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THE CONCEPT OF THE USE OF A MOTOR VEHICLE WITHIN THE COMPULSORY MOTOR THIRD PARTY LIABILITY INSURANCE

REVIEW SCIENTIFIC ARTICLE

Abstract

This paper analyzes the concept of the use of a motor vehicle within the framework of compulsory motor third party liability insurance, with particular reference to fire as the cause of damage. This paper focuses on the legislation of the Republic of Serbia and the European Union, with a detailed examination of relevant case law. The aim is to provide a clear understanding of the circumstances under which damage is considered to have arisen from the use of a motor vehicle, thus establishing whether the insurer must provide compensation. The research methods include the analysis of legal sources, national legislation, and EU directives, as well as a comparative analysis of the case law of the Court of Justice of the European Union and domestic courts. The results highlight the importance of a harmonized understanding of the concept of vehicle use, while the conclusion emphasizes the need for further alignment of Serbian legislation and judicial practice with EU law.

Keywords: compulsory motor third party liability insurance, concept of use of a motor vehicle, EU Motor Insurance Directives, case law.

I. Introduction

The use of a motor vehicles entails a high risk of causing damage to third parties, which requires adequate legal regulation of compulsory traffic insurance.

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Motor third party liability insurance, as a form of compulsory traffic insurance, protects the interests of both the liable party and the injured party, ensuring that the damage will be compensated even if the tortfeasor is insolvent, since the injured party may claim compensation not only from the tortfeasor but also from the insurer.[2]

However, the insurer will be obliged to compensate the damage only if the damage suffered by the injured party is covered by compulsory traffic insurance. National legislation, as well as the regulations of the European Union (hereinafter: the EU), require the owner of a motor vehicle to take out insurance covering damage caused by the use of the motor vehicle. Accordingly, damage caused by the use of a motor vehicle is covered by this insurance, whereas damage not arising from the use of a motor vehicle is not.[3]

Therefore, the central concept of this type of insurance is the " use of a motor vehicle", the interpretation of which directly affects the scope of insurance coverage. The concept "use of a motor vehicle" is, in almost all laws, recognized as a condition for the occurrence of the insured event under compulsory traffic insurance. However, this concept is not precisely defined, i.e. it is not clearly determined what constitutes the use of a motor vehicle, as it represents a legal standard.

A uniform, consistent, and precise definition of this legal standard in domestic legal theory and practice is of crucial importance, not only for ensuring legal certainty for citizens and insurance companies, but also for harmonizing domestic law with EU law.[4] The obligation to harmonize national law with EU law rests not only with the legislative branch but also with the judicial branch. Thus, there is a need not only to align the Law on Compulsory Traffic Insurance[5] with the amendments to Directive (EU) 2009/103/EC[6] as introduced by Directive (EU) 2021/2118[7], but also to harmonize domestic case law with the case law of the Court of Justice of the European Union.[8]

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[2] Nataša Petrović Tomić, *Pravo osiguranja – Sistem,* Belgrade, 2019, 538–539.

[3] Vladimir Čolović, „Naknada štete po osnovu osiguranja od auto-odgovornosti - ranije i sadašnje regulisanje u zakonodavstvu Srbije", *Obavezno osiguranje, naknada štete i obezbeđenje potraživanja* (ed. Zdravko Petrović), Belgrade 2010, 12.

[4] The Republic of Serbia has concluded the Stabilization and Association Agreement with the European Union (*Official Gazette of the Republic of Serbia* - International Treaties, No. 83/2008), under which it has, among other obligations, undertaken to align its legal system with EU law.

[5] Law on Compulsory Traffic Insurance - *Official Gazette of the Republic of Serbia*, Nos. 51/2009, 78/2011, 101/2011, 93/2012, and 7/2013 - Constitutional Court Decision.

[6] 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 a motor vehicle, and the enforcement of the obligation to insure against such liability, *Official Journal of the European Union*, OJ L 263, 7.10.2009.

[7] Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of a motor vehicle, *Official Journal of the European Union,* OJ L 430, 2.12.2021.

[8] Miloš Radovanović, „Pojam upotrebe motornog vozila u slovenačkoj sudskoj praksi", *Strani pravni život,* 1/2018, 104.

II. Development of motor third party liability insurance in the Republic of Serbia and the European Union

Compulsory motor third party liability insurance covers compensation for damage which the insured, in accordance with the law, is obliged to pay to third parties for damage arising from the use of a motor vehicle. The essence of this type of insurance lies in providing coverage for civil liability for damage arising from the use of a vehicle in traffic.[9]

The risks of modern society, particularly those arising from traffic, create the need for establishing an effective social protection mechanism.[10] Precisely in the field of road traffic, motor third party liability insurance has proven to be the most efficient instrument of protection, not only of the interests of motor vehicle owners but also for those who suffer damage. Traffic accidents represent an unavoidable risk that society must accept as the cost of technological progress and the benefits that vehicle use brings. However, the question arises as to who will bear the consequences of such risks. Under the general civil law principles, the owner of a hazardous object, such as a motor vehicle, is liable for damage caused by that object on the basis of strict (objective) liability, irrespective of fault.[11] With the development of the automotive industry and the increasing volume of traffic, the likelihood of damage occurring also increased, creating the need for the burden of liability not to rest solely on the vehicle owner. Thus emerged motor third party liability insurance - initially conceived as a means of protecting the property interests of vehicle owners. However, as the number of traffic accident victims increased, the function of this institution evolved: motor third party liability insurance became primarily a mechanism for ensuring compensation to injured parties.[12]

Motor insurance, as a legal concept, has not always been legally compulsory. Initially, it developed as a form of voluntary property insurance, based on the free will of individuals seeking to protect themselves against potential civil liability. However, the increase in the number of motor vehicles, the expansion of traffic, and the increasing frequency of traffic accidents led to the necessity of regulating this type of insurance as compulsory, in order to ensure effective protection of injured parties and enhance legal certainty in traffic.[13] The first countries to introduce compulsory

[9] Nataša Petrović Tomić, 537.

[10] Marijan Ćurković, *Ugovori o obaveznom osiguranju u cestovnom prometu*, Savjet stručne biblioteke „Croatia zajednica osiguranja imovine i osoba", Zagreb, 1989, 14.

[11] See Articles 173 and 174 of the Law on Contracts and Torts – *Official Gazette of SFRY*, Nos. 29/78, 39/85, 45/89 – Constitutional Court Decision, and Nos. 57/89, *Official Gazette of SRJ*, No. 31/93, *Official Gazette of Serbia and Montenegro*, No. 1/2003 – Constitutional Charter, and *Official Gazette of the RS*, No. 18/2020.

[12] Nataša Petrović Tomić, 537–538.

[13] Todor Brajović, „Naknada nematerijalne štete u srpskom osiguranju od auto-odgovornosti sa posebnim osvrtom na pojedina rešenja država članica EU", *Pravo i privreda* 10–12/2013, 126.

motor third party liability insurance were the Scandinavian states - Denmark (1920), Finland (1925), Norway (1926), and Sweden, followed by Austria (1929). The United Kingdom (1930), Switzerland (1932), and Germany (1939) soon followed, and after World War II, this model spread to other European countries such as Poland (1951), Belgium (1956), France (1958), and Czechoslovakia (1964).[14]

In the Republic of Serbia, the system of compulsory motor third party liability insurance has gone through several stages. The first step towards its introduction was the Law on Property and Persons Insurance of 1976,[15] which laid the foundation for further regulation in this field. After the dissolution of the SFRY, the legal framework developed through the Law on Insurance of Property and Persons of 1990 and 1996, culminating in the adoption of a special law on compulsory traffic insurance in 2009, which for the first time systematically regulated this field by a special law. That law established the obligation of vehicle owners to conclude a motor third party liability insurance contract, created a Guarantee Fund, and set out clear conditions for the payment of compensation. The 2011 amendments further clarified claims settlement procedures and introduced stricter penalties for failing to obtain vehicle insurance, thereby contributing to greater insurance market stability and enhanced protection of injured parties.[16]

Under the law on compulsory traffic insurance, motor vehicle owners are obliged to conclude an insurance contract covering their liability for damage caused to third parties by the use of a vehicle, including death, bodily injury, health impairment, as well as destruction or damage to property.[17] On the other hand, the insurer providing this type of insurance is obliged to accept an offer to conclude a contract if it does not differ from the general terms and conditions under which it normally operates, thus establishing a statutory limitation on the contractual freedom for both contracting parties.[18]

In the European Union, motor third party liability insurance has developed gradually through seven directives adopted from 1972 to the present day, with the aim of removing barriers to the free movement of vehicles and ensuring equal treatment of traffic accident victims across all Member States. Chronologically, the most important directives are: 1. Directive 72/166/EEC[19] – establishes the basic framework for compulsory insurance and the Green Card system; 2. Directive 84/5/EEC[20]

[14] Jasna Pak, *Pravo osiguranja,* Univerzitet Singidunum, Beograd, 2011, 247.
[15] Law on Insurance of Property and Persons, *Official Gazette of SFRY*, No. 24/76.
[16] T. Brajović, 127.
[17] The Law on Compulsory Traffic Insurance, Article18, para. 1.
[18] Nataša Petrović Tomić, 541.
[19] See: 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 a motor vehicles and the supervision of the obligation to insure against such liability, *Official Journal of the European Union*, OJ L 103, 2.5.1972, 1–4.
[20] See: 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 a motor vehicles, *Official Journal of the European Union,* OJ L 8, 11.1.1984, 17–20.

– introduces minimum amounts of sum insured, defines that the insurance covers both personal injury and property damage, and establishes the obligation to create a Guarantee Fund; 3. Directive 90/232/EEC[21] – extends coverage to all passengers in the vehicle and introduces the concept of a single premium; 4. Directive 2000/26/EC[22] – regulates procedures in cross-border accidents (the "Visiting Victims Directive")[23]; 5. Directive 2005/14/EC[24] – further harmonizes and amends previous directives in order to strengthen the protection of injured parties; 6. Directive 2009/103/EC[25] – the codification directive, which consolidates and regulates all key aspects of the insurance system, including minimum cover amounts, the right of direct action, and exclusions from insurance coverage.[26] Although the above directives covered a broad range of issues, none provided a definition of the concept of "use of a vehicle", even though this concept was essential for determining the scope of insurance coverage. This legal gap led to divergent case law and varying interpretations across Member States, leading to the adoption of Directive (EU) 2021/2118,[27] amending and supplementing Directive 2009/103/EC. This directive introduced a series of significant innovations: it redefined the concepts of "vehicle" and "use of a vehicle", increased the minimum amounts of sum insured, strengthened the protection of injured parties in cases of insurer insolvency, and clarified the conditions for verifying the validity of insurance in a cross-border context.[28]

Of particular importance is the new definition of the use of a vehicle, understood as "in accordance with the function of the vehicle as a means of transport, regardless of the terrain, movement, or technical characteristics". This definition broadens the scope of insurance and enables a more consistent application of insurance law in practice.

The adoption of Directive (EU) 2021/2118 was crucial for ensuring legal certainty in this field, as the previous inconsistent interpretations among Member

[21] See: 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 a motor vehicles, *Official Journal of the European Union,* OJ L 129, 19.5.1990, 33–35.

[22] See: 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 a motor vehicles, amending Directives 73/239/EEC and 88/357/EEC, *Official Journal of the European Union*, OJ L 181, 20 July 2000, 65–74.

[23] In more detail: Iva Tošić, „Razvoj koncepta auto-odgovornosti u pravu Evropske unije", *Pravni život*, No. 12/2017.

[24] Directive 2005/14/EC of 11 May 2005, amending Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, and 90/232/EEC regarding civil liability insurance in respect of the use of a motor vehicles, *Official Journal of the European Union,* OJ L 149, 11.6.2005, 14–22.

[25] See: Directive 2009/103/EC, 11–31.

[26] In more detail: Danijela Šaban, „Pojam uporabe motornog vozila u pravu osiguranja od automobilske odgovornosti", *Anali Pravnog fakulteta Univerziteta u Zenici*, No. 17/2016, 278–281.

[27] See: Directive (EU) 2021/2118, 1–27.

[28] Jasenko Marin: "Amendments In The Legislative Framework For Motor Liability In The Republic Of Croatiaj", *Insurance Trends,* No. 4/2024, 1–3.

States had proven to be an obstacle to the effective enforcement of victims' rights. The Republic of Serbia, as a candidate country for EU membership, strives to harmonize its national legislation with these solutions, as reflected in national practice and in the interpretation of the concept of use of a motor vehicle within national legal doctrine.

III. The concept of the use of a motor vehicle

Within the framework of motor third party liability insurance, the scope of insurance coverage is not the insured's entire civil liability for the damage caused, but only that portion which the law recognizes as a compulsory insurable risk. In this way, a distinction is made between the tortfeasor's civil liability *in integrum* and the insurer's liability *in terminis*, i.e. the limited liability arising from the concluded compulsory insurance contract.[29] Given that the insurer's liability is strictly limited by the statutory framework and by the scope of the obligation prescribed by law, it is of fundamental importance to precisely determine the boundaries of such coverage.

One of the most significant aspects in this regard is the interpretation of the concept of " use of a motor vehicle", since the meaning of this term determines whether specific damage falls within or outside the scope of insurance coverage.[30] As the legislator in the positive law of the Republic of Serbia does not provide an explicit definition of "use of a vehicle" in the context of motor third party liability insurance, the interpretation of this concept in practice becomes a matter for legal theory and case law. The way in which this concept is understood and applied determines both the extent of protection for injured parties and the length and complexity of damage compensation proceedings.

In addition to domestic legal sources, European Union law plays a particularly important role in shaping the modern understanding of this concept, with the EU directives and case law, particularly the judgments of the Court of Justice of the European Union, being decisive in defining and guiding legislative amendments.

1. The Concept of the use of a motor vehicle in European Union legislation

Despite the importance of the concept of the "use of a motor vehicle", it long remained undefined in the texts of the EU Directives. Its interpretation was left to legal theory and the judicial practice of Member States, which led to inconsistent solutions and disparities in the rights of injured parties. Given the increasing need

[29] Berislav M. Matijević, „Croquis pojma upotreba vozila u osiguranju od automobilske odgovornosti kroz praksu suda Evropske unije", *Strani pravni život*, 3/2019, 140.
[30] *Ibid.*

to achieve a uniform and stable interpretation of the term "use" throughout the EU, particularly in relation to various types of vehicles (e.g. working machinery, parked vehicles, vehicles on private property), and in order to extend protection for victims, the European legislator adopted in 2021 the seventh Directive – Directive (EU) 2021/2118, amending Directive 2009/103/EC.[31] The most significant amendment introduced by this directive is certainly the redefinition of the concept of "use of a vehicle".

According to the new definition contained in Article 1(1)(1a) of Directive (EU) 2021/2118, the use of a motor vehicle means: "any use of a vehicle that is consistent with its function as a means of transport, irrespective of the characteristics of the terrain on which the vehicle is used, and whether, at the time of the accident, it is in motion, stationary, or performing another operation deriving from its transport function".[32]

Such a normative definition stems from the need to move away from an exclusive reliance on case law and to establish legal certainty. In doing so, the Directive goes beyond a declarative level and becomes a constitutive legal act that standardizes a broadly functional interpretation of the concept of use, in accordance with the contemporary traffic and insurance requirements.[33]

Under this new regulatory framework, both at the legislative and theoretical level, there has been a transition from the classical notion of "active use" of a vehicle (implying movement) to a broader, functional model of interpretation encompassing passive situations -such as parking, standing, loading, unloading, and even technical malfunctions occurring while the vehicle is stationary.[34]

The new definition was inspired by the case law of the Court of Justice of the European Union, particularly the judgment in Vnuk (C-162/13), which initiated the process of legislative reforms. By introducing this definition, legal uncertainty has been significantly reduced, and tangible progress has been achieved toward fulfilling the objectives set forth in Articles 114 and 169 of the Treaty on the Functioning of the European Union (TFEU), namely, consumer protection and the enhancement of the single insurance market.

2. The concept of the use of a motor vehicle according to the case law of the Court of Justice of the European Union

In the absence of a precise statutory definition in the earlier directives, the concept of the "use of a vehicle" under EU law was developed primarily through the case law of the Court of Justice of the European Union (CJEU). By interpreting specific

[31] J. Marin, 5-10.

[32] *Ibid*, 11–12.

[33] Loris Belanić, „Redefiniranje obaveze osiguratelja od automobilske odgovornosti s obzirom na upotrebu vozila u kontekstu prakse suda EU", *Godišnjak Akademije pravnih znanosti Hrvatske*, Vol. XII, 1/2021, 345–366.

[34] *Ibid.*

cases, the Court gradually established the key criteria for applying this concept. These judgments not only resolved individual disputes, but also directly influenced their interpretation and were instrumental in prompting later legislative intervention, specifically the adoption of Directive (EU) 2021/2118.

2.1. Vnuk Judgment(C-162/13)[35]

This case concerned an accident that occurred when a tractor in a farmyard struck a person stacking hay. The Court held that the concept of the "use of a vehicle" must not be interpreted restrictively as merely the movement of a vehicle on public roads. Instead, it encompasses any use consistent with the vehicle's principal function as a means of transport, regardless of the location.

This judgment is regarded as a turning point, as it highlighted the need to harmonize the interpretation of the concept of the "use of a vehicle" across the EU.

2.2. Rodrigues de Andrade Judgment (C-514/16)[36]

In this case, a tractor was stationary, with its engine running to operate a vineyard spraying pump. The vehicle overturned, resulting in the death of a worker. The Court emphasized the distinction between a vehicle's function as a means of transport and its alternative (working) function. It held that when the working function predominates, the event does not fall within the concept of the "use of a vehicle" for the purposes of insurance directives.

This judgment underscored the importance of determining whether the vehicle was performing its transport function or another function at the moment the damage occurred.

2.3. Núñez Torreiro Judgment (C-334/16)[37]

This judgment concerned a military exercise during which a vehicle overturned in an area unsuitable for road use. Although the circumstances were specific, the Court concluded that the vehicle was being used in accordance with its transport

[35] Judgment of the CJEU in Case C-162/13 of 4 December 2014, *Damjan Vnuk / Zavarovalnica Triglav*, ECLI-:EU:C:2014:2146, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62013CJ0162*, accessed: 20. 6. 2025.

[36] Judgment of the CJEU in Case C-514/16 of 28 November 2017, *Isabel Maria Pinheiro Vieira Rodrigues de Andrade and others / Crédito Agrícola Seguros*, ECLI:EU:C:2017:908, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62016CJ0514*, accessed: 20. 6. 2025.

[37] Judgment of the CJEU in Case C-334/16 of 20 December 2017, *José Luís Núñez Torreiro / AIG Europe Limited and others*, ECLI:EU:C:2017:1007, available at:*https://eur-lex.europa.eu/legal-content/HR/TXT/?uri-=CELEX%3A62016CJ0334,* accessed: 20. 6. 2025.

function and that the event fell within the concept of the "use", since the movement occurred in the vehicle's capacity as a means of transport.

The judgment concluded that the terrain on which the accident occurred is not relevant, provided that the vehicle was being used in accordance with its transport function.

2.4. BTA Baltic Insurance Company Judgment (C-648/17)[38]

This case involved a situation in which a passenger, while opening the door of a parked vehicle, damaged an adjacent vehicle. The Court held that such an act also falls within the vehicle's ordinary transport function, as it enables passengers to enter and exit, and is, therefore, consistent with the concept of the "use of a vehicle" in the context of insurance.

2.5. Linea Directa Aseguradora Judgment (C-100/18)[39]

In this case, a vehicle had been parked for more than 24 hours in a private garage when, due to a fault in its electrical system, a fire broke out, causing damage to property. The Court found that such a situation may also fall within the concept of the "use of a vehicle", as the cause of the damage could be linked to the vehicle's function as a means of transport and its technical condition, even though it was not in motion at the time of the incident.

This is an exceptionally significant judgment because it demonstrates that a vehicle does not need to be in motion, nor must its engine be running, in order to be regarded as "in use".

The judgments discussed above demonstrate that the CJEU has consistently developed a broad, functional, and teleological interpretation of the concept of the "use of a vehicle", taking into account the primary objective of motor insurance - victim protection. Their diversity, coupled with the need for a uniform standard, prompted the legislator to include in Directive (EU) 2021/2118 a normative definition of this concept, which now encompasses the use of a vehicle "in accordance with its function as a means of transport", regardless of terrain, movement, or the specific moment in time.

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[38] Judgment of the CJEU in Case C-648/17 of 15 November 2018, *BTA Baltic Insurance Company AS / Baltijas Apdrošināšanas Nams AS*, ECLI:EU:C:2018:917, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62017CJ0648*, accessed: 20. 6. 2025.

[39] Judgment of the CJEU in Case C-100/18 of 20 June 2019, *Línea Directa Aseguradora SA v. Segurcaixa Sociedad Anónima de Seguros y Reaseguros*, ECLI:EU:C:2019:517, available at: *https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62018CJ0100*, accessed: 20. 6. 2025.

3. The concept of the use of a motor vehicle within the law of the Republic of Serbia

3.1. The concept of use in legal theory

In the law of the Republic of Serbia, as in the law of the EU, compulsory motor third party liability insurance covers the liability of the tortfeasor, i.e. the owner or user of the motor vehicle. Nevertheless, it is important to determine the legal basis of such liability. While the civil liability of the tortfeasor is founded on the general rules of the Law on Contracts and Torts,[40] the insurer's duty to compensate for damage caused by the use of a vehicle arises from the motor third party liability insurance contract, its terms and conditions, and the relevant provisions of the law on compulsory traffic insurance. This difference in the legal basis implies that the liability of the tortfeasor and that of the insurer do not necessarily coincide. On the contrary, motor third party liability insurance covers only that portion of the tortfeasor's liability which, by law, is transferred to the insurer. One of the key elements determining the boundaries of the insurer's liability is the concept of the " use of a motor vehicle".[41]

In this sense, the use of a motor vehicle represents an insured risk as defined by the law on compulsory traffic insurance, and its precise understanding directly affects the scope of the insurer's liability. It is, therefore, of crucial importance to delineate this concept clearly in order to determine whether a particular harmful event is covered by compulsory motor third party liability insurance or not.[42]

The law on compulsory traffic insurance does not provide an explicit definition of "use of a vehicle", which is not necessarily problematic, given that the question of whether the damage resulted from the use of a motor vehicle is a factual matter, dependent on the specific circumstances of the case.[43] However, in the absence of consistent case law, such an approach can lead to legal uncertainty.

Within legal theory, damage arising from the use of a motor vehicle is often linked to traffic accident, with a distinction drawn between a traffic accident in the narrow sense, i.e. a collision between motor vehicles and a traffic accident in the broader sense, where no physical contact occurs between two or more vehicles (e.g. running off the road, objects falling from a vehicle, and similar incidents).[44]

[40] See Articles 173 and 174 of the Law on Contracts and Tort.

[41] Pursuant to Article18 of the Law on Compulsory Traffic Insurance (LCTI), the owner of a motor vehicle is obliged to conclude an insurance contract covering liability for damage caused by the use of the vehicle to third parties, in the form of death, bodily injury, health impairment, or destruction/damage to property, excluding damages to property entrusted for transport.

[42] L. Belanić, 347–348.

[43] Unlike the current law, the 1967 Law on Compulsory Motor Insurance considered it necessary to define the concept of vehicle use more precisely; Article 15(2) provided that a vehicle is deemed to be in use both while driving and while stationary on the road during a journey.

[44] In more detail: N. Petrović Tomić, 544–545.

A part of legal theory supports a broad interpretation of the concept, emphasizing that liability insurance does not cover only damages arising from traffic accidents.[45] Thus, Professor Nataša Petrović Tomić concludes that the following situations also fall under the concept of vehicle use: 1) dazzling by headlights, causing another vehicle to veer off the road; 2) where the manner of driving of one driver forces another vehicle to collide with a third party; 3) if one vehicle brings mud or dirt onto the roadway, causing another vehicle to skid; 4) when a defect or malfunction in a vehicle leads to ignition and fire that damages a third party's property; 5) all situations involving stopping on the road, work on the vehicle, and any driving undertaken from the driver's seat and back.[46]

Professor Predrag Šulejić also advocates a broad interpretation, stating that the use includes stopping on the road, work on the vehicle, and any halt occurring during a drive. However, he emphasizes that in every case it is necessary to establish a causal link between the damage and the vehicle use. This link need not be direct, as the damage may occur at another location or at a later time.[47] Furthermore, it is noted that it is incorrect to restrict the concept of use solely to situations where the damage occurred on a public road, since the insurance also extends to damage occurring on non-public roads. Nor is it necessary for the vehicle to be self-propelled at the time, as it can be towed.[48]

Therefore, the use of a motor vehicle should not be limited strictly to a traffic accidents, vehicle movement, or public roads. Following the approach of EU law, when interpreting this concept, it must be borne in mind that the principal function of compulsory traffic insurance is the protection of third-party victims. Accordingly, this concept should be interpreted broadly, while always taking into account the transport function of the vehicle.

However, domestic case law remains inconsistent,with noticeable deviations from the interpretation of this concept in accordance with the vehicle's function as a means of transport, regardless of the terrain, its movement, or the specific moment at which the event occurred.

3.2. The concept of use in domestic case law

Given that the positive law of the Republic of Serbia, and in particular the Law on Compulsory Traffic Insurance, does not contain an explicit definition of the concept of the "use of a motor vehicle", case law plays a crucial role in determining the boundaries of the insurer's liability in cases involving damage. An analysis of the

[45] *Ibid.*
[46] *Ibid.*, 545.
[47] Predrag Šulejić, *Pravo osiguranja*, Belgrade, 2005, 441–442.
[48] *Ibid.*, 442–443.

relevant case law reveals that the interpretation of this concept varies among courts, with judicial decisions oscillating between two main interpretations: a restrictive interpretation, according to which use is strictly linked to the vehicle's movement in traffic, and a functional (broader) interpretation, which recognizes acts such as parking, unloading, idling with the engine running, or mechanical malfunction as forms of use, provided that such acts are connected to the vehicle's transport function.

Earlier case law includes rulings where a vehicle was considered to be in use while stationary at a bus stop for the purpose of passengers boarding and alighting; where the spreading of mud onto the roadway constitutes use if it caused the road surface to become slippery and led to a rollover; yet that damage is not considered to arise from use if the injured party was pushing the vehicle or if carbon monoxide poisoning occurred in a closed garage.[49]

Regarding the location (road) where the damage occurred, there were some inconsistencies in case law. In one decision, it was held that damage sustained by a worker assisting with the waste unloading at a public dump was not covered by compulsory traffic insurance, on the ground that the event did not occur in an area where traffic takes place. In another decision, it was held that there was no liability on the part of the insurance community where damage was caused by a tractor in a field, since the event did not occur on a public road. Conversely, a third decision, contrary to the previous, held that a factory yard where an accident occurred should be considered a road, since traffic, albeit limited to official vehicles, is conducted there.[50]

In more recent case law, a fully consistent interpretation has not been achieved. In case Gž 1292/2018, the Court of Appeal in Novi Sad held that an injury sustained by a passenger while entering a vehicle falls within the concept of use of a motor vehicle under the Law on Compulsory Traffic Insurance. The Court reasoned that the act of entering a vehicle constitutes an action directly linked to the use of the vehicle in its primary function - the transport of persons and goods, and that such an action bears a sufficiently strong causal and functional connection to the vehicle's purpose.[51] This decision thus adopts a functional interpretation of use, which extends beyond the narrower concept of the vehicle's movement.

By contrast, in case Rev 4191/2020, the Supreme Court of Cassation adopted a restrictive interpretation, holding that a vehicle undergoing repair cannot be regarded as "in use" within the meaning of compulsory motor insurance. The Court emphasized that the damage did not result from the vehicle's ordinary use, but occurred during servicing and preparation of the vehicle for its primary pur-

[49] VSH, Gž. 1174/70 of 11 May 1971; VSH, Gž. 1600/71 of 16 June 1971; VSS, Gž. 705/69 of 12 October 1969; VSH, Gž. 1777/74 of 17 April 1975, all cited in: P. Šulejić, 441.

[50] VS SRS, Pž. 102/72 of 18 February 1972; Gž. 156/74 of 20 January 1975; VSS, Pž. 1451/71 of 31 March 1972; all cited in: P. Šulejić, 442.

[51] Court of Appeal in Novi Sad, Gž 1292/2018 of 28 May 2018.

pose. Therefore, insurance coverage was excluded for actions not directly related to traffic or transport.[52] This case clearly illustrates the judicial distinction between the vehicle's active role in traffic and its technical servicing state or maintenance, which, according to the Court, does not fall within compulsory insurance. This view represents a paradigmatic example of a formal and narrowly defined interpretation of the concept of use, limited to the vehicle's active participation in the traffic process.

Furthermore, in case Rev 18331/2024, a situation was considered in which a moving car collided with a towed trailer, where the second-instance court held that the insurer of the trailer was not liable because the trailer did not act independently. The Supreme Court held that the trailer, being functionally connected to the towing vehicle, was in use, and that the absence of independent mechanical activity was not decisive.[53] This interpretation adopts the functional model, whereby the use of a vehicle is not strictly confined to its mechanical activity, but extends to the purposeful context and causal connection.

These judgments confirm that domestic case law fluctuates between the broader functional and narrower technical interpretations, with the dividing line between "use" and "non-use" of a vehicle determined largely by the factual circumstances of each case, rather than by a strictly established legal standard. On the one hand, it is essential to consider the specific circumstances of each individual case; on the other, such variability in practice may result in divergent legal outcomes in factually similar situations, thereby undermining legal certainty and consistency. In this regard, legal theory increasingly emphasizes the need for a more precise statutory definition of the concept of "use of a vehicle", based on the standards established by Directive (EU) 2021/2118, which provides a functional definition and ensures a harmonized interpretation among the Member States.

4. The concept of the use of a motor vehicle in case law regarding fire

One of the particularly complex issues in case law concerns the question of whether the occurrence of fire in a vehicle can be regarded as the "use of a motor vehicle" within the meaning of compulsory motor third party liability insurance. This legal dilemma is especially pronounced in cases where the vehicle was stationary and not being used for transportation at the time of the event, yet damage nonetheless occurred due to its technical function or system malfunctions. Courts have taken differing positions, oscillating between a broad functional interpretation and a restrictive approach, which complicates both the legal position of injured parties and the determination of the insurer's liability.

[52] Supreme Court of Cassation of the RS, Rev 4191/2020 of 15 July 2021.
[53] Supreme Court of Cassation of the RS, Rev 18331/2024 of 18 September 2024.

The following section presents selected judgments rendered by courts of the Republic of Serbia that address this question, with particular emphasis on how the term "use" is interpreted in situations where the damage arises from a vehicle fire.

In one case before the Commercial Court in Belgrade,[54] the court considered a claim for compensation for damage caused by a fire that had broken out on a parked motor vehicle insured with the defendant insurer under a policy of compulsory motor third party liability insurance. The fire subsequently spread to a neighbouring vehicle owned by the claimant, resulting in material damage. The claimant argued that the insurer was obliged to compensate for the damage since the harmful event originated from the insured vehicle, regardless of whether it was in motion. It was particularly emphasised that the damage had arisen from a hazardous object, and that, in accordance with the protective purpose of compulsory insurance, the insurer should be held liable. The court, however, entirely dismissed the claim, reasoning that in this specific case the fundamental prerequisite for the insurer's liability was not fulfilled, namely, that the damage must have arisen from the use of the vehicle. The court found that the claimant failed to prove the existence of any act of use consistent with the vehicle's transport function at the time of the damage. The court noted that the vehicle that caused the fire was parked, not in motion, not used for the transport of people or goods, and was not engaged in any traffic process. It further noted that the event could not be qualified as a traffic accident within the meaning of the Law on Road Traffic Safety,[55] which requires that at least one vehicle be in motion for such a classification. Accordingly, the court held that the defendant's objection of lack of passive standing was well-founded and that the claim was therefore unsubstantiated.

This judgment exemplifies a restrictive interpretation of the term "use of a motor vehicle", which relies strictly on the functional status of the vehicle at the moment of damage and ties the concept of use to the existence of a traffic accident in the narrow sense. Such an approach disregards the possibility that a stationary vehicle may nonetheless cause harmful consequences that are causally linked to its transport function or technical characteristics (e.g. battery, electrical wiring, fuel tank, etc.). In effect, this narrows the scope of protection that the institution of compulsory insurance is intended to provide and creates legal uncertainty for injured parties, as it raises the question of whether the insurance covers damages even when no fault is attributable to the tortfeasor, yet a causal link exists between the vehicle and the damage.

[54] Judgment of the Commercial Court in Belgrade, P 6410/2023 of 21 March 2024.

[55] Law on Road Traffic Safety, *Official Gazette of the Republic of Serbia*, Nos. 41/2009, 53/2010, 101/2011, 32/2013 – Constitutional Court Decision, 55/2014, 96/2015 – other law, 9/2016 – Constitutional Court Decision, 24/2018, 41/2018, 41/2018 – other law, 87/2018, 23/2019, 128/2020 – other law, 76/2023, and 19/2025.

For comparative purposes, reference may be made to a judgment of the Supreme Court of the Republic of Croatia,[56] which concerned a fire that broke out in a parked vehicle in a garage, caused by a malfunction in the vehicle's electrical system. Although the vehicle was not in motion and was not directly participating in traffic, the court nevertheless held that the incident constituted " use of a motor vehicle" within the meaning of motor third party liability insurance. The key reasoning was that the cause of the fire stemmed from the technical characteristics and functional properties of the vehicle itself, thereby allowing the event to be classified under the broader functional definition of use.

Although this judgment does not belong to domestic case law, it exemplifies a functional approach that does not limit the use of a vehicle solely to its movement or active participation in traffic, but also recognises situations where a vehicle, due to its technical characteristics, produces harmful consequences while stationary. Such an interpretation better aligns with the purpose of insurance as a means of protection for third-party victims and provides broader, materially fair protection.

The previously cited first-instance judgment of the Commercial Court in Belgrade was concluded in appellate proceedings, where the Commercial Appellate Court in Belgrade[57] ruled that the first-instance court had incorrectly concluded that the defendant insurer lacked passive legitimacy. The court clarified that the concept of use of a vehicle can include situations in which a parked vehicle ignites due to a fault in the electrical system, causing a fire. Nevertheless, the first-instance decision was confirmed on the grounds that the cause of the harmful event influenced the decision, and that the burden of proof rested on the claimant to establish the circumstances that led to the fire in the vehicle. The claimant failed to prove whether the fire resulted from a malfunction in the vehicle's electrical system, causing spontaneous ignition, or from human factors. Therefore, the claim was dismissed, applying the principle of burden of proof, concluding that the claimant did not prove that the cause of the fire was related to the mechanism necessary for the vehicle's transport function.

This second-instance judgment is particularly significant because it explicitly recognises that a fire ignited in a parked vehicle can constitute the "use of a motor vehicle" within the meaning of Article 18(1) of the Law on Compulsory Traffic Insurance, provided that there exists a causal and functional connection with the vehicle's technical systems serving its primary transport function. This departs from the earlier restrictive approach and affirms a broader, functional interpretation of the term use, closer to solutions adopted in EU law. At the same time, the judgment highlights a substantial procedural obstacle, the question of proving the cause of damage. The decision also confirms that case law is beginning to acknowledge the complexity

[56] Judgment of the Supreme Court of the Republic of Serbia, Rev 2643/12-2 of 23 April 2014, cited in D. Šaban, 289–290.

[57] Judgment of the Commercial Appellate Court in Belgrade, Pž 2792/24 of 11 September 2024.

of the concept of use, while emphasising that in such disputes, the decisive factor remains the specific factual basis and the validity of the evidence presented.

However, in an unrelated case, Rev 4570/2024,[58] the Supreme Court of Cassation of the Republic of Serbia considered whether a fire occurring in a parked vehicle, which was not involved in traffic, could constitute a case of the use of a vehicle under Article 18(1) of the Law on Compulsory Traffic Insurance. The Court held that no insurer liability arises when the damage is caused by a vehicle that was stationary and not used for transporting people or goods at the time of the incident. The Court noted that the mere fact that the vehicle caused the fire is insufficient to conclude that it was "in use" within the meaning of the Law on Compulsory Traffic Insurance. For insurer liability to exist, according to the Court, the damage must be directly and functionally linked to the vehicle's characteristics as a means of transport. In the specific case, such a link did not exist, as the vehicle was not in motion and no activity indicated its participation in traffic.

This interpretation reflects a restrictive approach in case law regarding the limits of coverage under compulsory motor third party liability insurance. It suggests that damage caused by vehicles in a static, technically passive state, even if directly responsible for the damage, is not considered damage arising from the use of a vehicle and, therefore, falls outside the scope of compulsory insurance coverage. This approach contrasts with modern trends in insurance law, particularly in EU law, where, as emphasised in the Rodrigues de Andrade and LDA judgments, the "use" of a vehicle is not strictly linked to motion or traffic participation but is interpreted functionally, in terms of the vehicle's technical nature and its potential to cause damage.

An example of a broad interpretation is the judgment of the Commercial Court in Požarevac, Case P. No. 126/12,[59] which held the liability of a vehicle owner under the Law of Contracts and Tort, even when the vehicle was stationary and not participating in traffic, if it caused damage due to its hazardous nature. Although this case did not concern liability under the Compulsory Motor Third Party Liability Insurance Law, it is significant as it demonstrates that, in cases of fire damage, the specific technical cause within the vehicle is irrelevant. In that case, a fire occurred in a parked passenger vehicle owned by the defendant, located in a self-service car wash bay operated by the claimant. Expert reports confirmed that the fire originated from inside the vehicle (passenger compartment) and spread, causing damage to the car wash property. In its reasoning, the court did not examine the exact technical cause of ignition (whether a gas system malfunction, spark, or other factor), but emphasised that the relevant factor for the decision was the causal link between the

[58] See Judgment of the Supreme Court of the Republic of Serbia, Rev 4570/24 of 29 May 2024.

[59] Judgment of the Commercial Court in Požarevac, P No. 126/12 of 18 December 2012, upheld by the Judgment of the Commercial Appellate Court, 3 Pž. 978/13 of 21 March 2013, available at: *http://www.propisionline.com/Login?ReturnUrl=%2f*.

vehicle and the damage, rather than the technical details of the cause of the fire. The court applied the rules on strict liability for damage caused by a hazardous object under the Law of Contracts and Tort, and concluded that a passenger vehicle, by its very technical nature and characteristics, constitutes a hazardous object capable of jeopardizing life, health, and property. The court found that a statutory presumption of causation existed, which the defendant failed to rebut.

The analysis of these judgments highlights the tension between the broader concept of a vehicle owner's liability and the narrower concept of insurer liability. While courts in standard civil proceedings tend to recognise a vehicle as a hazardous object whose mere static existence can cause damage and ground liability, case law in insurance disputes increasingly insists on the existence of use in both a functional and traffic-related sense in order to establish insurer's liability.

This demonstrates that case law is not uniform and underscores the need for a clearer statutory definition of the concept of use, which would harmonise the legal consequences and ensure consistency. Additionally, it raises the question of whether the protection of third-party victims is compromised when the system shifts from objective liability to a narrowly defined insurer liability, an issue of particular importance from the standpoint of public interest and legal certainty.

IV. Conclusion

The concept of "use of a motor vehicle" represents a central legal standard within the framework of compulsory motor third party liability insurance, as its interpretation directly determines the scope of insurer liability. An analysis of legislative frameworks, case law, and legal theory demonstrates that this concept must be construed in accordance with the functional purpose of the motor vehicle, rather than being narrowly limited to the vehicle's movement on public roads.

The Republic of Serbia, as a country in the process of EU accession, faces the challenge of harmonising not only its legislation but also its case law with European Union standards. Directive (EU) 2021/2118, a key milestone in European insurance law, introduces a broad, functional definition of the "use of a motor vehicle" based on its fundamental purpose as a means of transport, regardless of movement, location, or stationary status. In this sense, the primary purpose of compulsory insurance, the protection of third parties, comes to the fore, and the interpretation of "use" must serve this goal.

Serbian law, while formally pursuing similar objectives, still demonstrates significant oscillation in case law. On the one hand, there are judgments embracing a broader, functional approach, recognising use in contexts such as parking, unloading, technical malfunction, and fire; on the other hand, restrictive decisions strictly link use to active movement and the vehicle's presence in traffic. Such oscillations

generate legal uncertainty and may potentially hinder the realization of the rights of injured parties.

Therefore, it is necessary to pursue two parallel reforms. First, the Law on Compulsory Traffic Insurance must be amended and supplemented in accordance with Directive (EU) 2021/2118 to clearly establish a functional definition of the "use of a motor vehicle". Second, and perhaps even more importantly, case law must be harmonised so that the interpretation of use adopts a teleological approach - one that serves the purpose of insurance and protects the injured parties.

In each specific case, when considering whether the insurer is obliged to provide compensation, the following factors should be decisive:

1. whether the vehicle, at the time of the harmful event, was functioning as a means of transport or engaged in an activity directly connected to that function (including parking, unloading, preparation for driving, etc.);
2. whether there is a causal link between the damage and the technical characteristics of the vehicle as a means of transporting people or goods;
3. whether excluding coverage in the particular case would result in a clear undermining of the purpose of compulsory insurance and the protection of third parties.

In my view, the concept of " use of a motor vehicle" cannot remain within the domain of broad and inconsistent judicial discretion, as this creates legal uncertainty and inequality of citizens before the law. Normative precision, through the introduction of a general standard, is a *sine qua non* for ensuring predictability of law, while functional interpretation, consistently applied in practice, guarantees fairness and the protection of public interest.

Accordingly, steps should be taken toward harmonisation, so that the domestic insurance system becomes reliable, fair, and aligned with European legal values, which place the victim, not only formally but also substantively, at the center of protection.

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