

Case C-707/19

Request for a preliminary ruling

Date lodged:

23 September 2019

Referring court:

Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (Poland)

Date of the decision to refer:

2 September 2019

Applicant:

K.S.

Defendant:

A.B.

ORDER

Łódź, 2 September 2019

The Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for Łódź-Śródmieście in Łódź, Poland), 13th Commercial Division, composed of:

President [...]

having examined [...]

during an *in camera* hearing

the action brought by **K.S.**

against **A.B.**

as regards the question referred for a preliminary ruling:

hereby decides:

1. to refer the following questions to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267(a) of the Treaty of 25 March 1957 on the functioning of the European Union [...]:
 - (a) Must 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) 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 home country and the cost of necessary parking of vehicles?
 - (b) If the answer to the above question is affirmative — can this liability be limited in any way by the laws of the Member States?
2. to stay the proceedings in both cases pursuant to Article 177(1)(3¹) of the Kodeks Postępowania Cywilnego [Code of Civil Procedure] [Or.2]

REQUEST FOR A PRELIMINARY RULING TO THE COURT OF JUSTICE OF THE EUROPEAN UNION OF 2 SEPTEMBER 2019

Scope of the obligation to regulate insurance against civil liability in respect of the use of motor vehicles under Directive 2009/103/EC of the European Parliament and of the Council [...]

[...]

[...]

[...] [Or.3]

II. Description of the subject matter of the dispute and the main proceedings.

II.I On 23 January 2017, the applicant K.S. brought an action before the District Court for Łódź-Śródmieście [...] against A.B. [for] payment of PLN 14 413.78 as reimbursement for the costs of towing a damaged vehicle (make: V.) together with statutory interest for late payment from 17 April 2015, of PLN 14 113.78 as reimbursement for the costs of towing a damaged vehicle (semi-trailer) together with statutory default interest from 17 April 2015, and of PLN 6 020 as reimbursement for the costs of parking the damaged vehicles together with statutory default interest from 18 May 2016. In support of his action, the applicant stated that on 30 October 2014 in K. (Latvia), an accident occurred in which a V-make vehicle with a semi-

trailer was damaged. These vehicles were [Or.4] the applicant's property and were registered in Poland. The insurer of the party responsible for the damage with respect to insurance against civil liability was the defendant — A.B. As a result of the accident, the vehicles in question were damaged in such a way that it was impossible for them to return to the head office of the victim's company.

Consequently, the applicant incurred the costs of parking the damaged vehicles, amounting to PLN 6 020, and the costs of transporting the vehicles from Latvia to Poland [...] amounting in total to PLN 32 860 (PLN 16 600 net for the V-make vehicle and PLN 16 260 net for the semi-trailer). The defendant acknowledged its liability for the claim of 30 October 2014, but only paid compensation amounting to PLN 2 246.22 as reimbursement for the costs of towing the V-make vehicle and PLN 2 246.22 as reimbursement for the costs of towing the semi-trailer; the defendant refused to pay the amount of PLN 6 020 as reimbursement for the costs of parking the vehicles.

II.2 In its defence, the defendant A.B. sought that the claim be dismissed in its entirety. In support of its claim, the defendant pointed out that under Latvian law, which is the law applicable to the insurer's liability, the insurer is obliged to reimburse towing costs only within the territory of the Republic of Latvia and to reimburse the costs of parking only if those parking costs were related to ongoing criminal or other proceedings.

III. Contents of legal provisions applicable to the case

III.1 EU law:

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 [...]

(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 [Or.5] Community. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the internal market in motor insurance.

(3) 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. The extent of the liability covered and the terms and conditions of the insurance cover are to be determined on the basis of those measures.

Article 3

Compulsory insurance of vehicles

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;
- (b) any loss or injury suffered by nationals of Member States during a direct journey between two territories in which the Treaty is in force, if there is no national insurers' bureau responsible for the territory which is being crossed; in such a case, the loss or injury shall be covered in accordance with the national laws on compulsory insurance in force in the Member State in whose territory the vehicle is normally based.

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

Article 5

Derogation from the obligation in respect of compulsory insurance of vehicles [Or.6]

1. A Member State may derogate from Article 3 in respect of certain natural or legal persons, public or private; a list of such persons shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

A Member State so derogating shall take the appropriate measures to ensure that compensation is paid in respect of any loss or injury caused in its territory and in the territory of other Member States by vehicles belonging to such persons.

It shall in particular designate an authority or body in the country where the loss or injury occurs responsible for compensating injured parties in accordance with the laws of that State in cases where Article 2(a) is not applicable.

It shall communicate to the Commission the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation.

The Commission shall publish that list.

2. A Member State may derogate from Article 3 in respect of certain types of vehicle or certain vehicles having a special plate; the list of such types or of such vehicles shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

Any Member State so derogating shall ensure that vehicles referred to in the first subparagraph are treated in the same way as vehicles for which the insurance obligation provided for in Article 3 has not been satisfied.

IV.1 Latvian law:

Sauszemes transportlīdzekļu īpašnieku civiltiesiskās atbildības obligātās apdrošināšanas likums [Law on compulsory insurance against civil liability of owners of motor vehicles]

Article 28. 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 **[Or.7]** connection with a criminal investigation or for any other reason the vehicle or its remaining parts must remain in the car park, the damage covered by the claim shall also include the costs of evacuating the vehicle or its remaining parts to the appropriate car park and the fee for parking services.

V. A statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings

V.1 In the case before the referring court, a doubt arose as to the extent to which Article 3 of Directive 2009/103/EC of the European Parliament and of the Council [...] imposes on the Member States an obligation to ensure that civil liability in respect of the use of motor vehicles is covered by insurance. Should this obligation be interpreted as meaning that, within the framework of ‘all appropriate measures’, each Member State should make insurance against civil liability cover the full extent of liability, including for towing the vehicle to its home country and the cost of parking of vehicles, and thus is not Article 28 of the Latvian Law on compulsory insurance against civil liability of owners of motor vehicles incompatible with 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?

V.2 In the present case, the applicable law is determined by the Convention on the Law Applicable to Traffic Accidents concluded at The Hague on 4 May

1971, according to which the applicable law is the internal law of the State in which the accident occurred, that is, the law of the Republic of Latvia in the present case. However, despite the fact that the case must be resolved under Latvian law, it is important that the relevant provisions of European Union law are taken into consideration.

- V.3** Article 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 requires Member States to introduce into their [Or.8] national legal systems a universal obligation to insure vehicles. It does not, however, specify the extent of insurance cover which each Member State should ensure in connection with civil liability in respect of the use of motor vehicles. The second sentence of Article 3 merely stipulates that the extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of the measures ('appropriate measures') referred to in the first paragraph.
- V.4** The Court has repeatedly stressed in its case-law (see the judgment of 11 July 2013 in *Gábor Csonka and Others v Magyar Állam*, C-409/11), that in interpreting a provision of EU 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. Therefore, in view of the breadth of the wording of Article 3 of Directive 2009/103/EC of the European Parliament and of the Council, the scope of the obligation placed on the Member States must be interpreted in the light of the context and the objectives of that provision.
- V.5** Interpretative difficulties and doubts are exacerbated by the use of the words 'stosowne środki' in Article 3 of the directive, which may be interpreted in different ways given their general meaning. The terminology used in the different language versions of the directive is also significant in this respect, since the English text stipulates: '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'. Therefore, it appears that the wording of the English version ('all appropriate measures') is much stronger than the Polish wording. In the French version of Article 3 of the directive, a still stronger term appears to be used: 'Chaque État membre prend toutes les mesures appropriées, sous réserve de l'application de l'article 5, pour que la responsabilité civile relative à la circulation des véhicules ayant leur stationnement habituel sur son territoire soit couverte par une assurance'. Therefore, it appears that in the French version the words 'toutes les mesures appropriées' refer to the need to determine what measures will be sufficient to achieve the purpose of the directive and to implement the principle of full compensation, and that all necessary measures should be taken by the Member State. When these texts are read in parallel, the Polish version contains the least forceful wording; in Polish law, the scope of insurance undertakings' liability is extended by the

case-law of the ordinary courts and of the Sąd Najwyższy (Supreme Court, Poland) [Or.9].

- V.6** Recital 2 of Directive 2009/103/EC of the European Parliament and of the Council [...] stresses the importance of regulation and points out that the key objective of Community action is to reinforce and consolidate the internal market in motor insurance. Therefore, in the view of the referring court, the national legislation of the Member States must ensure that victims of accidents receive similar treatment irrespective of where in the European Union the accident occurred. It would appear that the EU legislature's intention is to strengthen the free movement of vehicles and persons, which would argue in favour of an interpretation of EU laws that would oblige Member States to regulate insurance against civil liability to the fullest extent, that is to say, including with regard to the cost of towing vehicles to the victim's home country.
- V.7** In Member States such as the Republic of Poland, it is emphasised that the insurer's obligation to compensate for damage should be fulfilled in accordance with the principle of full compensation. Therefore, in accordance with the well-established case-law of the Polish courts and with Polish legal literature, the victim is entitled to claim compensation from the insurance undertaking. This compensation must cover all losses suffered in connection with the event giving rise to the claim as well as all benefits that the victim would have obtained if the event giving rise to the claim had not occurred.
- V.8** The referring court notes that in accordance with the fifth sentence of Article 3 of Directive 2009/103/EC of the European Parliament and of the Council [...], insurance against civil liability must cover any loss or injury suffered. There is no doubt that the costs of towing and necessary parking of vehicles incurred by the victim constitute a loss suffered in connection with the event giving rise to the claim. Therefore, the causal link appears to be beyond doubt. The current dispute before the court is limited to the interpretation of the law. In view of the above, it may be concluded that a literal interpretation of Article 28 of the Latvian Law [...] may not be compatible with the wording and purpose of the fifth sentence of Article 3 of the directive, since it may result in a situation in which insurance against civil liability does not cover the loss suffered in connection with the event giving rise to the claim. Before making a request for a preliminary ruling, the referring court also consulted the information available on the practice of the Latvian courts and on their interpretation. To this end, a request was sent to the Latvian Ministry of Justice for information on the interpretation of law and an expert opinion of 7 June 2019 [...] by G. L. was commissioned, which confirmed the restrictive interpretation of Article 28 of the Latvian Law [...].
- V.9** The wording of Article 5 of Directive 2009/103/EC of the European Parliament and of the Council [...], which provides for derogations from the

obligation to insure vehicles in respect of certain natural or legal persons, also supports the view that, within the framework of ‘all appropriate measures’, a Member State should make insurance against civil liability cover losses relating to towing vehicles to the home country and the cost of necessary parking. However, even in that case a Member State should take measures to ensure that compensation is paid in respect of any loss or injury caused in its territory and in the territory of other Member States by vehicles belonging to such persons.

V.10 According to the referring court, the above considerations may lead to the conclusion that the interpretation given of Article 28 of the Latvian law, in so far as it limits the liability of insurance undertakings, is capable of producing effects which are incompatible with the objectives of Directive 2009/103/EC of the European Parliament and of the Council [...], since that interpretation would mean depriving a victim established in another Member State of the ability to obtain compensation for damage to property in the form of the costs of towing to its head office and the costs of necessary parking of vehicles in the territory of another Member State. Answers to the questions referred for preliminary ruling are relevant for the dispute pending before the referring court and will determine the legitimacy of further proceedings in the present case.