

Anonymised version

Translation

C-577/21 – 1

Case C-577/21

Request for a preliminary ruling

Date lodged:

20 September 2021

Referring court:

Sofiyski gradski sad (Bulgaria)

Date of the decision to refer:

11 August 2021

Applicants:

LM

NO

Defendant:

HUK-COBURG-Allgemeine Versicherung AG

ORDER [...]

The Sofiyski gradski sad (Sofia City Court) [...]

[...]

[...] [formation of the court and national procedure] took the following matters into consideration in reaching its decision:

- 1 By order [...], the court concluded the preparatory inquiries, opened the oral procedure and declared that the state of the proceedings permits final judgment. In reaching its decision, the court took the view that the German law applicable to the obligation to pay compensation for non-material damage suffered by a child as a result of the death of a parent following a road traffic accident may be contrary to EU law. More specifically, the issue is the requirement under German law that

the child must have suffered pathological damage to his or her health as a result of the pain and suffering experienced due to the death of a parent in order to be entitled to such compensation.

2 [...] [statements regarding the national procedure] Therefore, the court makes the following

ORDER:

3 Its order concluding the preparatory inquiries, opening the oral procedure and declaring that the state of the proceedings permits final judgment is **annulled**.

4 The matter is **referred** to the Court of Justice of the European Union for a request for a preliminary ruling [...] [instructions to the court administration].

5 The proceedings are **stayed** [...] pending the Court of Justice's ruling on the request for a preliminary ruling.

6 [...] [statements regarding the national procedure]

7 [...]

I. FACTS

1. FACTS PRESENTED BY THE PARTIES AND FORMS OF ORDER SOUGHT BY THE PARTIES TO THE COURT

1.1. Arguments of the applicants

8 In their application initiating proceedings [...], LM and NO stated, through their legal representative, their father CD, that they are the daughters of AB, who died as a result of a road traffic accident that occurred on 27 July 2014. The accident was caused by CD in Emsdetten (Germany).

9 Their mental health was traumatically damaged by the death of their mother. The damage has manifested itself in the following ways: insomnia and nightmares; mood swings – irritability, restlessness, introversion; social isolation and withdrawal; lack of interest in previously enjoyable activities; anxiety triggered more easily.

10 CD had compulsory civil liability insurance cover with the defendant, 'HUK-COBURG-Allgemeine Versicherung AG' (HUK). HUK paid each of the applicants compensation of EUR 5 000 as a result of their mother's death, which they considered insufficient. The applicants submit that they are owed a further 300 000 leva (BGN) each in compensation, which HUK has failed to pay to them.

They therefore request that HUK be ordered to pay them that compensation [...] [reference to the applicants' statement of claim and other pleadings].

1.2. Arguments of the defendant

- 11 The defendant, HUK, lodged a defence by which it opposes the claims brought by way of the action. It stated the following:
- a) The applicable law is German law. However, as at 27 July 2014, German law did not provide for compensation for non-material damage suffered by third parties unless such damage consisted in traumatic damage to health. Since 22 July 2017, German law has provided for an obligation to pay compensation for non-material damage suffered by third parties where the latter had a particularly close relationship with the injured person.
 - b) AB contributed to her own death because she:
 - was a passenger in a motor vehicle driven by an intoxicated driver;
 - was not wearing her seat belt.
 - c) the compensation sought is excessive. HUK therefore requests that the action be dismissed [...].

2. FACTS FOUND BY THE COURT AFTER HAVING CONSIDERED THE ALLEGATIONS OF FACT MADE BY THE PARTIES AND THE EVIDENCE COLLECTED IN THE CASE

- 12 AB was born on 28 September 1987 [...]. Her elder daughter NO was born on 12 May 2006 and her younger daughter LM on 27 July 2010. Their father is CD [...]. They were normal children who were looked after by their parents [...].
- 13 In 2013, CD and AB settled in Germany in order to work there. On the evening of 26 July 2014, CD and AB were celebrating the birthday of the son of AB's cousin. CD was drinking beer and AB saw this [...].
- 14 At some point after midnight, CD and AB left for home and, at around 3:00 a.m., CD was driving an Opel passenger car on Neubrückenstraße in Emsdetten, district of Münster, Germany. AB was travelling with him in the passenger seat without wearing her seat belt.
- 15 The Opel passenger car was travelling at a speed of approximately 113 km/h. It crossed a level crossing and then hit another vehicle parked nearby. That impact caused the Opel to lose stability and crash into a fence post. As a consequence, it flipped over, landing with its wheels up.

- 16 AB died as a result of the accident. Had AB been wearing her seat belt, she would not have suffered fatal injuries. Immediately after the accident, CD had a blood alcohol content of 1.17‰ [...]. It is established that CD had compulsory civil liability insurance cover with HUK at that time [...].
- 17 NO and LM were in Bulgaria when they learned of their mother’s death [...]. After the death of their mother, both children grieved and suffered because of their loss; they cried and mourned for her. They became stressed whenever their mother’s death was mentioned; they fell into an emotional void; they longed to hug [their mother]. They did not suffer pathological damage to their health as a result of the death of their mother [...].
- 18 On 27 July 2017, HUK paid compensation of EUR 5 000 to each of [the applicants], LM and NO [...]. The compensation was not for non-material damage [...].

III. APPLICABLE NATIONAL LAW

- 19 Sofia City Court held, by order [...], that German law is applicable to the dispute pursuant to the second subparagraph of Article 7(2) of the Rome I Regulation and Article 4(1) of the Rome II Regulation.
- 20 The relevant provisions of the applicable German law are as follows:
- Paragraph 844 of the Bürgerliches Gesetzbuch (Civil Code; ‘the BGB’), prior to its amendment of 22 July 2017 by the Gesetz zur Einführung eines Anspruchs auf Hinterbliebenengeld (Law introducing entitlement to survivor’s compensation),
 - Paragraphs 823 and 253 of the BGB,
 - Paragraph 115 of the Gesetz über den Versicherungsvertrag (Law on insurance contracts),
 - Judgments of the Bundesgerichtshof (Federal Court of Justice) of the Federal Republic of Germany (‘the BGH’) of 10 May 2015, BGH VI ZR 8/14 and of 16 January 2001, BGH VI ZR 381/99 [...].

IV. PROVISIONS OF EU LAW WHOSE INTERPRETATION IS THE SUBJECT OF THIS REQUEST FOR A PRELIMINARY RULING

- 21 [...]
- Article 1(1) of 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 (‘the Second Motor Vehicle Directive’).

V. REASONS WHY THE REFERRING COURT CONSIDERS THAT THE REQUEST FOR A PRELIMINARY RULING IS RELEVANT TO THE CORRECT RESOLUTION OF THE CASE

- 22 In accordance with settled case-law of the BGH, compensation for pain and suffering in the event of the death of a parent is payable only where that pain and suffering has led to pathological damage to health – an illness (judgments of the BGH of 10 May 2015, BGH VI ZR 8/14 and of 16 January 2001, BGH VI ZR 381/99). In the present case, if the Sofia City Court were to apply that interpretation given by the BGH, the applicants’ action would have to be dismissed, because the pain and suffering they suffered as a result of their mother’s death did not lead to pathological damage to their health.
- 23 The notion of ‘personal injuries’ within the meaning of Article 1(1) of the Second Motor Vehicle Directive and Article 1(1) of Third Council Directive 90/232/EEC of 14 May 1990 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 Third Motor Vehicle Directive’) also covers psychological illnesses and suffering (judgment of the Court of Justice of 24 October 2013, *Drozdzovs*, C-277/12, EU:C:2013:685, paragraph 38). Moreover, it is necessary to interpret that notion broadly (judgment in *Drozdzovs*, paragraph 40).
- 24 The test applied by the BGH, according to which the illnesses and suffering [must] have led to pathological damage to health, considerably narrows the interpretation of the notion of ‘personal injuries’. Moreover, in practice, such a narrowing of the interpretation of the notion of ‘personal injuries’ significantly restricts the group of persons who would be entitled to compensation for non-material damage caused by the death of a family member as a result of a road traffic accident.
- 25 It is possible that the interpretation given by the BGH is contrary to EU law because, by significantly narrowing the group of persons entitled to compensation for non-material damage caused by the death of a family member as a result of a road traffic accident, it restricts the practical effectiveness of the motor vehicle directives. Therefore, the Sofia City Court refers the first question of the present request for a preliminary ruling to the Court of Justice.
- 26 In a dispute between private persons, the national court is not obliged to disapply national law which is contrary to an EU directive (judgment of the Court of Justice of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 49). However, the national court is obliged first to interpret national law in conformity with EU law (*ibid.*).
- 27 In the present case, the interpretation given by the BGH may be just one of the possible interpretations of German law. Therefore, the question as to whether the referring Bulgarian court can interpret the applicable German law (the law of

another Member State) by applying the principle of interpretation in conformity with EU law is relevant for the correct resolution of the present case.

- 28 If the BGH's interpretation of German law to the effect that compensation for non-material damage caused by the death of a close family member as a result of a road traffic accident must be paid only where there is pathological damage to health is contrary to EU law and the Bulgarian court is permitted to interpret German law in conformity with EU law, it would be possible for the Sofia City Court to interpret German law differently from the BGH and award compensation to the applicants. Therefore, the Sofia City Court refers the first and second questions to the Court of Justice.

VI. REQUEST FOR A PRELIMINARY RULING

- 29 In the light of those considerations, the referring court refers the following questions to the Court of Justice for a preliminary ruling:

1. Is it contrary to Article 1(1) of Directive 84/5/EEC for the notion of 'personal injuries' to be interpreted as meaning that such injury exists in the case of psychological pain and suffering caused to a child by the death of a parent as a result of a road traffic accident only where that pain and suffering has resulted in pathological damage to the child's health?

2. Does the principle that a national court is to interpret national law in conformity with EU law apply where the national court applies not its own national law but that of another Member State of the European Union?

[...]