

DEKA
CHAMBERS

The Oracles of Themis

CJEU Case Law Update

Anirudh Mandagere

16th June 2023



1. What is the status of CJEU judgments in England and Wales?
2. *AK and others (Case C-618/21)*
3. *Huk-Coburg-Allgemeine Verisicherung (Case C-577/21)*



DEKA
CHAMBERS

Status of CJEU Judgments in England and Wales...where are we now?



S. 6, European Union (Withdrawal) Act 2018

(1) A court or tribunal—

(a) is not bound by any principles laid down, or any decisions made, on or after [IP completion day] by the European Court, and

(b) cannot refer any matter to the European Court on or after [IP completion day].

However, a court can “have regard” to anything done on or after IP completion day “so far as it is relevant to any matter before the court or tribunal (S. 6(2), 2018 Act)



S. 6(3), European Union (Withdrawal) Act 2018

Any question as to the validity, meaning or effect or retained EU law is to be decided

- a) In accordance with any retained caselaw and any retained principles of general EU law and
- b) Having regard....to the limits, immediately before IP completion day of EU Competences.



Who is bound by retained EU law?

S. 6(4)(ba) and (5A) of the 2018 Act empower a minister to make regulations which provide that a “relevant court” should not be bound by retained EU case law.

Regulation 3(b) of the European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020 provides that the Court of Appeal is a “relevant court”.



Can the Court of Appeal depart from retained EU case-law?

Retained EU Law made prior to “exit day”

Regulation 5 of the 2020 Regulations: They must apply the same test as the Supreme Court would in deciding whether to depart from the case law of the Supreme Court.



***Lipton v BA City Flyer Ltd* [2021] EWCA Civ 454, [83]: The Basic Principles**

1. The meaning and effect of measures should be determined by the case law of the CJEU made prior to 11pm on 31st December 2021.
2. General principles arising from the case law, including the CFR, are relevant to the interpretation of retained EU measures.
3. The Court of Appeal can depart from the case law “if it considers it right to do so”.



Further useful cases

Adfreaid Recovery v Aneurin Bevan University Health Board [2021] EWHC 3049 (TCC): Claims in England can no longer be brought based on general principles of EU Law.

Allied Wallet Ltd, Re, [2022] EWHC 402 (Ch): The *Marleasing* principle constitutes retained caselaw and continues to apply.



DEKA
CHAMBERS

AR and others (Case C-618/21)



Article 18, Directive 2009/103/EC

““Member States shall ensure that any party injured as a result of an accident caused by a vehicle covered by insurance enjoys a direct right of action against the insurance undertaking covering the person responsible against civil liability.”.



Article 828, Polish Civil Code

‘1. By a civil liability insurance contract, the insurer undertakes to pay compensation, as specified in the policy, for damage caused to third parties in respect of whom the policyholder or insured person bears liability.

...

4. A person entitled to compensation for a contingency covered by a civil liability insurance policy may bring an action directly against the insurer.’



Facts

Five Claimants involved in an RTA. One Claimant's car was damaged by a garage door.

Claimant's Approach: Look at the estimated value of the original parts and the labour required to repair the damaged vehicle.

Defendant's Approach: Calculate the diminution in value of the damaged vehicle.



Judgment of the Polish Court

Three questions referred to the CJEU

Question 1: What is the basis of calculating the cost of repairs?

Risk of unjust enrichment v protection of victims?



Judgment of the Polish Court

Article 828(1) of the Polish Civil Code: *‘1. By a civil liability insurance contract, the insurer undertakes to pay compensation, as specified in the policy, for damage caused to third parties in respect of whom the policyholder or insured person bears liability.*

Second Question: Is it possible to disregard the rule that the benefit provided by an insurer can only be of a monetary nature?



Judgment of the Polish Court

Third Question: If a garage door falls onto a car, does the claim fall within the scope of Article 18?



Judgment of the CJEU

Third Question: A garage door falling onto a car is not a road traffic accident. **Article 18 does not apply.**



Judgment of the CJEU

Second Question: Does Article 18 preclude national law from providing that the method of obtaining redress may consist only of monetary benefits?

No.



Focus is on the limits of the insurance contract

Recital 30 of the Directive

“The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of victims of motor vehicle accidents. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, a right of direct action against the insurance undertaking covering the person responsible against civil liability should be provided for victims of any motor vehicle accident”



Hypothetical repairs

National courts are entitled to protect against unjust enrichment.

Any interpretation of Article 18 must not undermine the insurer's obligation to cover all of the compensation.

Limits of the 2009 Directive.



DEKA
CHAMBERS

Huk-Coburg-Allgemeine Verisicherung (Case C-577/21)



Article 1(1), Second Directive 84/5/EEC

‘The insurance referred to in Article 3(1) of [Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of 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 shall cover compulsorily both damage to property and personal injuries.’



German Civil Code, Paragraph 253(2)

Paragraph 253(2) ‘Where damages are to be paid on account of bodily injury, damage to health, freedom or sexual self-determination, fair compensation in monetary terms for non-material damage may also be sought.’

Paragraph 823: ‘A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or other right of another person is liable to pay compensation to the other party for the damage arising from this.’



Facts

Claimants were Bulgarian nationals. Their parents lived in Germany.

Claimants' mother died in a road traffic accident, caused by the Claimant's father.

Insurer paid the Claimants the sum of 5,000EUR in compensation.

The Claimants sought compensation of 153,000EUR for damage to their mental health.



German Courts

Compensation for non-material damage suffered by indirect victims is governed by three conditions:

1. Victim must suffer damage to their own health.
2. Person is a close family member of the direct victim
3. Causal relationship between the fault committed by the person responsible for the accident and the tortfeasor.

Injuries to mental health must be a pathological condition

Referral to the CJEU:

Risk that the German Civil Code undermined the effectiveness of Article 1(1)



Judgment of the CJEU

Article 3 of Directive 2009/103/EC

‘Each Member State shall, subject to Article 5, 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 the measures referred to in the first paragraph....The insurance referred to in the first paragraph shall cover compulsorily both damage to property and personal injuries.’



Judgment

2009 Directive does not seek to harmonise civil liability.

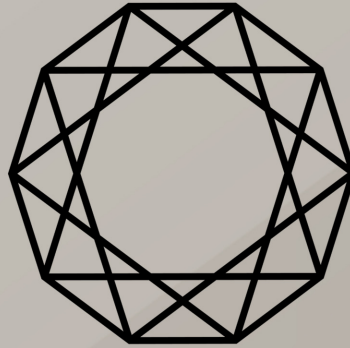
Member states are given sufficient latitude for determining which non-material damage can be compensated.



What can we take from this?

Difficulties of compensating indirect victims of road traffic accidents.

Limits of the EU Legal Order.



DEKA
CHAMBERS

www.dekachambers.com

Anirudh Mandagere

amandagere@dekachambers.com