



JUDGMENT OF THE COURT

14 June 2001*

(Motor Vehicle Insurance Directives – Standardised compensation system – Compensation for victims)

In Case E-7/00

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Héraðsdómur Reykjavíkur (Reykjavík District Court) for an Advisory Opinion in the case pending before it between

Halla Helgadóttir

and

Daníel Hjaltason and Iceland Insurance Company Ltd.

on the interpretation of the EEA Agreement, with particular reference to the following Acts referred to in Annex IX:

- the Act referred to in point 8 of Annex IX (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, hereinafter the “First Motor Vehicle Insurance Directive”);

* Language of the Request for an Advisory Opinion: Icelandic.

- the Act referred to in point 9 of Annex IX (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, hereinafter the “Second Motor Vehicle Insurance Directive”);
- the Act referred to in point 10 of Annex IX (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, hereinafter the “Third Motor Vehicle Insurance Directive”);

(hereinafter collectively the “Directives” or the “Motor Vehicle Insurance Directives”).

THE COURT,

composed of: Thór Vilhjálmsson, President, Carl Baudenbacher (Judge-Rapporteur) and Per Tresselt, Judges,

Registrar: Gunnar Selvik

after considering the written observations submitted on behalf of:

- Halla Helgadóttir, represented by Jón Steinar Gunnlaugsson, hæstaréttarlögmaður (Supreme Court Advocate), Reykjavík;
- Daníel Hjaltason and Iceland Insurance Company Ltd., represented by Óttar Pálsson, héraðsdómslögmaður (District Court Advocate), Reykjavík;
- the Government of Iceland, represented by Högni S. Kristjánsson, Legal Officer in the Ministry for Foreign Affairs of Iceland, External Trade Department, acting as Agent, assisted by Björn Friðfinnsson, Permanent Secretary, Ministry of Justice and Ecclesiastical Affairs;
- the Government of Norway, represented by Morten Goller, Advocate, and Thomas Nordby, Assistant Advocate, Office of the Attorney General (Civil Affairs);
- the EFTA Surveillance Authority, represented by Jan Magne Langseth, Officer, Legal and Executive Affairs, acting as Agent;
- the Commission of the European Communities, represented by Christina Tufvesson and John Forman, Legal Advisers, Legal Service, acting as Agents.

having regard to the Report for the Hearing,

after hearing the oral observations of Halla Helgadóttir, represented by Reimar Pétursson, Daníel Hjaltason and Iceland Insurance Company Ltd., the Government of Iceland, the Government of Norway, the EFTA Surveillance Authority, represented by Bjarnveig Eiríksdóttir, acting as Agent, and the Commission of the European Communities at the hearing on 22 February 2001,

gives the following

Judgment

Facts and procedure

- 1 By a reference dated 6 July 2000, registered at the Court on 10 July 2000, Héraðsdómur Reykjavíkur made a Request for an Advisory Opinion in a case brought before it by Halla Helgadóttir against Daníel Hjaltason and the Iceland Insurance Company Ltd. On 1 July 1994, Halla Helgadóttir, then 17 years of age, was hit by Daníel Hjaltason's car while she was riding her bicycle. She suffered head injuries. Her permanent non-pecuniary loss has been assessed at 7%, and her permanent disability also at 7%. The parties are in agreement that Daníel Hjaltason and Iceland Insurance Company Ltd. are jointly liable to Halla Helgadóttir for compensation on account of this accident.
- 2 Having completed primary school, Halla Helgadóttir studied in junior secondary school, from which she graduated four years later. She was engaged in a summer job at the time of the accident. Iceland Insurance Company Ltd. paid ISK 141 238 by way of compensation for her temporary loss of income from employment. In the year preceding the accident, her earnings from employment amounted to ISK 369 915, and in the year of the accident ISK 196 274. At the time of the present proceedings, Halla Helgadóttir is 23 years of age and a psychology student at university.
- 3 The dispute in this case relates to the question of whether the compensation to be paid to her on account of her permanent disability is to be paid under sections 5 to 7 of the Icelandic Tort Damages Act No. 50/1993 (hereinafter the "Tort Damages Act") or under section 8 of that Act. Halla Helgadóttir's claim on account of her permanent disability amounts to ISK 1 467 234 plus interest, but Iceland Insurance Company Ltd. has only paid her compensation in the amount of ISK 375 854 plus interest.
- 4 The Tort Damages Act was enacted in Iceland on 1 July 1993. Sections 5 to 7 of that Act contain provisions on disability compensation payable to a victim who has previously earned income. The compensation is to equal the victim's annual income from employment in the year preceding the accident, multiplied by 7.5,

and the resulting amount is to be multiplied by the victim's permanent disability percentage. However, at the time of the accident, Section 8 contained provisions on compensation to be paid to a victim who earned little or no income from employment. This concerned mainly children, students and persons working on an unpaid basis in the home. Compensation to persons coming under section 8 was not based on an assessment of occupational disability, as was the case with persons with previous earnings, but instead derived from an assessment of medical disability. The assessed financial loss was compensated for by reference to a tier system provided for in section 4 of the Act. According to the Act, no compensation for financial loss was to be paid to persons coming under section 8 if their non-pecuniary loss was assessed at under 15% but, following an amendment in 1996 (Act No. 42/1996), this minimum was reduced to 10%. The Supreme Court of Iceland held, in a judgment rendered 4 June 1998 (Case No. 317/1997), that this division of victims into two categories was based on objective criteria, but that it was incompatible with principles of equality and the provisions of the Icelandic Constitution giving protection to property to deny compensation to persons whose non-pecuniary loss was assessed at under a particular minimum compensation that corresponded to their probable loss. Section 8 of the Tort Damages Act was again amended by Act No. 37/1999 to provide that compensation to persons coming under section 8 was to be determined on the basis of the disability percentage as provided for in section 5, and that the amount thereof was to be determined as provided for in sections 5 to 7 of the Act.

5 Héraðsdómur Reykjavíkur decided to submit a Request for an Advisory Opinion to the EFTA Court on the following questions:

1. *Is it compatible with the provisions of the Agreement on the European Economic Area, in particular European Economic Community Council Directives on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, Nos. 72/166/EEC of 24 April 1972, 84/5/EEC of 30 December 1983, and 90/232/EEC of 14 May 1990, as amended, to determine the compensation payable to victims under the third-party liability insurance of a motor vehicle in accordance with national tort statutes providing for standardised compensation based on a tier of non-pecuniary loss (medical disability tier), regardless of a tier of permanent disability (occupational disability tier), in cases of victims who, on the date of an accident, make use of their earning capacity in a manner providing them with little or no earnings from employment?*

2. *If the first question is answered in the affirmative, do the Directives provide for minimum compensation for a victim in that situation?*

3. *If the second question is answered in the affirmative, by what reference is the minimum compensation payable to a victim in that situation to be determined and, in particular, what significance is to be*

given in this context to actuarial calculations, based on different premises as regards discounting and income?

4. Does it matter in this context whether a victim is entitled to compensation from other sources?

- 6 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Legal background

EEA law

- 7 The questions referred by Héraðsdómur Reykjavíkur concern the interpretation of various articles of the First, Second and Third Motor Vehicle Insurance Directives.

- 8 Article 3(1) and 3(2) of the First Motor Vehicle Insurance Directive read as follows:

“1. Each Member State shall, subject to Article 4, 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 these measures.

2. Each Member State shall take all appropriate measures to ensure that the contract of insurance also covers:

– according to the law in force in other Member States, any loss or injury which is caused in the territory of those States (...).”

- 9 Article 1(1) and 1(2) of the Second Motor Vehicle Insurance Directive read as follows:

“1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require that the amounts for which such insurance is compulsory are at least:

– in the case of personal injury, 350 000 ECU where there is only one victim (...).”

National law

- 10 The national law at issue is the Icelandic Tort Damages Act, in particular sections 5 to 7, and section 8.
- 11 According to section 5(2) of the Tort Damages Act, loss resulting from disability is to be assessed in the light of the victim’s prospects for earning income from any work in which he or she may reasonably be expected to be engaged. On the date of the accident in question here, disability compensation under the Tort Damages Act was to be calculated as 7.5 times the victim’s annual wages, multiplied by the disability percentage, see section 6 of the Act. According to section 7, the victim’s annual wages were to be deemed to correspond to his or her total earnings from employment in the year preceding the year of the accident. However, annual wages were to be assessed separately in extraordinary circumstances, for example, if changes had occurred in income or conditions of employment (section 7(2)).
- 12 On the date of the accident, section 8(1) of the Tort Damages Act read as follows:

“Compensation to children and to victims who, to a large extent, make use of their earning capacity in a manner providing them with little or no income from employment shall be determined by reference to their tier of non-pecuniary loss as provided for in section 4. Compensation shall be determined as a percentage of the compensation for permanent non-pecuniary loss in accordance with the first four sentences of section 4(1).”

Arguments of the parties

- 13 Halla Helgadóttir argues that the Motor Vehicle Insurance Directives aim to secure individual victims of motor vehicle accidents satisfactory compensation for the personal injury caused to them by such accidents. If Halla Helgadóttir were awarded damages under the rigid and standardised section 8 of the Tort Damages Act, she would not be compensated for all the damage to her person and/or the actual loss caused by the accident. Therefore, section 8 is, in the view of Halla Helgadóttir, incompatible with the Directives.
- 14 According to Halla Helgadóttir, the aim of the Directives and their wording support the conclusion that they contain minimum requirements of how the amount of compensation is to be determined and how the amount is to relate to the actual damage.

- 15 Daníel Hjaltason and Iceland Insurance Company Ltd. refer to the aim and the wording of the Motor Vehicle Insurance Directives. The aim of the Directives is, firstly, to ensure the free movement of vehicles normally based on Community territory and of persons travelling in those vehicles, and, secondly, to guarantee that victims of accidents caused by those vehicles receive comparable treatment regardless of where in the EEA the accident has occurred.
- 16 The Directives do not contain any provisions on minimum compensation for persons suffering losses due to motor vehicle accidents, or set any standards as to what can be regarded as reasonable compensation for same.
- 17 Furthermore, Daníel Hjaltason and Iceland Insurance Company Ltd. argue that the Directives were not intended to amend or approximate the tort laws of individual EEA States, or to affect national rules on the assessment of compensation. This view is said to be further confirmed by Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, and Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira* [2000] ECR I-6711, of the Court of Justice of the European Communities.
- 18 Daníel Hjaltason and Iceland Insurance Company Ltd. submit that, even if the Directives were to be interpreted so that domestic laws on tort which lay down rules unfavourable to victims on the calculation of compensation are regarded as jeopardising the aims of the Directives, there is nothing to support the view that this is the case in the matter at hand. Section 8 of the Tort Damages Act is only applicable when a reasonable assessment of loss cannot be determined with regard to prior earned income from employment.
- 19 The Government of Iceland argues that the case deals only with the question of whether section 8(1) of the Icelandic Tort Damages Act of 1993 is incompatible with the Directives. It contends that the primary objective ever since the enactment of the First Motor Vehicle Insurance Directive has been to facilitate the free movement of goods and persons. In the Second Motor Vehicle Insurance Directive, these main objectives were reiterated and a specific minimum amount to be covered by compulsory insurance was introduced. Lastly, in the Third Motor Vehicle Insurance Directive, further amendments were introduced to facilitate the crossing of internal Community frontiers and the establishment and functioning of the internal market.
- 20 The Government of Iceland submits that the Directives do not contain any provisions or obligations for how each EEA State is to assess disability or how that disability should be compensated for in monetary terms.
- 21 The Government of Norway supports the view of Daníel Hjaltason and Iceland Insurance Company Ltd., and refers as well to the main purpose of the Motor Vehicle Insurance Directives, that is, to remove barriers to the free movement of motor vehicles and persons within the European Economic Area resulting from disparities between national provisions on liability insurance for motor vehicles. Although the Directives do not contain any provisions which directly answer the

question in the case at hand, the Directives cannot be interpreted as prohibiting standardised compensation of the kind described in the first question.

- 22 The Government of Norway points out that the Directives do not contain any specific provisions relating to minimum compensation to be paid to individuals out of third-party liability insurance.
- 23 The EFTA Surveillance Authority argues that insurance cover for liability in the event of motor vehicle accidents must be secured for all groups of the population, including groups with no or little income. Even though the Motor Vehicle Insurance Directives do not regulate the principles for calculating economic loss sustained by the victim, the amounts in respect of which insurance is compulsory must in any event guarantee victims “adequate compensation”, irrespective of the EEA State in which the accident occurs. This does not mean that a standardised system for compensation will necessarily be contrary to the Directives. It will only be contrary to the Directives if the effect is that adequate compensation and insurance coverage are rendered impossible within the framework of that system.
- 24 The EFTA Surveillance Authority argues that “adequate compensation” within the meaning of the Second Motor Vehicle Insurance Directive is a legal standard linked to the amounts for which insurance must be compulsory, but cannot, at the current level of harmonisation, be interpreted as a quantitative, EEA-wide “standard” for minimum compensation to be paid by the insurer in each individual case.
- 25 The Commission of the European Communities points out that the purpose of the Directives, *viz.*, to ensure the free movement of vehicles and passengers and to guarantee that victims of accidents caused by those vehicles receive comparable treatment in the whole of the European Economic Area, is crucial. Therefore, a standardised system of compensation might be contrary to the Directives if it is construed in a way that very large parts of the population are, in fact, excluded from ever obtaining compensation up to the level of minimum insurance coverage laid down in the Directives, even in cases of serious disabilities.

Findings of the Court

- 26 By the first question, the national court wishes to know whether a standardised compensation system such as the one provided for in Section 8(1) of the Icelandic Tort Damages Act, as it stood until it was amended by Act No. 37/1999, is contrary to the Motor Vehicle Insurance Directives. The Court understands that the standardised system referred to in Section 8(1) encompasses only the calculation of compensation for loss of future income for motor vehicle accident victims having little or no income.
- 27 The Court notes that the main argument of Daníel Hjaltason and Iceland Insurance Company Ltd., the Government of Iceland and the Government of

Norway is that the Motor Vehicle Insurance Directives do not deal with rules relating to personal liability, but only with insurance. Therefore, the national legislatures should be free to establish the liability rules they deem to be adequate. Furthermore, the EFTA Surveillance Authority and the Commission of the European Communities have observed that the harmonisation of the rules on insurance coverage may have certain repercussions on the liability regimes of the Contracting Parties, a point which was acknowledged by the Government of Norway at the oral hearing.

- 28 The overall purpose of the Motor Vehicle Insurance Directives is to facilitate the free movement of goods and persons and to safeguard the interests of persons who may be the victims of accidents caused by motor vehicles (see the first and second recitals of the preamble to the First Motor Vehicle Insurance Directive; Case C-129/94 *Ruiz Bernáldez*, cited above; and Case E-1/99 *Storebrand Skadeforsikring v Finanger* [1999] EFTA Court Report 119). In particular, the goal of the Directives is to ensure the free movement of motor vehicles and of persons travelling in those vehicles (third recital of the preamble to the First Motor Vehicle Insurance Directive). To that end, the Motor Vehicle Insurance Directives aim at ensuring that “the national law of each Member State should (...) provide for the compulsory insurance of vehicles against civil liability, the insurance to be valid throughout Community territory” (eighth recital of the preamble to the First Motor Vehicle Insurance Directive). The purpose of the Second Motor Vehicle Insurance Directive is to further reduce disparities between the laws of the EEA States in the field of motor vehicle insurance since, as is stated in the third recital of the Second Motor Vehicle Insurance Directive: “these disparities have a direct effect upon the establishment and the operation of the common market”. Consequently, the Second Motor Vehicle Insurance Directive establishes, as already stated, *inter alia* minimum amounts for which insurance is compulsory (Article 1 of the Second Motor Vehicle Insurance Directive). The fifth recital of the preamble to the Second Motor Vehicle Insurance Directive emphasises that these amounts must “guarantee victims adequate compensation irrespective of the Member State in which the accident occurred”. Lastly, the Third Motor Vehicle Insurance Directive aims at eliminating “any uncertainty concerning the application of the first indent of Article 3(2) of Directive 72/166/EEC” (sixth recital of the preamble to the Third Motor Vehicle Insurance Directive), under which Member States are to take all appropriate measures to ensure that the contract of insurance also covers any loss or injury caused in the territory of those States. Thus, “a high level of consumer protection should be taken as a basis” (thirteenth recital of the preamble to the Third Motor Vehicle Insurance Directive) and liability is to be covered “for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle” (Article 1 of the Third Motor Vehicle Insurance Directive).
- 29 The Court concludes from the foregoing that the Motor Vehicle Insurance Directives have established the principle of compulsory third-party insurance in return for a single premium throughout the European Economic Area. In view of the aim of ensuring protection, which is stated repeatedly in the Motor Vehicle Insurance Directives, Article 3(1) of the First Motor Vehicle Insurance Directive,

as developed and amended by the Second and Third Motor Vehicle Insurance Directives, must be interpreted as meaning that compulsory motor vehicle insurance must enable third-party victims of accidents caused by motor vehicles to be compensated for all actual loss incurred, up to the amounts fixed in Article 1(2) of the Second Motor Vehicle Insurance Directive.

- 30 The basic aim of the three Directives is to harmonise insurance coverage (see Case E-1/99 *Storebrand Skadeforsikring v Finanger*, cited above). The rules of the EEA Contracting Parties on liability for road accidents are, however, at the present state of Community and EEA law, not subject to harmonisation and the Motor Vehicle Insurance Directives do not aim at such harmonisation within the European Economic Area (Case C-348/98 *Mendes Ferreira and Delgado Correia Ferreira*, cited above, at paragraph 23).
- 31 Although the basic aim of the three Directives is to harmonise the insurance coverage in case of motor vehicle accidents, the Directives, taken as a whole, may have some effect on the liability regimes of the Contracting Parties. From this it follows that it cannot be excluded that certain liability rules could be seen as conflicting with the aims of the Directives to harmonise the rules relating to insurance coverage, and to guarantee comparable treatment of victims of road accidents in the EEA States. This has been held to be the case when national provisions on liability exclude certain situations from insurance coverage altogether (see Case E-1/99 *Storebrand Skadeforsikring v Finanger*, cited above). The same might be true if national liability rules were to operate to exclude victims from protection in a manner that would depart significantly from what may be considered as the general standards of the law of civil liability within the EEA in similar situations. However, in the light of the basic aim of the Directives, and having regard to the nexus between considerations of comparable treatment and the rules and practices concerning insurance coverage, the possible effect of the Directives upon the liability regimes will be exceptional and limited, and the Contracting Parties have a wide margin of appreciation.
- 32 Section 8 of the Icelandic Tort Damages Act sets out a standardised system for calculating compensation for loss of future income from employment for victims with low income, or no income at all. The provision is not intended to exclude, nor does it have the effect of excluding, any group of victims from compensation from insurance cover. Nor does it preclude a victim from seeking reparations for any specific type of loss, or under any specific head of claim. The aim of that provision is to respond to the difficulties that arise in assessing the scope of loss of future income, and determining the compensation for that loss in the absence of adequate indicators regarding the earning possibilities in an uncertain future for victims for whom there is no previous record of income from employment, or where such income is lower than would result from full-time employment. It follows from the reasoning of the Court, as set out in the foregoing, that it falls within the competence of a Contracting Party to establish a standardised system for calculating such losses. Accordingly, the first question must be answered in the affirmative.

- 33 The answer to the first question must, therefore, be that it is compatible with EEA law, in particular the Motor Vehicle Insurance Directives, to determine compensation payable to victims under the third-party liability insurance of a motor vehicle in accordance with national tort liability statutes providing for standardised compensation based on a tier of non-pecuniary loss (medical disability tier), regardless of a tier of permanent disability (occupational disability tier), in cases of victims who, on the date of an accident, make use of their earning capacity in a manner providing them with little or no earnings from employment.
- 34 In considering the second and third questions, the Court refers to the discussion set out above relating to the first question. It follows that the answer to the second question must be in the negative.
- 35 The answer to the second question must, therefore, be that the aforementioned Motor Vehicle Insurance Directives do not contain any specific requirement for a minimum compensation for a victim in the situation referred to in the first question.
- 36 In the light of the answer to the second question, the third question need not be answered.
- 37 In answering the fourth question, the Court again refers to the discussion relating to the first question. The answer to the fourth question must, therefore, be that it is for the Contracting Parties to determine whether, and to what extent, the compensation covered by compulsory third-party insurance under the Directives should be adjusted by reference to any entitlement of a victim to compensation from other sources.

Costs

- 38 The costs incurred by the Government of Iceland, the Government of Norway, the EFTA Surveillance Authority and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds

THE COURT,

in answer to the questions referred to it by Héraðsdómur Reykjavíkur by the reference of 6 July 2000, hereby gives the following Advisory Opinion:

- 1. It is compatible with EEA law, in particular 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, 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, and 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, to determine compensation payable to victims under the third-party liability insurance of a motor vehicle in accordance with national tort liability statutes providing for standardised compensation based on a tier of non-pecuniary loss (medical disability tier), regardless of a tier of permanent disability (occupational disability tier), in cases of victims who, on the date of an accident, make use of their earning capacity in a manner providing them with little or no earnings from employment.**

- 2. The aforementioned Motor Vehicle Insurance Directives do not contain any specific requirement for a minimum compensation for a victim in the situation referred to in the first question.**

3. **It is for the Contracting Parties to determine whether, and to what extent, the compensation covered by compulsory third-party insurance under the Directives should be adjusted by reference to any entitlement of a victim to compensation from other sources.**

Thór Vilhjálmsson

Carl Baudenbacher

Per Tresselt

Delivered in open court in Luxembourg on 14 June 2001.

Gunnar Selvik
Registrar

Thór Vilhjálmsson
President