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**Mr. Nikola L. Filipović<sup>1</sup>**

INTERNATIONAL COURT PRACTICE

**REVIEW OF THE JUDGMENT OF THE EUROPEAN COURT  
OF JUSTICE IN THE CASE: FUNDO DE GARANTIA  
AUTOMÓVEL V ALINA ANTÓNIA DESTAPADO  
PÃO MOLE JULIANA,  
CRISTIANA MICAELA CAETANO JULIANA**

**1. Introductory Notes**

In this case, the judgment of the European Court of Justice relates to the obligation in respect of arranging the insurance cover for a motor vehicle that the owner no longer intended to use and that was parked on a private property, i.e. to the right of the Guarantee Fund to recourse against the vehicle owner who failed to insure the vehicle, since he no longer intended to use it.

Similar to the cases of Vnuk, Andrade and Torreiro, the court again faced the issue of the limits of the broadly set definition from the EU Directives, namely the issue as to what was deemed the “intended use” of a road vehicle and whether the definition of the term “intended use” should be construed following the subjective or objective criteria. An additional issue arose of the right to recourse of the Guarantee Fund against the party that was liable to have insured the vehicle, but was not responsible, in terms of civil law, for the accident or damage occurred.

**2. Regulatory Framework**

The Directive 72/166/EEC of 24<sup>th</sup> April 1972 (First Council Directive) defines the term “vehicle” under the Article 1, paragraph 1 as any motor vehicle intended

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for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled.

The Article 3, paragraph 1 of the Directive 72/166 stipulates the obligation to insure motor vehicles: "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 contract of insurance also covers: any loss or injury suffered by nationals of Member States during a direct journey between two territories in which the Treaty is in force".

The Directive 84/5/EEC of 30th December 1983 (Second Council Directive), under the Article 1 paragraph 4 stipulates the obligation of the Member States to establish the guarantee funds, i.e. if cited: "Each Member State shall set up or authorize a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied", but this paragraph, at the same time, " shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident."

### **3. Matter in Dispute and Legal Questions**

Mrs. A. A. Destapado Pao Mole Juliana is the owner of a motor vehicle registered in Portugal. She stopped driving due to health problems and parked the vehicle in the yard of her home, but did not take any further steps to completely withdraw the vehicle from operation. Without her knowledge, her son took the car keys and caused a traffic accident on the public road, landed off the road whereby himself and two of the passengers lost their lives, on November 19, 2006. The Guarantee Fund of Portugal compensated the damage to the injured parties and, in the recourse proceedings, sued the owner of the vehicle A.A. Destapado Pao Mole Juliana (and the daughter of the driver Cristiana Micaela Caetano Juliana) for the amount of damage paid out by the Fund to the claimants/injured.

After the first instance court in Portugal ruled in favour of the Guarantee Fund, explicating that the obligation to insure a vehicle attached whether or not the owner of the vehicle intended to use it in the traffic, but the appellate court was of the opposite view and amended the first instance decision, considering that in this particular case no obligation attached to insure the vehicle. Finally, the Supreme Court of Portugal, acting on the appeal of the Guarantee Fund, forwarded to the European Court of Justice a request for a preliminary decision, to construe the

obligations stipulated under the European directives that regulate the mandatory civil liability insurance with respect to the use of motor vehicles.

The Supreme Court of Portugal asked the European Court for a construing of the following issues:

1. Does the Article 3 (First Council Directive) stipulate the obligation to arrange for the civil liability insurance cover in the case of using the motor vehicle even where the owner has decided to park the vehicle on a private property off the public road or should the relevant Article be construed as not imposing the obligation upon the owner to contract the insurance coverage in such situations (without prejudice to the Guarantee Fund's obligation to claimants)?

2. Should the Article 1, paragraph 4 (Second Council Directive) be construed as granting the right to subrogation against the vehicle owner to the Guarantee Fund which, due to non-existence of a civil liability insurance contract, paid out the compensation to third party claimants, victims of a motor vehicle accident caused by the motor vehicle taken without the owner's consent and knowledge from the private property where it had been parked, *regardless* of the matter of attachment of the owner's liability for the accident; or else, is the Guarantee Fund *entitled* to the recourse depending on whether or not the presumption of civil liability of the vehicle owner is fulfilled and especially whether or not the owner had actual control over the vehicle at the time of the accident?

### **3.1. The Opinion of the European Court of Justice with Respect to the Obligation of the Owner to Arrange Insurance**

Essentially, the first question concerned the existence of an obligation of the vehicle owner to have the vehicle insured even when the owner no longer intended to drive and kept the vehicle parked on his private property.

The dilemma regarding this legal issue arises from the definition of a vehicle under the Article 1, Item 1 of the First Council Directive, which reads: "any motor vehicle intended for travel on land", where there is an element of "intended use" of the motor vehicle.

The question for the Court was, therefore, whether "intended" in the definition of a vehicle refers to the subjective or objective properties of the vehicle. The Court considered that the "intended" in terms of this definition did not refer to the subjective, i.e. the individual intention of the owner or a third party who controls the vehicle but referred to the objective purpose of the vehicle, i.e. that the vehicle is intended for travel, regardless of any intention whatsoever of its owner.

Since a vehicle is covered by the vehicle concept regardless of the subjective intention of its owner, the liability to insured under the Article 3 paragraph 1 (of the

First Council Directive) attaches for such a vehicle as is registered but not officially removed from traffic and is in a roadworthy condition.<sup>2</sup>

### **3.2. The Opinion of the Court with Respect to the Right of Recourse of the Guarantee Fund**

The second question essentially concerned the Guarantee Fund's right to recourse against the party who was obliged to take out civil liability insurance in respect of the use of a vehicle which caused the damage, but who did not take out the insurance, even if such party was not liable in terms of civil liability for a traffic accident.

The question posed by the Portuguese Supreme Court was whether the national regulations that allow such right of recourse to the Guarantee Fund are contrary to EU regulations in this area?

The court considered that the legislator, i.e. the EU wanted to preserve the right of Member States to provide for the ways and modalities of recourse to the Guarantee Fund, in particular that there were no EU regulations concerning the definition of a party against whom the Guarantee Fund may exercise their right of recourse. These aspects of functioning of the Guarantee Fund are governed by the national law of each Member State. The Court's conclusion is therefore that national law may provide for the following: when the owner of the vehicle involved in the accident has not fulfilled the obligation to insure such vehicle, that attached under the national law, the Guarantee Fund may contact the person responsible for the accident and/or the vehicle owner regardless of the latter's civil liability for the accident and the incurred damage.

The Court's view therefore as to answering the second question was that the Article 1, paragraph 4 of the Second Council Directive was to be construed as leaving the freedom to the national laws to stipulate whether the entity referred to in the provision had a right of recourse against the party or parties responsible for the accident as well as against the party who was required to take out the civil liability insurance in respect of the use of a vehicle that caused the damage compensated by such entity, even if the latter of the two parties was not liable for the accident in civil law terms.

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<sup>2</sup> The Court rejected the arguments of the German, Irish and Italian Governments according to which such a broad understanding of the obligation to insure was not necessary as damages incurred under the circumstances described in this case could be compensated by the Guarantee Fund, arguing that the Guarantee Fund has *ultima ratio* purpose of providing compensation only in precisely specified cases (Article 1, Item 4 of the Second Council Directive), and that the main purpose of a broad construing of the insurance obligation is to guarantee the achievement of the goal of protecting the victims of motor vehicle accidents, which the Union legislator constantly obeys and strengthens.

#### **4. Brief Review of the Judgment**

Following the already well-trodden path in the Vnuk and Torreiro judgments, the European Court of Justice presented a broad construing of both the concept of a vehicle and the concept of the vehicle use, with the primary emphasis on the interest of injured parties to receive compensation for the damage they suffered in the traffic accident. Based on the above cases, the basic operating definition of the term “vehicle use” was quite broad and included the use during which the vehicle performed its regular function as a means of transport (Vnuk), regardless of the place of its use (Torreiro) and, after this judgment, regardless of any subjective intent of the vehicle owner to either use or not use the vehicle.

This judgment is also significant because the European Court of Justice confirmed that the right of the Guarantee Fund to recourse against the owner of the vehicle who failed to meet his obligation to take out the insurance cover for the vehicle, regardless of his liability for the damage, is not contrary to European regulations, thus expanding the address to which the Guarantee Fund can refer in case of a recourse claim.

*Translated from Serbian by: **Bojana Papović***