



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

15 November 2018\*

(Reference for a preliminary ruling — Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Concept of ‘use of vehicles’ — Accident involving two vehicles parked in a car park — Material damage to a vehicle caused by a passenger from a neighbouring vehicle opening the vehicle door)

In Case C-648/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Supreme Court, Latvia), made by decision of 13 November 2017, received at the Court on 20 November 2017, in the proceedings

‘**BTA Baltic Insurance Company**’ AS, formerly ‘Balčia Insurance’ SE,

v

‘**Baltijas Apdrošināšanas Nams**’ AS,

THE COURT (Sixth Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, C.G. Fernlund and S. Rodin, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- ‘BTA Baltic Insurance Company’ AS, by E. Matveja and W. Stockmeyer,
- ‘Baltijas Apdrošināšanas Nams’ AS, by A. Pečērica,
- the Latvian Government, by I. Kucina and V. Soņeca, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Garofoli, avvocato dello Stato,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by K.-P. Wojcik and A. Sauka, acting as Agents,

\* Language of the case: Latvian.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1) of 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 (OJ, English Special Edition 1972(II), p. 360; ‘the First Directive’).
- 2 The request has been made in proceedings between ‘BTA Baltic Insurance Company’ AS (‘BTA’), formerly ‘Balčia Insurance’ SE, and ‘Baltijas Apdrošināšanas Nams’ AS (‘BAN’) concerning the reimbursement of insurance compensation paid by BTA to one of its customers.

### **Legal context**

#### *European Union law*

- 3 Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11) repealed, inter alia, the First Directive and Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17; ‘the Second Directive’). However, in view of the date of the facts of the case in the main proceedings, the case continues to be governed by the repealed directives.
- 4 Article 1 of the First Directive provided:  
  
‘For the purposes of this Directive:  
  
...  
  
2. “injured party” means any person entitled to compensation in respect of any loss or injury caused by vehicles;  
  
...’
- 5 In accordance with Article 3(1) of that directive:  
  
‘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.’

6 Article 2(1) of the Second Directive provided:

‘Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3(1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by:

– persons who do not have express or implied authorisation thereto,

or

– persons who do not hold a licence permitting them to drive the vehicle concerned,

or

– persons who are in breach of the statutory technical requirements concerning the condition and safety of the vehicle concerned

shall, for the purposes of Article 3(1) of [the First Directive], be deemed to be void in respect of claims by third parties who have been victims of an accident.

...’

7 Article 3 of that directive provided:

‘The members of the family of the insured person, driver or any other person who is liable under civil law in the event of an accident, and whose liability is covered by the insurance referred to in Article 1(1) shall not be excluded from insurance in respect of their personal injuries by virtue of that relationship.’

***Latvian law***

8 Article 1 of the Sauszemes transportlīdzekļu īpašnieku civiltiesiskās atbildības obligātās apdrošināšanas likums (Law on compulsory civil liability insurance for owners of motor vehicles transposing the First and Second Directives, ‘Law on compulsory insurance’) provides:

‘The following terms are used in this Law:

...

(2) Insurable event: a road traffic accident giving rise to payment of the insurance compensation.

...’

9 Article 3 of that law states:

‘1. The subject-matter of the compulsory insurance shall be the civil liability of the owner or person having custody of a motor vehicle (‘the civil liability of the owner’) for losses caused to a third party in a road traffic accident.

2. Every owner of a motor vehicle shall insure against the civil liability of the owner as regards each motor vehicle used in road traffic by entering into an appropriate insurance contract. ...’

10 Article 18 of that law provides:

‘In the event of the occurrence of an insurable event, the civil liability insurer of the owner of the motor vehicle responsible for the loss ... shall compensate up to the limit of the insurer’s liability the losses ... that have been caused to a third party in a road traffic accident.’

11 According to Article 25(1) of that law:

‘A loss caused to the property of a third party in a road traffic accident is a loss that has arisen:

(1) due to the damage or total loss of a motor vehicle;

...’

12 Article 31(10) of the Law on compulsory insurance provides:

‘If another insurance company has compensated the caused losses under an optional-insurance contract, the insurer that has insured the civil liability of the owner of the motor vehicle which caused the loss in a road traffic accident ... shall reimburse the amount of the compensation calculated and paid in accordance with the procedure laid down in this Law.’

13 Article 1 of the Ceļu satiksmes likums (‘Road Traffic Law’) is worded as follows:

‘The following terms are used in this Law:

...

(5) Road traffic: relations arising from movement on roads with or without motor vehicles;

...

(7) Road traffic accident: an accident that has occurred in road traffic which involves at least one vehicle and as a result of which an individual has died or has been caused physical injury, or damage has been caused to the property of a legal or natural person or to the environment, or when an accident has occurred in some other place, where driving with a vehicle is possible, and which involves a vehicle.’

14 Article 44 of that law states:

‘1. Damage suffered as a result of infringement of this Law or other enactments regulating road traffic safety shall be compensated.

2. The owner or person in custody of a vehicle, if he fails to prove that damage has been caused due to force majeure, intentionally by the victim or due to the gross negligence of the victim or such other reasons which, in accordance with the law, exonerates him from liability to compensate for the damage, shall be liable regarding the damage caused as a result of the use of that vehicle.

...’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 15 On 24 October 2008, a passenger of a vehicle parked in a supermarket car park ('the first vehicle') damaged the left rear side of the neighbouring vehicle ('the second vehicle') when opening the right rear door.
- 16 The owner of the second vehicle and the driver of the first vehicle filled out an accident report at the scene of the accident, in which the driver of the first vehicle acknowledged that he was to blame and confirmed that the passenger of the first vehicle had scratched the second vehicle with the back door of the first vehicle.
- 17 BTA had concluded an optional-insurance contract with the owner of the second vehicle. The civil liability arising from the use of the first vehicle was insured by BAN.
- 18 BTA, pursuant to the optional-insurance contract which it had concluded with the owner of the second vehicle, and after deducting the excess stipulated therein, paid the sum of LVL 47.42 (approximately EUR 67.47), corresponding to the cost of repairing the damage, to its customer (the owner of the second vehicle). This company subsequently asked BAN to reimburse the costs thus incurred.
- 19 BAN refused to reimburse those expenses on the ground that an accident which occurs when both vehicles are stationary is not considered to be an 'insurable event' within the meaning of the Law on compulsory insurance.
- 20 BTA initiated legal proceedings against BAN, seeking reimbursement of the compensation that it had paid to the owner of the second vehicle. Its action was upheld at first instance and on appeal.
- 21 In an appeal brought by BAN, the Augstākā tiesa (Supreme Court, Latvia), by judgment of 28 March 2014, set aside the judgment given on appeal, on the ground of inadequate reasoning.
- 22 Hearing the case again, the Rīgas apgabaltiesas Civillietu tiesas kolēģija (Regional Court, Riga, Civil Division, Latvia), by judgment of 20 May 2014, dismissed BTA'S appeal on the ground that there is no road traffic accident unless at least one of the vehicles involved is moving and that, as a result, the insurable event covered by BAN did not occur in the present case. That court also held that it was the passenger, rather than the driver, of the first vehicle who was liable for the damage caused to the second vehicle under civil law.
- 23 BTA lodged an appeal in cassation against that judgment before the Augstākā tiesa (Supreme Court). In support of its appeal, it claims, in particular, (i) that the interpretation of the concept of 'insurable event' used by the Rīgas apgabaltiesas Civillietu tiesas kolēģija (Regional Court, Riga, Civil Division) is contrary to the objective of protecting the victims of motor vehicle accidents, pursued by the EU legislation concerning compulsory insurance in respect of the use of motor vehicles, (ii) that the 'use of a vehicle' includes the vehicle being stationary, and (iii) that, as the owner of a vehicle is liable for the damage caused to third parties by passengers when the vehicle is being used, such damage is covered by the civil liability insurance relating to that vehicle.
- 24 The referring court is uncertain whether the act of opening the door of a parked vehicle amounts to 'use of a vehicle that is consistent with its normal function' within the meaning of the judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146) and whether this action falls within the concept of 'use of vehicles' within the meaning of Article 3(1) of the First Directive.

- 25 The referring court notes, in that regard, that the broad interpretation that the Court has given to that concept in that judgment suggests that an affirmative answer should be given to that question. According to that court, when passengers get in or out of a vehicle, that amounts to use of that vehicle, and the vehicle cannot be used to its full potential if passengers remain inside it.
- 26 If the answer to that question is in the affirmative, the referring court asks whether the concept of the ‘use of vehicles’ in Article 3(1) of the First Directive also covers cases where a passenger uses the vehicle.
- 27 In that regard, the referring court points out that, according to Article 1(2) of the First Directive, the concept of ‘injured party’, within the meaning of that directive, covers any person entitled to compensation in respect of any loss or injury caused by vehicles. The referring court adds that Article 3(1) of that directive refers to the ‘use’ of vehicles, not only to the liability of drivers.
- 28 Furthermore, the referring court observes that the Court of Justice specified, in its judgment of 4 September 2014, *Vnuk* (C-162/13, EU:C:2014:2146), that the concept of the ‘use of vehicles’ in that provision covers any use of a vehicle that is consistent with the normal function of that vehicle. The action of opening the doors of a vehicle to get in or out of it constitutes such a use.
- 29 In those circumstances, the Augstākā Tiesa (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is Article 3(1) of [the First Directive], to be interpreted as meaning that the concept of “use of vehicles” covers a situation such as that in the main proceedings, that is to say, the opening of the doors of a stationary vehicle?
- (2) If the answer to the first question is in the affirmative, is Article 3(1) of [the First Directive] to be interpreted as meaning that the concept of ‘use of vehicles’ covers a situation such as that in the main proceedings, that is to say, a situation in which damage to the property of a third party is caused by use of the vehicle by a passenger?’

### **Consideration of the questions referred**

- 30 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(1) of the First Directive must be interpreted as meaning that the concept of ‘use of vehicles’, referred to in that provision, covers a situation in which the passenger of a vehicle parked in a car park, in opening the door of that vehicle, scraped against and damaged the vehicle parked next to it.
- 31 In this regard, it must be recalled that the concept of ‘use of vehicles’, referred to in Article 3(1) the First Directive, cannot be left to the assessment of each Member State, but is an autonomous concept of EU law, which must be interpreted, in accordance with the Court’s settled case-law, in the light, in particular, of the context of that provision and the objectives pursued by the rules of which it is part (judgments of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraphs 41 and 42, and of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 31).
- 32 Moreover, the aim of EU legislation concerning insurance against civil liability in respect of the use of vehicles is, on the one hand, to ensure the free movement of vehicles normally based on European Union territory and of persons travelling in those vehicles, and, on the other hand, to guarantee that the victims of accidents caused by those vehicles receive comparable treatment irrespective of where in the European Union the accident occurred (see, to that effect, judgments of 23 October 2012,

*Marques Almeida*, C-300/10, EU:C:2012:656, paragraph 26; of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 50; and of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 32).

- 33 In addition, the development of that legislation shows that the objective of protecting the victims of accidents caused by those vehicles has continuously been pursued and reinforced by the EU legislature (judgments of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraphs 52 to 55, and of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 33).
- 34 In the light of those considerations, the Court has ruled that Article 3(1) of the First Directive must be interpreted as meaning that the concept of ‘use of vehicles’ in that provision is not limited to road use, that is to say, to travel on public roads, but that that concept covers any use of a vehicle that is consistent with the normal function of that vehicle (judgments of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 59, and of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 34).
- 35 In that regard, the Court has stated that, as the motor vehicles referred to in Article 1(1) of the First Directive, are, irrespective of their characteristics, intended normally to serve as a means of transport, that concept covers any use of a vehicle as a means of transport (judgment of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraphs 37 and 38).
- 36 In the present case, it must be held that the act of opening the door of a vehicle amounts to use of the vehicle which is consistent with its function as a means of transport, inasmuch as, among other things, it allows persons to get in or out of the vehicle or to load and unload goods which are to be transported in the vehicle or which have been transported in it.
- 37 That conclusion is not affected by the fact that the vehicles at issue in the main proceedings were, at the time of the accident, stationary and that they were in a car park.
- 38 It must be recalled, first, that the fact that the vehicle involved in the accident was stationary when the accident occurred does not, in itself, preclude the use of that vehicle at that time from falling within the scope of its function as a means of transport and, therefore, within the scope of the concept of ‘use of vehicles’ within the meaning of Article 3(1) of the First Directive (judgment of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 39). The opening of doors is usually only done when vehicles are stationary.
- 39 Furthermore, the Court has also stated that whether or not the motor of the vehicle concerned was running at the time when the accident occurred is not conclusive either (judgment of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 39).
- 40 As regards, secondly, the fact that the vehicles at issue in the main proceedings were in a car park, it should be recalled that the scope of the concept of ‘use of vehicles’, within the meaning of Article 3(1) of the First Directive, does not depend on the characteristics of the terrain on which the vehicle is used (see, to that effect, judgments of 28 November 2017, *Rodrigues de Andrade*, C-514/16, EU:C:2017:908, paragraph 35; and of 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraph 30).
- 41 As regards the fact that the accident at issue in the main proceedings was not caused by an action of the driver of the first vehicle, but by an action of the passenger, it should be noted, first of all, that Article 3(1) of the First Directive lays down generally that ‘civil liability in respect of the use of vehicles normally based in [the] territory [of each Member State]’ must be covered by insurance.

- 42 Thus, contrary to the position set out by the Polish Government in relation to the reply to be given to the second question, neither that provision nor the other provisions of the directives relating to compulsory insurance limit the coverage of compulsory insurance to the civil liability of a particular category of person, such as the driver of the vehicle.
- 43 By contrast, Article 2(1) of the Second Directive, which refers to ‘the use or driving of vehicles’, and Article 3 of that directive, which refers to the ‘driver or any other person who is liable under civil law in the event of an accident and whose liability is covered by the [compulsory] insurance’, suggest that such insurance covers civil liability arising not only from the driving of vehicles but also from other uses made of vehicles by persons other than the driver.
- 44 Next, it is apparent from the case-law cited in paragraphs 34 and 35 of the present judgment that the concept of ‘use of vehicles’, within the meaning of Article 3(1) of the First Directive, covers ‘any’ use of a vehicle that is consistent with its normal function, namely its function as a means of transport.
- 45 It is important to point out in this regard that the use of vehicles is not limited to the driving of vehicles, but also includes actions which, like the action mentioned in paragraph 36 of the present judgment, are also normally carried out by passengers.
- 46 Finally, it must be recalled that the EU legislation concerning civil liability insurance in respect of the use of vehicles prevents the exclusion of the insurer’s obligation to compensate a victim of a road traffic accident involving an insured vehicle when the accident has been caused by a person who is not the person covered by the insurance policy (see, to that effect, judgment of 1 December 2011, *Churchill Insurance Company Limited and Evans*, C-442/10, EU:C:2011:799, paragraphs 33 to 44 and the case-law cited).
- 47 It follows from the foregoing considerations that the fact that the accident at issue in the main proceedings was not caused by an act of the driver of the first vehicle but by that of a passenger does not, in itself, preclude the use of that vehicle at that time from falling within the scope of its function as a means of transport and, therefore, within the scope of the concept of ‘use of vehicles’ within the meaning of Article 3(1) of the First Directive.
- 48 In the light of all the foregoing considerations, the answer to the questions referred is that Article 3(1) of the First Directive must be interpreted as meaning that the concept of ‘use of vehicles’, referred to in that provision, covers a situation in which the passenger of a vehicle parked in a car park, in opening the door of that vehicle, scraped against and damaged the vehicle parked next to it.

### Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

**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, must be interpreted as meaning that the concept of ‘use of vehicles’, set out in that provision, covers a situation in which the passenger of a vehicle parked in a car park, in opening the door of that vehicle, scraped against and damaged the vehicle parked next to it.**

[Signatures]