

JUDGMENT OF THE COURT (Fifth Chamber)  
28 March 1996<sup>\*</sup>

In Case C-129/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Audiencia Provincial de Sevilla, Spain, for a preliminary ruling in the criminal proceedings before that court against

**Rafael Ruiz Bernáldez**

on the interpretation of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972(II), p. 360), the Second Council Directive 84/5/EEC of 30 December 1983 (OJ 1984 L 8, p. 17) and the Third Council Directive 90/232/EEC of 14 May 1990 (OJ 1990 L 129, p. 33), both on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles,

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet (Rapporteur), J. C. Moitinho de Almeida, L. Sevón and M. Wathelet, Judges,

Advocate General: C. O. Lenz,  
Registrar: D. Louterman-Hubeau, Principal Administrator,

<sup>\*</sup> Language of the case: Spanish.

after considering the written observations submitted on behalf of:

- the Spanish Ministerio Fiscal (Public Prosecutor), by Alfredo Flores Pérez, Fiscal Jefe of the Audiencia Provincial de Sevilla,
  
- the Spanish Government, by Alberto José Navarro González, Director General for Community Legal and Institutional Coordination, and Gloria Calvo Díaz, Abogado del Estado, of the State Legal Department, acting as Agents,
  
- the Greek Government, by Panagiotis Kamarineas, State Legal Adviser, and Christina Sitara, legal representative, acting as Agents,
  
- the United Kingdom, by S. Lucinda Hudson, of the Treasury Solicitor's Department, and Rhodri Thompson, Barrister, acting as Agents,
  
- the Commission of the European Communities, by Dimitrios Gouloussis, Legal Adviser, and Blanca Rodríguez Galindo, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Spanish Government, represented by Gloria Calvo Díaz, the Greek Government, represented by Panagiotis Kamarineas and Christina Sitara, the United Kingdom, represented by Rhodri Thompson, and the Commission, represented by Dimitrios Gouloussis and Blanca Vilá Costa, of its Legal Service, at the hearing on 7 December 1995,

after hearing the Opinion of the Advocate General at the sitting on 25 January 1996,

gives the following

### Judgment

- 1 By order of 4 April 1994, received at the Court on 4 May 1994, the Audiencia Provincial de Sevilla (Seville Provincial Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty five questions on the interpretation of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972(II), p. 360, hereinafter 'the First Directive'), the Second Council Directive 84/5/EEC of 30 December 1983 (OJ 1984 L 8, p. 17, 'the Second Directive') and the Third Council Directive 90/232/EEC of 14 May 1990 (OJ 1990 L 129, p. 33, 'the Third Directive'), both on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles.
- 2 Those questions were raised in criminal proceedings against Rafael Ruiz Bernáldez, who caused a road accident while driving while intoxicated.
- 3 By judgment of 7 September 1993 the Juzgado de lo Penal no. 3 de Sevilla (Seville No 3 Criminal Court) ordered Mr Ruiz Bernáldez to make reparation for the damage to property he had caused. On the other hand, it absolved the insurance company with which Mr Ruiz Bernáldez had taken out a policy covering damage

caused by his vehicle from any liability to pay compensation. It did so on the basis of Article 12(3) of the Reglamento del Seguro Obligatorio (Compulsory Insurance Rules), approved by Royal Decree No 2641/86 of 30 December 1986, which provides:

‘With respect to damage to property, the insurer shall ... compensate the damage caused if the driver of the vehicle specified in the insurance policy incurs civil liability ...

There shall be excluded from this cover damage to property caused:

...

(b)where the driver is intoxicated

...’

- 4 The Audiencia Provincial de Sevilla, hearing the Ministerio Fiscal’s appeal against the latter part of the judgment, considered whether, having regard to the Community directives relating to insurance against civil liability in respect of the use of motor vehicles, Article 12(3)(b) of the Reglamento del Seguro Obligatorio could be interpreted as meaning that the insurer did not have to compensate the victim of a road-traffic accident caused by an intoxicated driver.

5 Since the national court was uncertain as to the answer, it stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

- '(1) Does the wording of Article 3(1) of the First Council Directive 72/166/EEC of 24 April 1972 allow the internal rules of the system of compulsory insurance against civil liability in respect of the use of motor vehicles in each Member State to lay down any exclusions deemed fit or, on the contrary, must exclusions from cover be limited to those expressly provided for in the Second Council Directive 84/5/EEC of 30 December 1983?
  
- (2) Does the exclusion from compulsory insurance cover of damage to property caused by vehicles driven under the influence of alcohol comply with the abovementioned legislation?
  
- (3) Must the cases referred to in Article 2(1) of the Second Council Directive 84/5/EEC be regarded as a precise and exhaustive enumeration of the statutory provisions and contractual clauses which may remove insurance cover but which are not valid as against the person who has suffered harm, so that any other statutory or contractual exclusion would be valid as against him?
  
- (4) If a statutory provision or contractual clause which excludes insurance cover where the driver responsible for the damage is intoxicated is valid in relations between the insurer and the insured, could its validity as against a third party who has suffered harm be considered to be in compliance with the system laid down in Directives 72/166/EEC, 84/5/EEC and 90/232/EEC?

(5) If the provisions of the abovementioned directives, in particular Article 3(1) of Council Directive 72/166/EEC, allow exclusion of compulsory insurance cover against civil liability in respect of the use of motor vehicles which is valid as against the victim where the driver was intoxicated, may it be considered that such a case entails an absence of insurance as provided for in Article 1(4) of the Second Council Directive 84/5/EEC which would determine payment and cover by the body provided for in that article?’

### Admissibility

6 The Spanish Ministerio Fiscal submits that there is no need to answer the questions referred for a preliminary ruling, since they are not relevant to the outcome of the main proceedings.

7 On this point, the Court has consistently held that it is for the national courts alone, before which the proceedings are pending and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they refer to the Court. A request for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual nature of the case or the subject-matter of the main action (see, *inter alia*, Case C-143/94 *Furlanis Costruzioni Generali* [1995] ECR I-3633, paragraph 12). That is not so, however, in the main proceedings in this case.

8 Consequently, the Court must consider the national court’s questions.

## Questions 1 to 4

- 9 By Questions 1 to 4, which may be considered together, the national court seeks to ascertain whether Article 3(1) of the First Directive is to be interpreted as meaning that, without prejudice to the provisions of Article 2(1) of the Second Directive, a compulsory insurance contract may provide that in certain cases, in particular where the driver of the vehicle was intoxicated, the insurer is not obliged to pay compensation for the personal injuries and damage to property caused to third parties by the insured vehicle, or whether in such cases the compulsory insurance contract may provide only that the insurer is to have a right of recovery against the insured.
- 10 The Spanish and Greek Governments, the United Kingdom and the Commission consider that the directives leave Member States a wide discretion with respect to the terms and conditions of compulsory insurance, but that they must ensure in any event that the victim is compensated, either in all cases or at least in the principal fields of civil liability, in particular where the damage is caused by a vehicle driven by an intoxicated person.
- 11 Those three Governments consider that the directives authorize exclusion clauses relating to the physical condition of the driver, provided that they take effect only between the insurer and the insured.
- 12 In the Commission's view, on the other hand, the directives authorize such exclusion clauses, even in the relations between the insurer and the victim, on condition that the vehicle is then treated as an uninsured vehicle and the body referred to in Article 1(4) of the Second Directive compensates the victim.

- 13 The preambles to the directives show that their aim is firstly to ensure the free movement of vehicles normally based on Community territory and of persons travelling in those vehicles, and secondly of guaranteeing that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the Community the accident has occurred (see more particularly the fifth recital in the preamble to the Second Directive and the fourth recital in the preamble to the Third Directive).
- 14 For that purpose the First Directive, having regard to the agreement between the national insurers' bureaux, established a system based on the presumption that vehicles normally based on Community territory are covered by insurance (see the eighth recital). Article 3(1) of the First Directive thus provides that Member States are, subject to the derogations in Article 4, to take all appropriate measures to ensure that civil liability in respect of the use of vehicles is covered by insurance.
- 15 The original version of that article left it to the Member States, however, to determine the damage covered and the terms and conditions of compulsory insurance.
- 16 In order to reduce the disparities which continued to exist between the laws of the Member States with respect to the extent of the obligation of insurance cover (third recital in the preamble to the Second Directive), Article 1 of the Second Directive required compulsory cover, as regards civil liability, for both damage to property and personal injuries, up to specified sums. Article 1 of the Third Directive extended that obligation to cover for personal injuries to passengers other than the driver.



- 17 Article 1(4) of the Second Directive also improved the protection of victims by requiring the Member States to set up or authorize bodies responsible for providing compensation for damage to property or personal injuries caused by unidentified or uninsured vehicles.
- 18 In view of the aim of ensuring protection, stated repeatedly in the directives, Article 3(1) of the First Directive, as developed and supplemented by the Second and Third Directives, must be interpreted as meaning that compulsory motor insurance must enable third-party victims of accidents caused by vehicles to be compensated for all the damage to property and personal injuries sustained by them, up to the amounts fixed in Article 1(2) of the Second Directive.
- 19 Any other interpretation would have the effect of allowing Member States to limit payment of compensation to third-party victims of a road-traffic accident to certain types of damage, thus bringing about disparities in the treatment of victims depending on where the accident occurred, which is precisely what the directives are intended to avoid. Article 3(1) of the First Directive would then be deprived of its effectiveness.
- 20 That being so, Article 3(1) of the First Directive precludes an insurer from being able to rely on statutory provisions or contractual clauses to refuse to compensate third-party victims of an accident caused by the insured vehicle.
- 21 In that context the first subparagraph of Article 2(1) of the Second Directive merely recalls that obligation with respect to provisions or clauses in a policy excluding from insurance the use or driving of vehicles in particular cases (persons not authorized to drive the vehicle, persons not holding a driving licence, persons in breach of the statutory technical requirements concerning the condition and safety of the vehicle). However, by way of derogation from that obligation, the second and third subparagraphs of Article 2(1) provide that certain persons may be

excluded from compensation by the insurer, having regard to the situation they have themselves brought about (persons entering a vehicle which they know to have been stolen) or to the compensation they can claim elsewhere (victims who may obtain compensation for the damage suffered from a social security body).

- 22 In contrast, Article 3(1) of the First Directive does not preclude statutory provisions or contractual clauses under which it is possible for the insurer to claim against the insured in certain cases.
- 23 That applies in particular to provisions or clauses which allow the insurer to claim against the insured with a view to recovering the sums paid to the victim of a road-traffic accident caused by an intoxicated driver.
- 24 The answer to Questions 1 to 4 must therefore be that Article 3(1) of the First Directive is to be interpreted as meaning that, without prejudice to the provisions of Article 2(1) of the Second Directive, a compulsory insurance contract may not provide that in certain cases, in particular where the driver of the vehicle was intoxicated, the insurer is not obliged to pay compensation for the damage to property and personal injuries caused to third parties by the insured vehicle. It may, on the other hand, provide that in such cases the insurer is to have a right of recovery against the insured.

## Question 5

- 25 Question 5 is put only on the basis of the Court's answer to the preceding questions being that Article 3(1) of the First Directive is to be interpreted as meaning

that a compulsory insurance contract may provide that in certain cases, in particular where the driver of the vehicle was intoxicated, the insurer is not obliged to pay compensation for the damage to property and personal injuries caused to third parties by the insured vehicle.

- 26 In view of the answer to Questions 1 to 4, there is no need to answer Question 5.

### Costs

- 27 The costs incurred by the Spanish and Greek Governments, the United Kingdom and the Commission of the European Communities, 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 (Fifth Chamber),

in answer to the questions referred to it by the Audiencia Provincial de Sevilla, by order of 4 April 1994, hereby rules:

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, is to be interpreted as meaning that,

without prejudice to the provisions of Article 2(1) of the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, a compulsory insurance contract may not provide that in certain cases, in particular where the driver of the vehicle was intoxicated, the insurer is not obliged to pay compensation for the damage to property and personal injuries caused to third parties by the insured vehicle. It may, on the other hand, provide that in such cases the insurer is to have a right of recovery against the insured.

Edward

Puissochet

Moitinho de Almeida

Sevón

Wathelet

Delivered in open court in Luxembourg on 28 March 1996.

R. Grass

D. A. O. Edward

Registrar

President of the Fifth Chamber