



E-7/00/21

**REPORT FOR THE HEARING**  
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), Iceland in a case between

**Halla Helgadóttir**

and

**Daníel Hjaltason and Iceland Insurance Company Ltd.**

on the interpretation of the Agreement on the European Economic Area (hereinafter the 'EEA Agreement'), with particular reference to the following Acts referred to in Annex IX to the EEA Agreement:

- 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');
- 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').

## **I. Introduction**

1. By a reference dated 6 July 2000, registered at the Court on 10 July 2000, the Reykjavík District Court 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.

## **II. Facts and procedure**

2. On 1 July 1994, Ms Helgadóttir, then 17 years of age, was hit by 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 Ms Helgadóttir for compensation on account of this accident.

3. Having completed primary school, Ms 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 compensation for her temporary loss of income from employment at ISK 141 238. 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. Ms Helgadóttir is now 23 years of age and a university psychology student.

4. 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 Tort Damages Act No. 50/1993 (hereinafter 'Tort Damages Act') or under section 8 of that Act. Ms 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.

5. 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. Section 8, on the other hand, previously contained provisions on compensation to be paid to a victim who earned little or no income from employment. This concerned mainly children, young students and housewives working 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 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.

### III. Questions

6. The following questions were referred to the EFTA Court:

**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?**

**IV. Legal background**

**EEA law**

7. The questions submitted by the national court concern various articles of the First, Second and Third Motor Vehicle Insurance Directives.

8. Articles 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. Articles 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. Reference is made to the Icelandic Tort Damages Act, in particular sections 5 to 7, and section 8.

11. According to section 5(2), 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 was to be calculated as 7.5 times the

victim's annual wages, multiplied by the disability percentage, cf. section 6. 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).'*

## **V. Written Observations**

13. Pursuant to Article 20 of the Statute of the EFTA Court and Article 97 of the Rules of Procedure, written observations have been received from:

- Ms Halla Helgadóttir, represented by Jón Steinar Gunnlaugsson, hæstaréttarlögmaður (Supreme Court Advocate), Reykjavík ;
- Mr Daníel Hjaltason and Iceland Insurance Company Ltd., represented by Óttar Pálsson, héraðsdómslögmaður (District Court Advocate), Reykjavík;
- the Icelandic Government, 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 Norwegian Government, 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.

## The first question

*Halla Helgadóttir*

14. Ms Helgadóttir argues that the Directives aim to secure individual victims of motor vehicle accidents satisfactory compensation for the physical injury caused to them by such accidents.

15. Ms Helgadóttir refers in particular to the fifth recital of the Second Motor Vehicle Insurance Directive,<sup>1</sup> Article 3(1) of the First Motor Vehicle Insurance Directive and Article 1 of the Second Motor Vehicle Insurance Directive. Furthermore, reference is made to the case-law of the Court of Justice of the European Communities<sup>2</sup> and of the EFTA Court<sup>3</sup> concerning the purpose and aim of the Directives.

16. As to the measures chosen to implement the Directives, Ms Helgadóttir admits that the Contracting Parties have a relatively wide margin of appreciation. However such measures must, according to the wording of the Directives and the relevant case-law, secure victims of motor vehicle accidents compensation which covers all the damage and/or loss caused by the accident. If Ms 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 Ms Helgadóttir, incompatible with the Directives.

17. The standardisation in section 8 is too rigid, lacks legal justification, or is at least not proportionate to any legitimate aims because within the group of people who fall under section 8, if it is interpreted literally, are a number of people who most certainly have either suffered lesser or greater financial loss than afforded under the clause.

18. For Ms Helgadóttir, such rules must be flexible enough to take reasonable account of the circumstances of an individual who has become a victim of such an accident. Section 8 affords a great number of victims of motor vehicle accidents fixed compensation without taking into account individual circumstances or assessing what the real potential loss of an injured party is.

---

<sup>1</sup> '(...) [T]he amounts in respect of which insurance is compulsory must in any event guarantee victims adequate compensation (...).'

<sup>2</sup> Case C-129/94 *Criminal proceedings against Rafael Ruiz Bernáldez* [1996] ECR I-1829 (hereinafter '*Bernaldez*').

<sup>3</sup> Case E-1/99 *Storebrand Skadeforsikring AS v Veronika Finanger* [1999] EFTA Court Report 119 (hereinafter '*Finanger*').

19. A provision of this nature has, in the EEA area, only been enacted in Denmark and Iceland. Damages in other countries are decided on a much more individual basis.<sup>4</sup>

20. As a result of this provision, a large number of people who have little or no relationship with each other from the perspective of potential loss are grouped together and compensated in exactly the same way. Thus, much has been left to chance intentionally, and it is, in fact, totally arbitrary whether the loss is compensated or not.

21. To decide the amount of compensation in such a way clearly does not secure individual victims compensation for their loss caused by a motor vehicle accident.

22. Ms Helgadóttir proposes that the question be answered as follows:

*'1. It is not compatible with the provisions of the EEA Agreement and the Directives to determine the compensation payable to victims under the third-party liability insurance of a motor vehicle in accordance with the 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.'*

*Daníel Hjaltason and Iceland Insurance Company Ltd.*

23. Daníel Hjaltason and Iceland Insurance Company Ltd. refer to the aim and the wording of the Motor Vehicle Insurance Directives, as well as the case-law of the Court of Justice of the European Communities<sup>5</sup> and the EFTA Court.<sup>6</sup> In their view, 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.

24. However, the Directives do not contain any provisions on minimum compensation for those suffering losses due to motor vehicle accidents, or set any

---

<sup>4</sup> See *Personal Injury Compensation*, edited by W. Pfennigstorf, Lloyd's of London Press Ltd., 1993, and *Personal Injury Awards in EU and EFTA Countries – An Industry Report*, prepared by David McIntosh and Marjorie Holmes, Lloyd's of London Press Ltd., 2<sup>nd</sup> Edition, 1994.

<sup>5</sup> *Bernáldez*; Case 116/83 *Asbl Bureau Belge des Assureurs Automobiles v Fantozzi and SA Les Assurance Populaires* [1984] ECR 2481; Case C-348/98 *Vitor Manuel Mendes Ferreira and Maria Clara Delgado Correia Ferreira v Companhia de Seguros Mundial Confiança S.A.*, Judgment of 14 September 2000, not yet reported (hereinafter '*Ferreira*').

<sup>6</sup> *Finanger*.

standards as to what can be regarded as reasonable compensation for same. On the contrary, the substance, nomenclature, and wording in the various Directives support the view that domestic legislation in each Member State and Contracting Party is to prevail. Reference is made *inter alia* to wording such as ‘domestic law’ in the seventh recital of the preamble to the First Motor Vehicle Insurance Directive; to ‘the right of the Member States’ in Article 1(4) of the Second Motor Vehicle Insurance Directive; and to ‘each Member State shall apply its laws, regulations and administrative provisions’ in the sixth paragraph of the same Article.

25. Daníel Hjaltason and Iceland Insurance Company Ltd. argue that the Directives were not intended to amend or approximate the tort laws of individual Member States, or to affect national rules on the assessment of compensation. This view is confirmed by the *Bernáldez* and *Ferreira* rulings of the Court of Justice of the European Communities. In the latter case, that Court stated that ‘(...) it is clear from the aim of the three directives governing insurance against civil liability in respect of the use of motor vehicles and from their wording that they do not seek to harmonise the rules of the Member States governing civil liability’ (paragraph 23).

26. Daníel Hjaltason and Iceland Insurance Company Ltd. argue that generally accepted rules of interpretation do not support the Directives’ having been drafted with a view to harmonising the rules of Member States governing civil liability. Furthermore, with respect, the EFTA Court has not been empowered to lay down rules on the assessment of compensation in circumstances such as those in the case at hand. Rather, decisions of that kind are political in nature.

27. Referring to the *Francovich*<sup>7</sup> case, Daníel Hjaltason and Iceland Insurance Company Ltd. point out that even the Court of Justice of the European Communities is of the view that, in State liability cases, ‘it is on the basis of the rules of national law on liability that the State must make reparation for the consequences of the loss and damage caused’ (paragraph 42).

28. The *Finanger* ruling of the EFTA Court does not contradict the arguments of Daníel Hjaltason and Iceland Insurance Company Ltd. because the Norwegian rules in that case limited the scope of the Directives by limiting to whom they were to apply, whereas the Directives specifically set out the scope they are to have. However, the Directives do not contain any similar provisions on civil liability and the measurement of compensation.

29. Daníel Hjaltason and Iceland Insurance Company Ltd. furthermore 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 measurement of

---

<sup>7</sup> Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 42 (hereinafter ‘*Francovich*’).

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.

30. Daníel Hjaltason and Iceland Insurance Company Ltd. emphasise that the provisions of section 8 of the Tort Damages Act are objective and apply to all persons in the same or similar situation.

31. Reference is made to Danish legislation,<sup>8</sup> which was the model for the Icelandic Tort Damages Act, to the *travaux préparatoires* supplementing the Icelandic Act, and to a judgment of the Icelandic Supreme Court.<sup>9</sup>

32. Daníel Hjaltason and Iceland Insurance Company Ltd. are of the opinion that the crucial question is not whether standardised rules as such are contrary to EEA law. The decisive point is the actual amount of compensation the victim receives.

33. Daníel Hjaltason and Iceland Insurance Company Ltd. suggest answering the questions as follows:

*‘(a) It is 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, No’s. 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.*

*(b) The Directives do not provide for minimum compensation for a victim in that situation. Furthermore, in the absence of such EEA-legislation, it is on the basis of the rules of national law on liability that the compensation for a victim in that situation must be assessed.*

*In the light of the proposed answers it seems not necessary to answer the third and fourth question.’*

---

<sup>8</sup> Danish Damages Liability Act of 1984, Danish Law No. 228 of 23 May 1984.

<sup>9</sup> Judgments of the Supreme Court of 4 June 1998 in Case No. 317/1997 and 17 February 2000 in Case No. 380/1999.

*The Icelandic Government*

34. In the opinion of the Icelandic Government, the case deals only with the question of whether section 8(1) of the Icelandic Tort Damages Act is incompatible with the EEA Agreement and the Directives.

35. The Icelandic Government refers to Icelandic tort law generally<sup>10</sup> and the legislative acts implementing the Directives into Icelandic legislation (Icelandic Traffic Act and relevant regulations).

36. Reference is made to rulings of the Supreme Court of Iceland,<sup>11</sup> in which that Court ruled that the disputed provision is compatible with the Constitution of the Republic of Iceland regarding the division of victims into two categories: individuals with little or no income from employment and individuals with previously earned income.

37. In the opinion of the Icelandic Government, the primary objective ever since the First Motor Vehicle Insurance Directive has been to facilitate the free movement of goods and persons. This goal is reflected in the first paragraph of the preamble to the First Motor Vehicle Insurance Directive. As a consequence of that Directive, the laws of the Member States relating to compulsory insurance against civil liability in respect of the use of motor vehicles were approximated. 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. The fifth recital of the preamble to that Directive also contains a provision aimed at guaranteeing victims adequate compensation irrespective of the Member State in which the accident occurs. 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.

38. From the substance of the three Directives, combined with the aforementioned objectives, the Icelandic Government draws three conclusions. Firstly, the Directives have together established a single system ensuring that individuals in the Common Market are covered by compulsory insurance against civil liability in respect of the use of motor vehicles wherever that use takes place within the Common Market. This insurance is based on minimum amounts covered by the Directives. Secondly, Member States are under an obligation to guarantee adequate compensation to victims irrespective of the Member State in which the accident occurs. Thirdly, the Directives provide for a co-ordinated system to facilitate rapid and direct payment of compensation to victims irrespective of their nationality or location within the Common Market.

---

<sup>10</sup> Arnljótur Björnsson, A Survey of Icelandic Tort Law, Scandinavian Studies in Law, Volume 38, Stockholm Institute for Scandinavian Law 1999.

<sup>11</sup> Judgment of the Supreme Court of 4 June 1998 in Case No. 317/1997, previously cited.

39. The Icelandic Government submits that the Directives do not contain any provision or obligation on how each Member State is to calculate disability and how that disability should be compensated for in terms of amounts.

40. The Directives would have to be more specific than they currently are if they were intended to harmonise in any way the details of the rules on how national legislation should guarantee adequate compensation to victims of road traffic accidents.

42. The situation is, in fact, quite the contrary. The Directives contain various provisions emphasising how questions relating to the calculation and assessment of compensation to be paid must be resolved, based on national rules. This conclusion can be drawn from the wording of the Directives in various places. Reference is made to the first subparagraph of Article 1(4) of the Second Motor Vehicle Insurance Directive, where it is made clear that a payment to a victim by a specific body shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary. Furthermore, the final subparagraph of Article 1(4) of the same Directive clearly states that each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by the body. This is supported by the wording of the sixth recital of the preamble to the same Directive:

*‘(...) [I]t is important, without amending the provisions applied by the Member States with regard to the subsidiary or non-subsidiary nature of the compensation paid by that body and to the rules applicable with regard to subrogation, to provide that the victim of such an accident should be able to apply directly to that body as a first point of contact (...).’*

43. The Icelandic Government submits that, in the present case, the victim has been granted the full protection contained in the Directives and has been paid adequate compensation as envisaged therein. Any further obligations cannot be construed from the EEA Agreement.

44. This interpretation is in line with the case-law, although both the Court of Justice of the European Communities and the EFTA Court have recognised that the Directives may have some impact on the decision of whether or not compensation is to be paid to a third party.

45. The Icelandic Government submits, however, that the rulings in the case-law of the two courts do not have any bearing on the present case, as they relate to very different circumstances.

46. In the EFTA-Court’s *Finanger* case, the Norwegian legislation went further in excluding individuals from insurance coverage. In the present case, the damage incurred by Ms Helgadóttir comes under the Directives, liability is admitted by Daníel Hjaltason and Iceland Insurance Company Ltd., the minimum amounts fixed in the Directives and domestic legislation cover Ms Helgadóttir and compensation has been paid to Ms Helgadóttir for all her actual loss.

47. Furthermore, the EC-Court's ruling in the *Bernáldez* case, like *Finanger*, emphasises the objectives of the Directives, *viz.*, to guarantee comparable treatment to victims of accidents, irrespective of where in the Community the accident occurs.

48. Reference is also made to the *Ferreira* ruling of the Court of Justice of the European Communities, in which it was confirmed that the intention of the Directives was not to harmonise the rules of the Member States governing civil liability.

49. The Icelandic Government submits that current legislation in Iceland fulfils this objective, since adequate compensation and compulsory insurance coverage is guaranteed.

50. Furthermore, the Icelandic legislation is proportionate, since all victims are guaranteed compensation and insurance coverage irrespective of the type of damage incurred, without prejudice to the principle of assumption of risk.

51. In addition, the Icelandic Government submits that, even in cases where the Court of Justice of the European Communities has addressed the question of compensation in the case of non-implementation or incorrect implementation of an act, that Court has not created any standardised formula to be used for calculating damages or compensation but has instead referred that matter to the national court in each case, with the only guideline being that the compensation should be along the same lines as normally applicable under the domestic legal order.<sup>12</sup>

52. Lastly, the Icelandic Government submits that, even if the EFTA Court were to find that, as a matter of principle, the rules applied in this particular case for calculating compensation to Ms Helgadóttir jeopardised the objectives of the Directives for receiving adequate compensation, that would not apply in the present case. The Icelandic Government submits that the compensation offered to Ms Helgadóttir is adequate.

53. It has to be borne in mind that section 8 of the Tort Damages Act is only applied in cases where there are no objective criteria, such as income, to rely on as a basis for calculation of compensation covering potential loss of future income as a consequence of the accident.

54. The rule contained in section 8 of the Tort Damages Act is an objective rule covering individuals in the specific circumstances described in the provision, children and individuals without income. A similar rule is to be found in *inter alia* Danish legislation.<sup>13</sup> The rule is proportionate and aimed at guaranteeing

---

<sup>12</sup> *Francovich*.

<sup>13</sup> See footnote 8.

victims full compensation for their non-pecuniary damage as well as for damage as a result of permanent disability.

55. However, if the Court finds that the Directives should be interpreted as suggested by Ms Helgadóttir, the Icelandic Government submits that section 8 of the Tort Damages Act does fulfil the obligations contained in the Directives, since it does guarantee victims adequate compensation.

56. The Icelandic Government suggests answering the questions as follows:

*‘1. It is compatible with the provisions of the Agreement on the European Economic Area 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 The Directives do not provide for minimum compensation for a victim in that situation.*

*As a consequence questions 3 and 4 need not to be answered.’*

#### *The Norwegian Government*

57. In the view of the Norwegian Government, the main purpose of the Directives 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, as evidenced by the seventh and eighth paragraphs of the preamble to the First Motor Vehicle Insurance Directive.

58. Both the placing of the Directives in Annex IX to the EEA Agreement and the purpose of the Directives indicates that they are not intended to harmonise the substantive liability for road traffic accidents throughout the Community and the EEA. The objective of the Directives is only to ensure that the civil liability arising under the Member States’ domestic law is covered by insurance which complies with the Directives.

59. The Norwegian Government states that the Directives do not contain any provisions which directly answer the question in the case at hand. However, the Directives cannot be interpreted as prohibiting standardised compensation of the kind described in the first question.

60. Reference is made to the rulings in *Ferreira* and *Finanger*, Article 3(1) of the First Motor Vehicle Insurance Directive, Articles 1 and 2 of the Second Motor Vehicle Insurance Directive, and Article 1 of the Third Motor Vehicle Insurance Directive.

61. In *Ferreira*, the Court of Justice of the European Communities held that the original version of Article 3(1) of the First Motor Vehicle Insurance Directive left it to the Member States to determine which damage was covered and the terms and conditions of compulsory insurance needed to cover civil liability. Article 3(1) of that Directive states that each Member State is to 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, whereas the extent of the liability covered and the terms and conditions of the insurance cover are to be determined on the basis of those measures. The same wording is found again in the second recital in the preamble to the Second Motor Vehicle Insurance Directive.

62. In order to reduce the disparities which continued to exist between the laws of the Member States as regards the extent of the obligation to insure,<sup>14</sup> Article 1 of the Second Motor Vehicle Insurance Directive imposed amounts of mandatory cover for civil liability for damage to property and personal injuries, while Article 3 of the same Directive provided that, as regards personal injuries, members of the family of the insured person or of the driver may not be excluded from cover because of their familial relationship. Article 1 of the Third Motor Vehicle Insurance Directive extended that obligation to provide cover for personal injuries to passengers other than the driver.

63. The Second Motor Vehicle Insurance Directive still only imposes requirements as to the insurance cover of injured third persons, whereas it is left to national law to regulate their position under the law of torts.

64. The wording of the Third Motor Vehicle Insurance Directive gives further indication that it is only the insurance cover that is being governed, not the liability for compensation or the extent of such liability. Furthermore, Article 2 of the Third Motor Vehicle Insurance Directive provides that Member States shall take the necessary steps to ensure that all compulsory insurance policies against civil liability arising out of the use of vehicles: (1) cover, on the basis of a single premium, the entire territory of the Community; and (2) guarantee, on the basis of the same single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based when that cover is higher. This clearly shows that the compulsory insurance is meant to cover the compensation the injured party is entitled to

---

<sup>14</sup> Third recital in the preamble to the Second Motor Vehicle Insurance Directive.

under the relevant laws of tort, but not to govern the domestic laws of tort or the rules concerning compensation amounts.<sup>15</sup>

65. In the opinion of the Norwegian Government, the wording of the Directives thus shows that the way in which the Member States regulate liability for compensation is not affected by the Directives.

66. This interpretation is confirmed by the Fourth Motor Vehicle Insurance Directive,<sup>16</sup> in which the sixth and thirteenth recitals of the preamble refer to the fact that the green card bureau system does not solve all the problems of an injured party having to claim in another country against a party resident there and an insurance undertaking authorised there (foreign legal system, foreign language, unfamiliar settlement procedures and often unreasonably delayed settlement). However, a system of having claims representatives in the injured party's Member State of residence affects neither the substantive law to be applied in each individual case nor the matter of jurisdiction.

67. This view is also confirmed by the ECJ in *Ferreira*. It follows from the conclusions of that decision that Article 3(1) of the First Motor Vehicle Insurance Directive, as amplified and supplemented by the Second and Third Motor Vehicle Insurance Directives, requires the Member States to ensure that civil liability arising under their domestic law in respect of the use of vehicles normally based in their territory is covered by insurance and specifies *inter alia* the types of loss or injury and the third-party victims to be covered by that insurance. However, the provision does not state what type of civil liability, for risk or for fault, is to be covered, nor does it regulate the rules observed by the Member States as regards determination of compensation amounts.

68. In the view of the Norwegian Government, it is clear that the Directives impose requirements regarding insurance cover but that they do not affect the substance of national law relating to torts and compensation. The crucial point is that the insurance cover must square with the liability for compensation.

69. However, the EFTA Court in *Finanger* held that the distinction between personal liability and insurance cover is less clear-cut. In the opinion of the Norwegian Government, the suggested answer to the first question set out below is not incompatible with the Court's findings in *Finanger*. The present case does not involve excluding certain situations from insurance coverage altogether. By its first question, the national court only seeks to know whether a standardised system for calculation of damages in certain situations is compatible with EEA law. Accordingly, the distinction should be decisive in the present case.

---

<sup>15</sup> One possible exception is the minimum amounts of cover laid down in Articles 1(2) and 5(3) of the Second Motor Vehicle Insurance Directive, cf. *Ferreira* (the second question).

<sup>16</sup> Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 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 amending Council Directives 73/239/EEC and 88/357/EEC, OJ 2000 L 181, p. 65.

70. The Norwegian Government proposes the following answer to the first question:

*‘It is compatible with the provisions of the Agreement on the European Economic Area, in particular 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.’*

#### *The EFTA Surveillance Authority*

71. Concerning the principles of the Motor Vehicle Insurance Directives, the EFTA Surveillance Authority refers to the *Finanger* and *Ferreira* rulings. Following that case-law, the Directives do not state that national provisions may exclude certain groups of the population or certain situations from insurance cover compared to other groups. The Directives are silent in this respect. There can, therefore, be no doubt that motor vehicle insurance cover for liability must be secured for all groups of the population, including those groups with no or little income.

72. In addition to the text of the Second Motor Vehicle Insurance Directive itself, the fifth recital in the preamble, cited previously, contains a reference to the relative extent of the coverage.

73. The wording of the Directives does not provide any guidelines which make it possible to assess or further qualify or quantify the concept of ‘personal injury’ contained in the wording of the Second Motor Vehicle Insurance Directive. Therefore, the national legislators can also define the further content of that concept.

74. It is clear that the Directives are to provide for insurance coverage for all personal injuries sustained on the territory of the EEA State where the damage occurs. The basis for the damage assessment and the calculation cannot, however, be found in the wording of the Directives themselves, but must be found in national law. Even so, as the EFTA Court has indicated in *Finanger* and the Court of Justice of the European Communities in *Ferreira*, it must be borne in mind that the national legislator is bound by certain *de minimis* standards with regard to insurance coverage.

75. 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.

76. This does not mean that a standardised system for compensation will necessarily run counter to the Directives. It will only be contrary to the Directives if the effect is that adequate compensation and insurance coverage is rendered impossible within the framework of that system.

77. A system based on a standard created to take due care of the victim by securing ‘adequate compensation’ and which generally leads to a fair result will, in principle, not be contrary to the Motor Vehicle Insurance Directives.

78. A national legal system under which a victim’s future potential ability to earn income is assessed individually by the courts may, especially for younger victims, sometimes lead to widely varying results and, in some cases, maybe a more unfair result than under a standardised system.

79. Problems with a standardised system may arise where, in reality, it functions as a cut-off clause for insurance coverage for victims belonging to a certain group or groups of the population. A national provision that leads to the result that a certain group of victims of road traffic accidents may under no circumstances be awarded the compensation provided for under the minimum requirements set out in Article 1(2) of the Second Motor Vehicle Insurance Directive cannot be accepted.

80. However, section 8 of the Icelandic Tort Damages Act, as it stood at the time of the accident, does not bear the characteristics of a cut-off clause which makes it impossible for the national court to award adequate compensation up to the minimum level as prescribed by Article 1(2) of the Second Motor Vehicle Insurance Directive.

81. The EFTA Surveillance Authority thus proposes to answer the first question as follows:

*‘The Motor Insurance Directives, and in particular Article 1(2) of the Act referred to in point 9 of Annex IX to the EEA Agreement (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), must be interpreted so as not to preclude a national law that links the medicinal disability factor to the compensation to be paid, for pecuniary damage in the form of compensation for occupational loss, to victims with little or no income previous to the accident.’*

*Commission of the European Communities*

82. The Commission of the European Communities points out that there are a number of elements concerning both the facts of the case and the applicable national law which remain unclear. It follows that certain doubts exist as to which, precisely, are the provisions of Community/EEA law to be considered and how, then, they would be applied to the case at hand.

83. It remains unclear as to why there was agreement between the Parties as to liability to compensation in the light of the (at the time) 15% cut-off percentage for non-pecuniary damage; why there seems to be a discrepancy in the amounts of compensation paid; the relevance of the amendments to the 1993 Act and the decision of the Supreme Court; the basis on which compensation to Ms Helgadóttir has, in fact, been calculated and the method used to arrive at that compensation.

84. The Commission refers to Article 1(1) and (2) of the Second Motor Vehicle Insurance Directive and states that the motivation for this article is provided in the fifth recital of that Directive, cited previously.

85. However, the Motor Vehicle Insurance Directives do not, in the absence of harmonisation in this area of the law, lay down any rules as to how compensation to victims of traffic accidents is to be calculated. This remains for the national legislator and the national courts to decide.

86. Reference is also made to the rulings in *Bernaldez*, *Finanger* and *Ferreira*.

87. In *Ferreira*, the Court of Justice of the European Communities considered a case involving the death of a member of the family of the insured person. It held that:

*‘Article 3(1) of the First [Motor Insurance] Directive, as amplified and supplemented by the Second and Third [Motor Insurance] Directives, thus requires the Member States to ensure that civil liability in respect of the use of vehicles normally based on their territory is covered by insurance, and specifies, inter alia, the types of loss or injury and the third-party victims to be covered by that insurance. On the other hand, that provision does not state what type of civil liability, for risk or for fault, is to be covered.’* (paragraph 27)

*‘(...) It follows that, as Community law stands at present, the Member States are free to determine the type of civil liability applicable to road-traffic accidents. However, they must ensure that the civil liability arising under their domestic law is covered by insurance which complies with [the Motor Vehicle Insurance Directives].’* (paragraph 29)

88. That Court went on to state:

*‘However, it is clear from paragraph 29 above that the civil liability which, under the domestic law of the Member State in question, applies to road-traffic*

*accidents must be covered by insurance and that that insurance must adhere to the minimum amount of cover laid down in Articles 1(2) (...) of the Second [Motor Insurance] Directive (...). Consequently, in the case of accidents to which that type of civil liability attaches, the Member State's domestic law may not lay down maximum limits for compensation which are lower than the said minimum amounts.'* (paragraph 40)

*'(...) Articles 1(2) and 5(3) of the Second [Motor Insurance] Directive (...) preclude domestic laws laying down maximum amounts of compensation that are lower than the minimum amounts of cover laid down by those provisions where, in the absence of fault on the part of the driver of the vehicle which caused the accident, only civil liability for materialisation of risk arises.'* (paragraph 41)

89. The Commission does not consider that, on the facts given, it is in a position to put forward a specific reply to the questions raised.

90. In its written observations, the Commission limits itself to drawing the particular attention of the EFTA Court to the *Ferreira* judgment and, in particular, to the statements in paragraphs 40 and 41 of that judgment.

## **The second question**

### *Halla Helgadóttir*

91. Ms Helgadóttir submits that the aim of the Directives is to secure individuals compensation if they become victims of motor vehicle accidents. Both damage to property and personal injuries are to be covered. 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. Otherwise, the insurance would not compulsorily cover 'damage to property and personal injuries'.

92. This conclusion is further supported by the EFTA Court's ruling in the *Finanger* case, in which it stated that the 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. Following this reasoning, the Directives must contain some minimum requirements as to how the amount of compensation is to be determined and how it must be related to the actual loss. Otherwise, victims would not be compensated for 'all actual loss incurred'.

93. Ms Helgadóttir also points out that the right of establishment under Articles 28 to 35 of the EEA Agreement is dependent on people enjoying sufficient liability insurance protection in case of a motor vehicle accident. If

there were no minimum requirements in EEA law as to how compensation were determined, the free movement of people within the EEA could easily be adversely affected.

94. Moreover, if only insufficient amounts of compensation for motor vehicle accidents were awarded in certain countries, the insurance cost of companies in those countries would be lower than the real damage incurred in motor vehicle accidents. This could result in distortion of competition between companies in those countries and in the rest of the EEA.

95. If it were to be admitted that the Contracting Parties had unrestricted freedom in deciding the amounts of compensation to be awarded to victims of motor vehicle accidents, it would jeopardise the real protection of individual rights aimed at by the Directives. The Contracting Parties could then decide, without giving any justification, that everyone suffering injuries in a motor vehicle accident should receive, for example, ISK 1 or EUR 1 or any other arbitrary unsatisfactory amount as compensation from the liability insurance.

96. The freedom of the Contracting Parties in laying down the rules concerning the compensation to be awarded to the victims of motor vehicle accidents must never supersede the Contracting Parties' duty to secure individuals satisfactory compensation for damage to their person.

97. Therefore, the correct interpretation must be that the Contracting Parties are obliged to ensure that victims of motor vehicle accidents receive compensation in reasonable correlation to the actual financial loss incurred. If this is not so, then the Contracting Party in question will have failed to fulfil the requirements of the Directives concerning minimum amount of compensation

98. Ms Helgadóttir proposes answering the second question as follows:

*'According to the Directives the Contracting Parties are obliged to secure individuals falling victim to motor vehicle accidents compensation, which bears reasonable correlation to the actual loss they incur in such accidents. If there is not a reasonable correlation between the actual loss and the awarded compensation a Contracting Party fails to fulfil the requirements of the Directives.'*

#### *The Norwegian Government*

99. For the *Norwegian Government*, the second question contains two elements. Firstly, there is the question of whether the Directives require a certain quantitative minimum standard for compensation. Secondly, there is the question of whether a minimum level of medical disability for compensation of future occupational loss, i.e. the level of 15% under Icelandic law at the time of the accident, is compatible with the Directives.

100. The Norwegian Government initially 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.

101. Referring to the *Ferreira* case, in which it was held at paragraph 23 that ‘the Directives do not seek to harmonise the rules of the Member States governing civil liability’, the Norwegian Government states that the Directives do not intend to improve the position of victims of road-traffic accidents as compared to victims of other kinds of accidents as far as the calculation of compensation is concerned. The Icelandic system of standardised compensation, based on a certain percentage of medical disability for children and persons with little or no earnings, covers and is applicable to all types of civil liability. Thus, Ms Helgadóttir would have been covered to the same extent regardless of whether the loss had resulted from a road-traffic accident or from another type of accident. This raises the question of liability.

102. Thus, the system as such cannot be contrary to the Directives. The Directives cannot be interpreted as setting a common EEA standard for minimum compensation, or as requiring that any level of medical disability must give rise to compensation for future occupational loss.

103. The Norwegian Government distinguishes the case at hand from the *Ferreira* case and the *Finanger* case. In the case at hand, the question is not whether the Icelandic law is contrary to Articles 1(2) and 5(3) of the Second Motor Vehicle Insurance Directive. The question is whether the Directives require minimum compensation.

104. If one reads paragraph 28 of the *Finanger* in isolation, the passage might seem to imply that the EFTA Court interprets the Directives as requiring that ‘all actual loss’ must be compensated in every individual case. Read as a whole, however, it is clear that the ruling in *Finanger* does not support this view. It follows from the next paragraph of the judgment that the statement is only part of an argument leading to the conclusion that the distinction between personal liability and insurance cover was not decisive in that particular case. This interpretation is confirmed by the Court’s reference to the *Bernáldez* case.

105. The only reference to a relative level of compensation in the Directives can be found in the preamble to the Second Motor Vehicle Insurance Directive. The text of the Directive, however, does not in any way specify this concept. Thus, the reference to ‘adequate compensation’ in the preamble to the Second Motor Vehicle Insurance Directive cannot be read as harmonising a certain minimum level of compensation throughout the EEA.

106. Thus, it must be up to the national legislators and to the national courts to define the content of this phrase.

107. However, if the Court should come to the conclusion that the Directives, taken as a whole, require the Member States to ensure a certain minimum level of compensation, the Norwegian Government would like to emphasise that a system of standardised compensation is not contrary to the Directives. At the very least, it must be left to the national courts to assess whether the particular rule in question will ‘*exclude certain situations from insurance cover altogether*’, as contemplated in *Finanger*, at paragraph 29.

108. The Norwegian Government suggests that the second question should be answered as follows:

*‘The Directives do not provide for minimum compensation for a victim in the situation as described in the first question.’*

#### *The EFTA Surveillance Authority*

109. In the opinion of the EFTA Surveillance Authority, ‘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.

110. On the contrary, the principles for calculation of the insurance compensation and the civil liability in concrete cases are matters reserved to the legislator and the national courts. The judgment of the EFTA Court in the *Finanger* case, which is in line with the *Ferreira* ruling by the Court of Justice of the European Communities, shows that there is a link between insurance cover and the provisions on liability and torts. In this respect, it is important that the victim’s insurance coverage is in line with the spirit and provisions of the Motor Vehicle Insurance Directives, and that the minimum coverage provided for in Article 1(2) of the Second Motor Vehicle Insurance Directive is not rendered ineffective.

111. As the Second Motor Vehicle Insurance Directive does not distinguish between the insurance coverage that must be provided by law for different categories of victims, the insurance coverage must be the same for all ‘categories’ of victims.

112. This conclusion does not lead to harmonisation in the EEA States of the actual compensation to be paid by the insurer to the victim, as long as third parties to a road traffic accident receive ‘adequate compensation’ within the meaning of the Directives. Therefore, the national legislators may still maintain different systems for assessing victims’ compensation within the framework of the Motor Vehicle Insurance Directives.

113. Since the Second Motor Vehicle Insurance Directive does not provide for a lower limit for compensation in each individual case, it is not contrary to EEA law that damages below €350 000 are awarded in individual cases. However, it is established that Article 1(2) of the Second Motor Vehicle Insurance Directive precludes domestic laws which set out maximum amounts of compensation that are lower than the minimum amounts of cover laid down by those provisions.

114. At the current level of harmonisation, it must be left to the national court to assess whether the national system in effect at the time of the accident excludes certain situations from insurance coverage or *de facto* creates a system contrary to the Motor Vehicle Insurance Directives.

115. The EFTA Surveillance Authority suggests that the second question be answered as follows:

*‘The Motor Insurance Directives, and in particular Article 1.2 of the Act referred to in point 9 of Annex IX to the EEA Agreement (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), must be interpreted so as to not provide for minimum compensation in individual cases as long as the national legal system does not preclude payment of adequate compensation up to the minimum level in Article 1.2 of the Directive.’*

### **The third question**

*Halla Helgadóttir*

116. Ms Helgadóttir submits that two factors are most important in the determination of whether there is a reasonable correlation between the actual financial loss suffered and the amount awarded. They are: (1) the approach used to calculate the compensation; and (2) the actual amount awarded.

117. Ms Helgadóttir submits, firstly, that the more the approach adopted by a Contracting Party is standardised, and thus the less consideration is taken of individual circumstances, the greater the risk is that individuals will receive unsatisfactory compensation.

118. Secondly, if the amount of damages in one country is considerably lower than the average in the EEA, it serves as an indication that the level of protection is unsatisfactory. By way of information, damages awarded in Iceland are among the lowest in the EEA. Reference is made to Icelandic literature on the subject.<sup>17</sup>

---

<sup>17</sup> See *Álitsgerð til allsherjarnefndar Alþingis um skaðabótalög nr. 50/1993 ásamt fylgiskjöllum og breytingartillögum*, by Gestur Jónsson and Gunnlaugur Claessen, published in *Alþingistíðindi*

119. Thirdly, calculations by actuaries serve as a prime indication of the actual loss associated with permanent disability. Rules which lead to amounts of damages being much lower than the calculated loss according to an actuary cannot be in conformity with requirements of the Directives.

120. Fourthly, the amount of compensation Ms Helgadóttir would receive under section 8 obviously does not cover the loss of future income which may be expected to result from her 7% permanent disability. It is inherent in the assessment of 7% permanent disability that she will, on average, lose 7% of her future income for the rest of her working life.

121. Fifthly, it is relevant that section 8 has been amended by Act no. 37/1999, which is applicable to all accidents taking place after 1 May 1999, with the effect that compensation to people falling under section 8 is now decided in accordance with sections 5 to 7. This amendment was introduced because there had been criticism of the considerable differences between compensation awarded to victims falling under section 8 and those coming under sections 5 to 7.<sup>18</sup>

122. Ms Helgadóttir suggests that the third question be answered as follows:

*‘Whether compensation bears reasonable correlation to the actual financial loss incurred is to be determined by consideration of the approach used to calculate the compensation, and the actual amount awarded. Article 8 of the Act on Damages does not meet the requirements of the Directives due to the arbitrary results following its application and the low amount of damages it provides for.’*

#### *The Norwegian Government*

123. The Norwegian Government is of the opinion that the second question should be answered in the negative. However, if the Court should answer the second question in the affirmative, the Norwegian Government would like to make the following remarks with respect to the third question.

124. The Norwegian Government is of the view that the third question is only a clarification of the second question. Thus, in order to answer the second question in the affirmative, one naturally has to clarify ‘by what reference’ a minimum compensation is payable.

125. The Directives do not contain any specific provisions relating to minimum compensation to be paid to individuals out of third-party liability insurance. As

---

1995-1996 (*Icelandic Parliament Reports*), pp. 3297-3345; see specifically pp. 3300-3303 and graphs at pp. 3323-3326.

<sup>18</sup> See comments to Article 7 of *Greinargerð með frumvarpi til laga um breytingu á skaðabótalögum, nr. 50/1993, sbr. lög nr. 42/1996*, published in *Alþingistíðindi 1998-1999* (*Icelandic Parliament Reports*), þingskjal (document no.) 199.

stated above, the reference to ‘adequate compensation’ in the preamble to the Second Motor Vehicle Insurance Directive cannot be read as harmonizing a certain minimum compensation throughout the EEA.

126. Based on the foregoing and the close connection between the second and third questions, the Norwegian Government does not suggest an answer to the third question, but repeats that the Directives do not provide for minimum compensation for a victim in the situation as described in the first question.

#### *The EFTA Surveillance Authority*

127. The EFTA Surveillance Authority examines the third and fourth questions together. It is of the view that, when assessing the compensation payable, the national court must follow the national jurisdiction’s rules and law governing evidence and must, in the light of those rules, decide what is adequate compensation in each case. In so doing, the national court may use the national rules as regards discounting and income and may take into account whether a victim is entitled to compensation from other sources.

128. At the current level of harmonisation within the EEA, it is not necessary to answer questions three and four.

#### **The fourth question**

##### *Halla Helgadóttir*

129. In the view of Ms Helgadóttir, it could make a difference with respect to section 8 of the Tort Damages Act whether victims are entitled under law to damages from sources other than the insurance cover, for example, from the State Social Security Institute. In the case at hand, however, she is not entitled to any such social benefits, and will not receive any compensation for her injuries other than from Daníel Hjaltason and Iceland Insurance Company Ltd.

130. In Denmark, where a rule similar to the one in section 8 of the Tort Damages Act has been enacted, it seems that the level of social security and the amount of benefits afforded to victims of motor vehicle accidents is greater than in Iceland.

131. Ms Helgadóttir suggests that the fourth question be answered as follows:

*‘It may matter if a victim is entitled to compensation from other sources than from the insurance cover.’*

*The Norwegian Government*

132. The *Norwegian Government* strongly emphasises that the Directives in no way harmonise national legislation on the issue of whether national authorities may take into account compensation from other sources to which the victim may be entitled and, if so, to what extent they may do so.

133. The answer to the fourth question will thus wholly depend on the national rules of tort. In the light of the foregoing, the Norwegian Government does not suggest an answer to the fourth question.

Carl Baudenbacher  
Judge-Rapporteur