Case C-370/24 [Nastolo] [i]

Request for a preliminary ruling

Date lodged:

23 May 2024

Referring court:

Tribunale ordinario di Lodi (Italy)

Date of the decision to refer:

20 May 2024

Applicant:

AT

Defendant:

CT

[…]

TRIBUNALE ORDINARIO DI LODI

(DISTRICT COURT, LODI)

CIVIL SECTION I

The investigating judge, […]

[…] in case […] brought by:

AT […]

(applicant)

against

[i] The name of the present case is fictitious. It does not correspond to the real name of any of the parties to the proceedings.

CT, […] as an undertaking designated by the Fondo di Garanzia per le Vittime della Strada (the Guarantee Fund for Road Accident Victims) […]

(defendant)

makes […] the following

ORDER

under Article 267 TFEU

Reference to the Court of Justice

for a preliminary ruling concerning interpretation

1. Subject matter of the proceedings and relevant facts

By application initiating proceedings of 11.2.2022, AT brought proceedings against PERSON 3, the heir of PERSON 2, and CT, the latter in its capacity as an undertaking designated by the Guarantee Fund for Road Accident Victims ('the FGVS'), [1] seeking compensation for the damage (assessed as EUR 233 076.00, plus interest and revaluation) suffered as a result of the road traffic accident in which she was involved on 6.1.2016.

AT claimed that on 6.1.2016, in Lodi, she had been invited, as a passenger, into a passenger car (a Ford Fiesta, with Italian number plate […]) which PERSON 2 had at its disposal.

During the journey, the passenger car was involved in an accident; the course of the accident was established in the road traffic accident report of the Polizia Locale di Lodi (Local Police, Lodi) […]. The Local Police officers, after hearing the persons concerned and eyewitnesses, described what had happened as follows: the vehicle in which PERSON 2 (the driver) and AT (passenger) were travelling crashed into the back of another car (driven by […], in which there were also two passengers) […]. Following the collision, the Ford Fiesta, which AT and PERSON 2 were in, hit the central reservation and overturned. AT and PERSON 2 were taken to hospital.

The driver tested positive for cocaine, opiates and tetrahydrocannabinol. The effects of the accident on the driver's physical condition are unknown – and in any event irrelevant.

[1] […]

As regards, by contrast, AT, the legal doctor appointed, as an expert, by the Court found that, as a result of the accident, the woman suffered significant consequences in terms of physical integrity.

The Local Police officers who intervened noted, in their report, that the Ford Fiesta had been stolen […].

As a result, PERSON 2 and AT were prosecuted for the offence of receiving stolen goods (Article 648 of the Codice Penale (Criminal Code, Italy)); the applicant was acquitted for not having committed the act […].

In the meantime, PERSON 2 died.

Once the proceedings had been initiated, CT (as an undertaking designated by the FGVS) entered an appearance before the court, and asserted that compensation under Article 283 of decreto legislativo n. 209/05 (Legislative Decree No 209/05) is payable only in favour of passengers who had no knowledge of the unlawful use of the passenger car in which they were travelling at the time of the accident, recalling the position of the Suprema Corte (Supreme Court of Cassation, Italy) […] according to which it is for the injured party to prove that he or she had, without any fault on his or her part, no knowledge of the unlawful use of the vehicle. To that effect, it asserted that the criminal judgment of acquittal is irrelevant […].

[…]

[…] *[other facts and procedural events not relevant for the purposes of the questions referred for a preliminary ruling]*

[…] [B]y order of 20.3.2024, this court […] set the time limit […] for the parties to lodge written submissions on the following issues: *(i) the existence (or otherwise) of a conflict between national law (Article 283 of the Codice delle Assicurazioni private (the Private Insurance Code), as interpreted by the Supreme Court) and supranational law (Article 13 of Directive 2009/103/EC); (ii) whether (or not) the conditions for a reference to the Court of Justice for a preliminary ruling concerning interpretation under Article 267 TFEU are met.*

AT's defence counsel lodged an authorised submission […]

CT's defence counsel lodged an authorised submission […]

2. The relevant Italian legislation and its interpretation in the case-law

The relevant provisions of national law for the purposes of the present case are as follows:

Article 283(1) of Legislative Decree No 209/2005 (the Private Insurance Code) provides that: '1. The Guarantee Fund for Road Accident Victims, set up within

CONSAP [the Concessionaire for Public Insurance Services], shall pay compensation for damages caused by the use of vehicles and vessels, for which insurance is compulsory, in cases where: […] (d) the vehicle is being used against the wishes of the owner […]'.

Article 283(2) of Legislative Decree No 209/2005 provides that: 'in the case referred to in paragraph 1(d), compensation shall be payable only to non-travelling third parties and to passengers travelling against their wishes or who have no knowledge of the unlawful use'.

That legislation has been interpreted, both by the Supreme Court of Cassation […] and by the court adjudicating on the substance […], as meaning that it is for the injured party claimant to prove knowledge of the unlawful origin of the vehicle, as a constituent element of his or her claim for compensation.

[…] [*case-law of the Supreme Court of Cassation*]

Judgment No 12231/2019 reads as follows: 'The only difference which can be inferred between the Community text and the national rule is in the allocation of the burden of proof where the Community legislation places that burden on the insurer and the national legislation, by not making a clear statement, nevertheless implies that lack of knowledge of the unlawfulness is a constituent element of the claim, with the burden of proof on the injured party. The Italian legislature, in implementing the Community legislation and providing for insurance cover for persons previously excluded from compensation, could not fail to deal with cases in which the passenger travelling against his or her own will or because he or she knew of the unlawfulness of the use cannot obtain compensation. Placing on the injured party the burden of proving his or her good faith falls, according to this Court, within the sphere of discretion that remains with the State in implementing the directive, without prejudice to the specific aim pursued by Community law and national law, of not allowing compensation for those who know that the vehicle was stolen'.

3. The supranational legislation

The legislative point of reference applicable *ratione temporis*, in secondary EU law, is Directive 2009/103/EC of 16.9.2009 (OJ L 263, p. 11).

Article 13 of that directive provides:

– in the first subparagraph of paragraph 2, that '2. In the case of vehicles stolen or obtained by violence, Member States may provide that the body specified in Article 10(1) is to pay compensation instead of the insurer under the conditions set out in paragraph 1 of this Article';

– in the first subparagraph of paragraph 1, that 'any statutory provision or any contractual clause contained in an insurance policy issued in

accordance with Article 3 shall be deemed to be void in respect of claims by third parties who have been victims of an accident where that statutory provision or contractual clause excludes from insurance the use or driving of vehicles by: (a) persons who do not have express or implied authorisation to do so; (b) persons who do not hold a licence permitting them to drive the vehicle concerned; (c) persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned';

– in the second subparagraph of paragraph 1, that 'the provision or clause referred to in point (a) of the first subparagraph may be invoked against persons who voluntarily entered the vehicle which caused the damage or injury, when the insurer can prove that they knew the vehicle was stolen'.

As far as this Court is aware, there are no judgments of the Court of Justice specifically aimed at interpreting Article 13 of Directive 2009/103/EC.

However, in the case-law of the Court of Justice, albeit developed with reference to the previous legislation on the matter (the so-called second, third and fourth directives on the matter, dating back to 1984, 1990 and 2000, respectively), it is held repeatedly that statutory provisions or contractual clauses which have the effect of excluding the applicability of an insurance policy can be relied on against the victims of an accident only where 'the insurer can prove that the persons who voluntarily entered the vehicle which caused the injury knew that it was stolen' (Court of Justice, 30.6.2005, Case C-537/03 *Candolin*, paragraph 23; see also Court of Justice, 1.12.2011, Case C-442/10 *Churchill*, paragraph 35).

4. The parties' submissions and arguments

[…] [T]his court invited the parties to lodge, […], written submissions on the following issues: *(i) the existence (or otherwise) of a conflict between national law (Article 283 of the Private Insurance Code, as interpreted by the Supreme Court of Cassation) and supranational law (Article 13 of Directive 2009/103/EC); (ii) whether (or not) the conditions for a reference to the Court of Justice for a preliminary ruling concerning interpretation under Article 267 TFEU are met.*

AT's defence counsel […] submitted that Article 13 of Directive 2009/103/EC is already sufficiently clear in imposing the burden of proof on FGVS. In addition, he requested the disapplication of the national provision in the event of finding a conflict between EU and national law.

CT's defence counsel […] recalled the national case-law, on the substance and legality, according to which the burden of proof of the stolen origin of the vehicle is on the claimant/injured party. In that regard, CT's defence counsel noted that, in cases where the Supreme Court of Cassation has ruled on the application of the national rule, it has never considered – even though it was, in his view, obliged to

do so under Article 267 TFEU – proposing to make a reference for a preliminary ruling itself, on the assumption that the interpretation provided is not contrary to Directive 2009/103/EC.

5. The grounds of the reference for a preliminary ruling and the point of view of the referring court

This court considers it appropriate to request, of its own motion, an interpretative intervention by the Court of Justice with regard to Article 13 of Directive 2009/103/EC.

While being aware that it is for the national judicial authority 'to interpret national law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive' (see, word for word and among others, Court of Justice, 5.10.2004, Joined Cases C-397/01 to C-403/01, *Pfeiffer*, paragraph 113 and the other precedents cited therein), it is necessary for the Court of Justice, the institution whose task is to provide the exact interpretation of that supranational legislation, to give a ruling on the abovementioned provision, in order to prevent national case-law from becoming settled along the lines of the approach already mentioned, which might not be consistent with the supranational legislation.

Article 13 of Directive 2009/103/EC allows – 'may provide' – Member States to provide (without, therefore, any obligation) that the body specified in Article 10(1) is to pay compensation to the victim of an accident caused by a stolen motor vehicle; however, nothing expressly states – neither in Article 13, nor in the abovementioned Article 10 of Directive 2009/103/EC – that, even where the legislature has provided for the payment of compensation by the designated body, the burden of proof regarding the injured party's knowledge of the unlawful use is on that body (or on the injured party claimant). The second subparagraph of Article 13(1) of Directive 2009/103/EC refers only to the principal case of the claim made against the insurance undertaking.

In the view of this court, it is therefore appropriate to clarify whether, in the event that the national legislature (as is the case in Italy) has decided to provide for the payment of compensation by the body referred to in Article 10(1) of Directive 2009/103/EC, it can then be stated – without a conflict with EU law arising – that there is a system of evidence that places on the injured party the burden of proving lack of knowledge that the vehicle is a stolen vehicle or whether, on the contrary, the opposite must be inferred from the overall content of Directive 2009/103/EC.

The ruling requested is of manifest importance in the present proceedings, since the allocation of the burden of proof as regards knowledge (or otherwise) of the criminal origin of the good has significant consequences in relation to the possibility (or otherwise) of granting the application and the consequent payment of the compensation requested. Nor is the condition of relevance called into question by the mere fact […] that the woman was acquitted of the offence of

receiving stolen goods, in so far as a person may well have knowledge of the unlawful origin of a good without having taken part in the aforementioned offence. It is therefore clear that the allocation of the burden of proof, in this case as in any other similar case that may arise in the future, is of manifest importance.

This court […] considers that a combined reading of the provisions of the directive suggests that the burden of proving the condition of the stolen origin of the motor vehicle should be placed on the body referred to in Article 10(1) of Directive 2009/103/EC (in Italy, the FGVS).

In addition to the wording of Article 13 of Directive 2009/103/EC, that is supported by:

(i) the systematic reading of subparagraph 2 of Article 10(2) of Directive 2009/103/EC, according to which – in the case of the use of uninsured vehicles – the injured party's knowledge of the lack of insurance must be proved by the body in order to exclude payment of compensation. Therefore, the intention of the supranational legislature to impose on the body – and not on the injured party – the obligation to provide proof of any circumstance that prevents compensation, including in relation to that specific person (and not only, therefore, when the counterparty is an insurance undertaking), seems clear;

(ii) the reference in the wording in subparagraph 1 of Article 13(2) of Directive 2009/103/EC to paragraph 1 of that provision ('is to pay compensation instead of the insurer under the conditions set out in paragraph 1 of this Article';

(iii) the general principle that *vulneratus ante omnia reficiendus* (the injured party is first and foremost entitled to compensation), which underpins the entire body of supranational legislation on compulsory motor vehicle insurance and which the Court of Justice has, frequently, used as the basis for its decisions on the subject (see, throughout, Court of Justice, 1.12.2011, C-442/10 *Churchill*). Consequently, if the *ratio legis* (the rationale) is to allow the innocent injured party to have access to just compensation, it is hard to see how the latter can be burdened with the obligation to prove a circumstance (moreover, of a negative nature, that is to say 'of not knowing') which is almost impossible to demonstrate;

(iv) the principle of effectiveness of EU law – as a usual limit on the procedural autonomy of the Member States – according to which the detailed rules for the protection of supranational law rights must not be rendered impossible or excessively difficult by the national procedural system (see, inter alia, the key judgments on this point, Court of Justice, 14.12.1995, C-312/93 *Peterbroeck* and 19.11.1991, C-6/90 and C-9/90 *Francovich*). In the present case, the exercise [of] the right granted to the injured party, expressly arising from supranational law, could be seriously undermined by

the obligation to provide proof of a circumstance that is a negative and, above all, the ascertainment of which is almost impossible for the person claiming compensation.

From that perspective, the approach developed in national case-law is not only not binding, for this court, but also does not appear to be entirely persuasive: on the contrary, it is precisely the grounds of the judgments of the Supreme Court of Cassation that call for proceeding with the reference for a preliminary ruling.

In the aforementioned judgments, in particular in judgment No 12231/2019, the Supreme Court of Cassation starts from the assumption that there is a conflict between the supranational and national legislation, but then considers that the discrepancy is (legitimately) attributable to the legislature's margin of discretion in transposing the directive.

However, the two statements do not seem to be able to coexist: either it is stated that there is a conflict between European legislation and national legislation and the inconsistency is resolved using the criteria provided for that purpose (first and foremost, interpretation in conformity with supranational law, with the need to make a reference to the Court of Justice where there is a doubt as to the interpretation), or it is asserted that the national legislature was not bound as regards the detailed rules of transposition. However, in the latter case, it is not even correct to find a conflict between the rules: if it is stated that the directive is not binding on the legislature (and the court) as regards the allocation of the burden of proof, then the Member State would keep intact its sphere of autonomy in regulating the conditions governing claims for compensation and the related burdens of proof, without there even being a conflict.

The brief summary of those arguments leads to the conclusion that it is necessary for the Court of Justice to rule on the correct interpretation of the supranational legislation, in particular Articles 13 and 10 of Directive 2009/103/EC, so as to clarify whether, in the case of claims for compensation submitted to the bodies responsible for compensating so-called road accident victims, the claimant – or the body – has the burden of proving knowledge of the stolen origin of the vehicle.

5. The questions

[…]

[…] [*questions referred for a preliminary ruling, set out in the operative part*]

6. Operative part

For the foregoing reasons, the Court of Lodi, sitting as a single judge […]:

(A) Orders, pursuant to Article 267 TFEU, that the following questions be referred to the Court of Justice of the European Union for a preliminary ruling concerning interpretation:

‘1. Is Article 13 of Directive 2009/103/EC to be interpreted as meaning that, in the case of a road traffic accident involving a passenger travelling in a stolen vehicle, it is for the body responsible for providing compensation within the meaning of Article 10 of Directive 2009/103/EC to prove that the injured party knew that the vehicle had been stolen?

2. If so, does that provision, as thus interpreted, preclude legislation, such as the Italian legislation, interpreted and applied as meaning that the burden of proof is on the injured passenger?’

[…] *[procedure]*

(C) Stays the proceedings until such time as the decision of the Court of Justice has been notified.

Lodi, 20.05.2024

[…]