

Anonymised version

Translation

C-236/23 – 1

Case C-236/23

Request for a preliminary ruling

Date lodged:

7 April 2023

Referring court:

Court of Cassation (France)

Date of the decision to refer:

30 March 2023

Applicant:

Mutuelle assurance des travailleurs mutualistes (Matmut)

Defendants:

TN

Société MAAF assurances

Fonds de garantie des assurances obligatoires de dommages
(FGAO)

PQ

COURT OF CASSATION

Public hearing of **30 March 2023**

[...]

[...]

- Reference to the Court of Justice
of the European Union

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

OPINION OF THE COURT OF CASSATION, SECOND CIVIL CHAMBER,

OF 30 MARCH 2023

The Criminal Chamber, which is hearing Appeal No.20-86.015 brought by the company Mutuelle assurance des travailleurs mutualistes (MATMUT), has requested, on 6 September 2022, the opinion of the Second Civil Chamber.

The file has been sent to the principal state prosecutor.

[...]

The Second Civil Chamber of the Court of Cassation [...] has delivered the present opinion.

Facts and procedure

- 1 According to the judgment under appeal (Lyon, 21 October 2020), PQ concluded a motor insurance contract with the company Mutuelle assurance des travailleurs mutualistes (MATMUT) on 5 October 2012, stating that he was the only driver of the insured vehicle.
- 2 On 28 September 2013, a traffic accident occurred involving that vehicle driven by TN, who was under the influence of alcohol. PQ, a passenger in the vehicle, was injured in the accident, which also involved another vehicle insured by the company MAAF.
- 3 Prosecuted before a criminal court, TN was found guilty, in particular, of causing unintentional physical injuries to PQ resulting in a period of incapacity of more than 3 months by driving a motorised road vehicle under the influence of alcohol.
- 4 At the hearing in the course of the criminal proceedings, in which PQ's claims for civil damages were examined, MATMUT relied on the objection of nullity of contract on the ground of PQ's false statement of the usual driver's identity, requesting that it be exonerated and that liability for PQ's damages be assumed by the Fonds de garantie des assurances obligatoires de dommages (FGAO) which, according to Article L. 421-1 of the Insurance Code, is the organisation responsible for paying compensation, inter alia, to victims of traffic accidents where the person responsible is not insured.
- 5 By judgment of 17 December [2018], the criminal court ruled that the contract was null and void because of the intentional false statement made by the insured person . It exonerated MATMUT, ordered TN to pay compensation to the victims and declared the judgment to be enforceable against the FGAO.

- 6 The FGAO, MAAF and TN appealed against that judgment.
- 7 The appeal court upheld the judgment in that it had ruled that the insurance contract concluded between PQ and MATMUT was null and void.
- 8 It found that, when the insurance was concluded by PQ, TN was the owner of the vehicle and its usual driver. It held that PQ had therefore made an intentional false statement of the normal driver's identity which had manifestly changed the insurer's opinion of the risk, given that TN had previously been convicted of drink-driving.
- 9 However, it refused to exonerate MATMUT and declared the decision to be enforceable against it. It therefore exonerated the FGAO. In arriving at that conclusion, the appeal court observed that it follows from the precedence of European Union law over national law that the nullity of a contract because of the intentional false statement of the insured person, as laid down in Article L. 113-8 of the Insurance Code, is not enforceable against victims of a traffic accident or their successors.
- 10 It further stated that the fact that the victim was a passenger in the vehicle which caused the accident or the policyholder or the owner of that vehicle did not allow him to be denied the status of a third-party victim.
- 11 MATMUT brought an appeal before the Court of Cassation against that judgment (Appeal No 20-86.015), which is defended by TN and his insurer, MAAF, as well as by PQ and the FGAO.
- 12 That appeal, which was submitted to the Criminal Chamber, criticises the appeal court, in essence, for declaring the nullity of the insurance contract to be unenforceable against PQ, since it had found that he had knowingly provided the insurer with false information regarding the identity of the usual driver of the vehicle. It claims that the appeal court infringed Articles L. 113-8 and R. 211-13 of the Insurance Code.
- 13 The Criminal Chamber, concluding that the examination of the plea required the opinion of the chamber specialised in insurance law, referred to it the following question:

'Must the nullity of the motor vehicle insurance contract owing to an intentional false statement of the usual driver's identity be declared unenforceable against a victim, even where the victim is both the passenger in the vehicle which caused the accident and the policyholder who made that false statement?'

Applicable provisions

- 14 According to Article L. 113-8 of the Insurance Code, the insurance contract is null and void in the event of an intentional omission or false statement by the insured

person where that omission or false statement changes the subject matter of the risk or reduces its extent in the insurer's opinion, even if the risk omitted or misrepresented by the insured person had no bearing on the accident.

- 15 The bad faith of the policyholder penalised by the nullity of the insurance is characterised by his intention to deceive the insurer (2nd Civil Chamber, 19 October 2006, Appeal No 05-18.886), irrespective of whether the false statement had any bearing on the accident (Criminal Chamber, 31 May 1988, Appeal No 87-84.010, published).
- 16 The nullity of the insurance contract takes effect on the date of the intentional false statement (Criminal Chamber, 2 December 2014, Appeal No 14-80.933, published). Therefore, where the incorrect statement of the risk is made at the time of conclusion of the contract, the contract is retroactively annulled and is then deemed never to have existed.
- 17 Until a judgment reversing the previous position of 29 August 2019 (2nd Civil Chamber, 29 August 2019, Appeal No 18-14.768, published), the Court of Cassation held that the nullity of the contract resulting from the insured person's false statement could be relied on against the victim, since the insurer which denied his warranty claim had duly directed a claim against the FGAO (Criminal Chamber, 31 May 1988, cited above; Criminal Chamber, 12 June 2012, Appeal No 11-87.395).
- 18 It relied, in particular, on Article R. 211-13 of the Insurance Code which provides for the unenforceability against the victim only of certain warranty lapses or exclusions.
- 19 Since that judgment of 29 August 2019, the Court of Cassation holds that it follows from Article L. 113-8 and R. 211-13 of the Insurance Code, interpreted in the light of Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 and of Article 2(1) of Second Council Directive 84/5/EEC of 30 December 1983 and of Articles 3 and 13 of Council Directive 2009/103 of 16 September 2009 that the nullity laid down in Article L. 113-8 of the Insurance Code cannot be relied on against the victims of a traffic accident or their successors and that the FGAO cannot be required to compensate the victim in such a case (2nd Civil Chamber, 16 January 2020, Appeal No 18-23.381, published; Criminal Chamber, 8 September 2020, Appeal No 19-84.983, published).
- 20 It follows, henceforth, from Article L. 211-7-1 of the Insurance Code resulting from Law No 2019-486 of 22 May 2019, which was adopted in order to bring the Insurance Code into conformity with EU law, that the nullity of a motor insurance contract cannot be relied on against victims of damage arising from a traffic accident or their successors, and that, in such a situation, the insurer covering civil liability for the vehicle involved is required to pay compensation to them. The provision goes on to state that the insurer is subrogated to the rights of the person

entitled to compensation against the person responsible for the accident, to the extent of the amount of the sums that it has paid.

Grounds for the reference for a preliminary ruling

- 21 Since the change in its case-law and the entry into force of Article L. 211-7-1 of the Insurance Code, the Court of Cassation has never ruled on whether the nullity of the contract can be relied on against a victim who was a passenger in the vehicle where the victim is also the policyholder and the person who made the intentional false statement which resulted in the insurance contract being null and void.
- 22 Moreover, none of the judgments delivered by the Court of Justice of the European Union (CJEU) interpreting Directive 2009/103 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, which is applicable to the dispute, or the previous directives which it consolidated, relate to that specific situation (Candolin, 30 June 2005, Case C-537/03, ECLI:EU:C:2005:417; Churchill Insurance Company, 1 December 2011, Case C-442/10, ECLI:EU:C:2011:799; Marques Almeida, 23 October 2012, Case C-300/10, ECLI:EU:C:2012:656; Csonka and Others., 11 July 2013, Case C-409/11, ECLI:EU:C:2013:512; Fidelidade, 20 July 2017, Case C-287/16, ECLI:EU:C:2017:575; Delgado Mendes, 14 September 2017, Case C-503/16, ECLI:EU:C:2017:681; Van Ameyde, 10 June 2021, Case C-923/19, ECLI:EU:C:2021:475).
- 23 Although it is apparent from that case-law that the only distinction permitted by EU rules relating to compulsory insurance against civil liability in respect of the use of motor vehicles is that between the driver and passenger and although the fact that the passenger who is the victim of the accident is also the person insured to drive the vehicle does not allow him to be denied the status of a third-party victim, none of those judgments had to deal with the situation of an insured person who is both the passenger who is the victim of an accident and the person who caused the insurance contract to be null and void through that person's own fault. In particular, the Fidelidade judgment, relating to the consequences to be drawn from the nullity of a contract, concerned the situation of victims who were not the policyholders and the Churchill Insurance Company judgment did not concern the consequences to be drawn from the nullity of a contract, but a national provision which had the effect of automatically excluding, in certain circumstances, the obligation on the insurer to compensate an insured person who was a passenger and victim of a road traffic accident where the insured had authorised an uninsured person to drive.
- 24 The question therefore arises whether the directives cited above preclude the nullity of the insurance contract from being enforceable against a passenger who

is the victim of an accident where that person is also the policyholder whose breach of contract is the cause of that nullity.

- 25 The Court of Cassation also wonders whether, in the event that the nullity of the insurance contract is declared to be unenforceable against the victim who is the policyholder, the insurer may be permitted, without contravening EU law, to bring an action against the victim based on the intentional fault committed when the contract was concluded in order to obtain reimbursement of the sums paid to the victim in performance of the contract.
- 26 The national case-law considers that a person entering into a contract for civil liability motor insurance who voluntarily makes false statements thereby incurs liability towards the insurer and, in the event of annulment of that contract on the ground of an intentional false statement, must repay to the insurer the compensation that the insurer paid to the victim (1st Civil Chamber, 26 February 1991, Appeal No 88-15.814, published).
- 27 On the other hand, a declaration of enforceability against the victim of the nullity of the insurance contract would result, in French law, in the FGAO paying compensation to the victim, since Articles L. 421-1, I, 1., R. 421-4 and R. 421-18 of the Insurance Code provide, in that case, for the Fund to intervene on behalf of the traffic accident victim and his or her successors.
- 28 The question therefore arises whether Articles 3 and 13 of Directive 2009/103 of the European Parliament and of the Council of 16 September 2009 preclude national legislation declaring the nullity of the contract resulting from the victim's false statement when concluding the contract to be enforceable against the passenger who is the victim of the accident and also the policyholder and whether the fact that the FGAO is required to compensate that victim where the nullity of the contract is declared to be enforceable against the victim would be likely to affect the outcome.
- 29 Since the answer to those questions is not so clear as to leave no room for reasonable doubt, a reference for a preliminary ruling must be made to the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the Functioning of the European Union.

ON THOSE GROUNDS, the Court hereby:

REFERS the following question to the Court of Justice of the European Union:

Must Articles 3 and 13 of Directive 2009/103 of the European Parliament and of the Council of 16 September 2009 be interpreted as precluding the nullity of a contract for civil liability motor insurance from being declared enforceable against a passenger who is a victim where that person is also the policyholder and intentionally made a false statement at the time of conclusion of the contract which gave rise to that nullity?

[...]

WORKING DOCUMENT