients for calculating premiums, or differential premium rate systems under which the premium payable depends on the claims record.

4. The following paragraph is added to Article 12 of Law No 990 of 24 December 1969: "2a. Undertakings engaged in the business of compulsory insurance under Article 2(2) of Decree-Law No 70 of 28 March 2000, as amended by the converting law, are required, if the client so requests, to draw up insurance contracts providing for a no claims bonus arrangement, subject to an excess — which may not be relied upon against an injured third party — in an amount not less than ITL 500 000 and not more than ITL 1 000 000. It is for the insured person alone to opt for a no claims bonus system with an excess, and to determine the excess amount."

5. Once Article 2(2) and (3) has exhausted its effects, the insured person may, where the premium is increased — save in the case of increases resulting from differential premium rate systems — by an amount in excess of the planned rate of inflation, terminate the contract by giving notice to that effect by registered letter with advice of receipt, or by fax, sent to the head office of the undertaking concerned or to the agency where the policy was taken out. In that case the insured person shall not be entitled to the days of grace provided for by the second paragraph of Article 1901 of the Civil Code.'

The main proceedings and the questions referred

7 It is apparent from the order for reference that RAS summoned Mr Lo Bue to appear before the Giudice di pace di Palermo seeking:

'— a declaration that Article 2(2), (3) and (4) of Decree-Law No 70/2000, as converted into law by Law No 137/00, is incompatible with Articles 6, 29

and 39 of Community Directive 92/49/EEC and must therefore be disapplied on the ground that it is contrary to Community law;

— an order that Mr Dario Lo Bue pay the premium, free of the restrictions provided for by Decree-Law No 70/2000 as converted into law by Law No 137/00, in an amount to be determined by separate ruling;

in the alternative

— should the court not consider Article 2(2), (3) and (4) of Decree-Law No 70/2000, as converted into law by Law No 137/00, to be manifestly incompatible with Articles 6, 29 and 39 of Community Directive 92/49/EEC, an order referring the matter to the Court of Justice of the European Communities under Article 234 EC for a preliminary ruling...'.

8 It is also apparent from the order for reference that Mr Lo Bue contested RAS's claims maintaining that he had paid the amount of the insurance premium required by RAS on the assumption that that amount was, or ought to have been, in accordance with the maximum amounts set by the laws in force and stating that he had no intention of paying any increase in the premium.

9 According to the order, RAS claimed judgment for payment of the sum of money which would be due to it if the premium on the automobile insurance policy taken out by Mr Lo Bue were not subject to the maximum set by the Decree-Law in respect of curbing inflation.

10 The national court points out in that regard that the Decree-Law prohibited, for one year, any increase in insurance premiums in respect of third-party liability for motorists when policies were renewed by policyholders who had not caused any accident during the reference period (first subparagraph of Article 2(2)), and that in respect of newly issued policies, any change to the premium rates applying on the date of entry into force of that Decree-Law was prohibited (second subparagraph of Article 2(2)).

11 According to the national court, the provisions of the Decree-Law cited in the preceding paragraph appear to conflict with Article 8(3) of Directive 73/239 and Articles 29 and 39 of Directive 92/49, under which Member States may not approve 'increases in premium rates' unless the measure which affects the insurance sector forms 'part of a general price-control system'.

12 The national court states further that Article 8(3) of Directive 73/239 and Articles 29 and 39 of Directive 92/49 provide that a Member State's power of intervention is restricted to the approval of 'increases in premium rates' and in no way extends to the other contractual terms. Thus, the Decree-Law, by prohibiting any change in the other conditions of the contract (Article 2(3)), again seems to be contrary to the said Articles 8(3), 29 and 39. The same is true of the provision requiring insurance companies, if so requested by the client, to issue policies which incorporate a no claims bonus arrangement and an excess the minimum and the maximum levels of which are laid down by the Law (Article 2(4)).

13 Furthermore, according to the national court the Decree-Law appears to contravene the abovementioned provisions by giving the insured person, on expiry of the period during which premium rates were frozen, the right to withdraw from the contract if, at the date of its annual renewal, the insurer required an increase in the premium which was not the result of the specific terms of the contract and was more than the rate of inflation laid down by governmental decision (Article 2(5)).

14 Having regard to those considerations the Giudice di pace di Palermo decided to stay proceedings and seek from the Court of Justice a preliminary ruling on the following questions:

'(1) Must the third subparagraph of Article 8(3) of Council Directive 73/239/EEC, as amended by Article 6 of Council Directive 92/49/EEC, be interpreted as precluding national legislation which, for the purposes of curbing inflation, applies only to insurance against third-party liability in connection with the use of motor vehicles, mopeds and motor cycles and makes no provision for intervention in matters concerning prices of goods and services in general (as distinct from third-party liability vehicle insurance), which are also factors in the calculation of the consumer price index?

(2) Must the third subparagraph of Article 8(3) of Council Directive 73/239/EEC, as amended by Article 6 of Council Directive 92/49/EEC, be interpreted as precluding national legislation which, for the purposes of curbing inflation, prohibits the alteration, not only of premium rates but also of the number of risk categories, the coefficients for determining the premium

and differential premium rate systems under which the premium payable depends on the claims record?

(3) Must the third subparagraph of Article 8(3) of Council Directive 73/239/EEC, as amended by Article 6 of Council Directive 92/49/EEC, be interpreted as precluding national legislation which, for the purposes of curbing inflation, also requires insurance undertakings, if the client so requests, to draw up policies the terms of which incorporate a no claims bonus arrangement and an excess in an amount set between the minimum and the maximum level permitted by law?

(4) Must the third subparagraph of Article 8(3) of Council Directive 73/239/EEC, as amended by Article 6 of Council Directive 92/49/EEC, be interpreted as precluding national legislation which, for the purposes of curbing inflation, provides that, on expiry of the period during which premium rates were frozen, the insured person may withdraw from the contract if, on the date for annual renewal of the policy, an increase is applied to the premium (not provided for under a customised arrangement) higher than the scheduled rate of inflation decided by the Government?'

Consideration of the questions referred

15 By its questions, the national court is asking, essentially, whether Article 8(3) of Directive 73/239 and Articles 29 and 39 of Directive 92/49 preclude legislation such as Article 2(2) to (5) of the Decree-Law.

16 Since it considered that its answer to the questions referred could be clearly deduced from its existing case-law, the Court, pursuant to Article 104(3) of its Rules of Procedure, informed the national court that it was proposing to give its decision by reasoned order and invited the interested parties referred to in Article 20 of the EC Statute of the Court of Justice to submit any observations they might have in that regard.

17 RAS and the Commission of the European Communities submit that the Court should not give its decision by reasoned order pursuant to Article 104(3) of the Rules of Procedure, taking the view, contrary to the Italian Government, that the answer which should be given to the referring court cannot be clearly deduced from the Court's case-law upon which the latter intends to base its decision.

18 According to RAS and the Commission, Directive 92/49 was properly transposed into national law by Decree-Law No 175 of 17 March 1995 (*GURI* No 114 of 18 May 1995, p. 4). The questions referred do not concern whether the provisions of Directives 73/239 and 92/49 have direct effect, but whether the Decree-Law is incompatible with the Directives, so that, if such is the case, the Decree-Law may be disapplied in favour of Decree-Law No 175.

19 With a view to replying to the national court, it should be recalled that, in accordance with settled case-law, when applying national law, whether adopted before or after the directive, the national court having to interpret that law must do so, as far as possible, in the light of the wording and the purpose of the directive so as to achieve the result it has in view and thereby comply with the third paragraph of Article 249 EC, but a directive may not of itself impose obligations on a private individual and may not therefore be relied on as such against such a person (see, in particular, Case C-343/98 *Collino and Chiappero* [2000] ECR I-6659, paragraphs 20 and 21).

20 In this case it is apparent from the information provided by the referring court and from the observations submitted to the Court of Justice that the purpose of the main proceedings is to ask the national court to disapply the Decree-Law in favour of previous national legislation, on the ground that the Decree-Law is incompatible with Directives 73/239 and 92/49, in order to obtain judgment against Mr Lo Bue for the payment of an insurance premium in an amount greater than that which would result from the application of the Decree-Law.

21 However, in accordance with the case-law mentioned in paragraph 19 of this order, interpretation of Article 8(3) of Directive 73/249 and Articles 29 and 39 of Directive 92/49, which has been requested by the national court, cannot, in any event, enable judgment to be given against Mr Lo Bue for the payment of an increase in premium which is not based on the national law applicable to the main proceedings, namely the Decree-Law.

22 The answer to the questions referred by the national court must therefore be that a directive may not, of itself, impose obligations on a private individual and may not therefore be relied on as such against such a person.

Costs

23 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 (Third Chamber),

in answer to the questions referred to it by the Giudice di pace di Palermo by order of 4 May 2001, hereby rules:

A directive may not, of itself, impose obligations on a private individual and may not therefore be relied on as such against such a person.

Luxembourg, 24 October 2002.

R. Grass

Registrar

J.-P. Puissochet

President of the Third Chamber