

Judgment of the Hellenic Supreme Court Part 2: Relatives' rights to compensation for emotional distress in fatal car accidents under the Rome II Regulation

Following a judgment by the Supreme Court of Greece in 2023, the issue of direct damages was once again brought before Areios Pagos. In a decision that diverged from the ruling of the Court of Justice of the European Union (CJEU) in the Lazar case, the Supreme Court reaffirmed its position. However, one member of the court expressed a dissenting opinion, emphasizing the obligation of national courts to submit a preliminary reference. This judge provided rationale for the Supreme Court's departure from established case law, highlighting the importance of adhering to the CJEU's precedents in the context of European legal integration.

The facts

In the case under consideration, the plaintiffs, Greek nationals residing in Greece, filed a lawsuit in the Athens Court of First Instance following a fatal traffic accident that occurred in Finland in 2016. The deceased, also a Greek national and resident of Greece, suffered fatal injuries when a German driver, operating a vehicle registered in Finland, collided with him. The insurance company representing the German driver acknowledged its civil liability.

First instance proceedings. The plaintiffs, who included the deceased's parents and grandparents, sought recognition of their right to compensation for emotional distress stemming from the incident. The Athens Court of First Instance partially accepted their claim under Greek law.

Court of Appeal Proceedings

Following the initial ruling, the defendant, i.e., the German insurance company, lodged an appeal before the Athens Court of Appeal [CoA], contending that Finnish law should govern the case, since the accident occurred in Finland. However, the Court of Appeal determined that Greek law was applicable in accordance with Article 4(1) of Regulation (EC) No. 864/2007 (Rome II). This decision was based on the fact that both the deceased and the plaintiffs were Greek nationals and residents of Greece, thereby qualifying under Article 4(1), which stipulates the governing law as the law of the country in which the damage (here, emotional distress) occurs.

The Court of Appeal concluded that the relatives of the deceased possessed a direct and personal claim against the perpetrator, as the emotional injury constituted a primary and immediate violation of their personal rights. Consequently, the jurisdiction of the court was established based on the residence of the plaintiffs, where they endured emotional distress due to the deceased's death.

Importantly, the nature of the emotional distress was distinguished as a direct consequence of the wrongful act, independent from the primary injury suffered by the deceased. The court considered that the location of such emotional distress is defined not by where the relatives learned of the death, but rather by their primary residence, where they experience ongoing suffering over time.

Finally, under Article 932 of the Greek Civil Code, financial compensation for emotional distress is expressly recognized for relatives of victims in cases involving wrongful death.

Supreme Court Ruling

The Hellenic Supreme Court upheld the Co A decision, affirming that Greek law applied in this case, and that the CoA accurately interpreted Article 4(1) of the Rome II Regulation. The Supreme Court ruled that the concept of direct damage encompasses the emotional anguish experienced by the relatives, thereby warranting compensation and establishing jurisdiction based on their residence.

In its decision, the majority of the Supreme Court members underscored that a contrary interpretation, which would limit jurisdiction solely to the country where the accident occurred, would conflict with established interpretations by the Court of Justice of the European Union (CJEU). The majority opinion emphasized

the importance of recognizing the locality of emotional distress as a legitimate basis for asserting jurisdiction and claims for compensation.

Minority Opinion

One member of the Court expressed the following opinion: According to Article 267 TFEU, the courts of the Member States in which a question of interpretation of primary or secondary law of the European Union arises in a pending case are allowed or even required, when it comes to a court whose decisions are not subject to appeal under the internal law of the relevant Member State, to refer the matter to the CJEU for a preliminary ruling. Thus, with the institution of preliminary reference, a procedure is established between national courts and the CJEU, with the main goal of ensuring the uniformity of EU law, which also serves the principle of equal treatment of the involved persons, since this principle is surely threatened if the same provisions are applied differently across the Member States of the EU.

The submission of a preliminary question is mandatory when the relevant conditions set by the CJEU are met, which are mainly condensed in the principle of the so-called *acte clair*. If the CJEU has ruled on the interpretation of provisions of EU law, the national court, particularly the court whose decisions are not subject to appeal, is obliged to comply with it and, if it disagrees, must submit a new preliminary question providing new elements, developing its arguments, and supporting a different interpretation.

In addition, the same member of the Supreme Court dissented, arguing that Article 4(1) of the Rome II Regulation characterizes the damages related to the death of the victim as indirect consequences of the accident when the plaintiffs reside in a different Member State than where the accident occurred. The dissenting opinion cited EU case law (CJEU, case C-350/14, *Lazar*) to assert that the applicable law in such cases would be the law of Finland, where the direct damage occurred, rather than Greek law.

The minority contended that, as per Finnish law, monetary compensation for emotional distress in cases of wrongful death is only available under specific circumstances, which may unduly limit the recovery of damages for the relatives in question. Accordingly, it proposed the need for a preliminary reference to the CJEU to clarify the legal framework surrounding compensation claims for

emotional distress and the corresponding entitlements in light of the applicable law.

Conclusion

The Hellenic Supreme Court reinforced the principle that the emotional distress suffered by relatives of a deceased individual due to wrongful death is direct damage under the Rome II Regulation, warranting compensation. This case highlights the nuanced interplay between jurisdiction, applicable law, and the evolving interpretation of emotional distress in the context of cross-border torts within the European Union.