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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

20 June 2019 (\*)

(Reference for a preliminary ruling — Insurance against civil liability in respect of the use of motor vehicles — Directive 2009/103/EC — Article 3, first paragraph – Concept of ‘use of vehicles’ — Damage to property as a result of a fire in a vehicle parked in the private garage of the property — Compulsory insurance cover)

In Case C-100/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 30 January 2018, received at the Court on 12 February 2018, in the proceedings

**Línea Directa Aseguradora, SA**

v

**Segurcaixa, Sociedad Anónima de Seguros y Reaseguros,**

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, T. von Danwitz and P.G. Xuereb, Judges, Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

Línea Directa Aseguradora SA, by M. Relaño, abogado,

Segurcaixa, Sociedad Anónima de Seguros y Reaseguros, by C. Blanco Sánchez de Cueto, procurador, and by A. Ruiz Hourcadette, abogada,

the Spanish Government, by L. Aguilera Ruiz and by V. Ester Casas, acting as Agents,

the Lithuanian Government, by R. Krasuckaitė and G. Taluntytė, acting as Agents,

the Austrian Government, by G. Hesse, acting as Agent,

the United Kingdom Government, by S. Brandon, acting as Agent, and by A. Bates, Barrister,

the European Commission, by H. Tserepa-Lacombe and by J. Rius, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2019,

gives the following

### Judgment

This request for a preliminary ruling concerns the interpretation of Article 3 of 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).

The request has been made in proceedings between Línea Directa Aseguradora SA (‘Línea Directa’) and Segurcaixa, Sociedad Anónima de Seguros y Reaseguros (‘Segurcaixa’), concerning the reimbursement of the compensation which Segurcaixa paid to the victim of a fire originating in the electrical circuit of a car insured by Línea Directa.

### Legal context

#### European Union law

Article 1 of Directive 2009/103 is worded as follows:

‘For the purposes of this Directive:

“vehicle” means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled;

...’

Article 3 of that directive provides:

‘Each Member State shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance.

The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of the measures referred to in the first paragraph.

Each Member State shall take all appropriate measures to ensure that the contract of insurance also covers:

according to the law in force in other Member States, any loss or injury which is caused in the territory of those States;

any loss or injury suffered by nationals of Member States during a direct journey between two territories in which the Treaty is in force, if there is no national insurers’ bureau responsible for the territory which is being crossed; in such a

case, the loss or injury shall be covered in accordance with the national laws on compulsory insurance in force in the Member State in whose territory the vehicle is normally based.

The insurance referred to in the first paragraph shall cover compulsorily both damage to property and personal injuries.'

Article 5 of that directive provides:

'1. A Member State may derogate from Article 3 in respect of certain natural or legal persons, public or private; a list of such persons shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

...

2. A Member State may derogate from Article 3 in respect of certain types of vehicle or certain vehicles having a special plate; the list of such types or of such vehicles shall be drawn up by the State concerned and communicated to the other Member States and to the Commission.

...'

Article 13(1)(c) of that directive provides:

'1. Each Member State shall take all appropriate measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 shall be deemed to be void in respect of claims by third parties who have been victims of an accident where that statutory provision or contractual clause excludes from insurance the use or driving of vehicles by:

...

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

*Spanish law*

The Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor (Law on civil liability and motor vehicle insurance), codified by Real Decreto Legislativo 8/2004 por el que se aprueba el texto refundido de la Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor (Royal Decree-Law 8/2004 approving the revised text of the Law on civil liability and motor vehicle insurance) of 29 October 2004 (BOE No 267 of 5 November 2004, p. 3662), in the version applicable to the dispute in the main proceedings, provides in Article 1(1):

'Because of the risk involved in driving motor vehicles, drivers shall be liable for damage caused to persons or property as a consequence of its use.

In the case of damage to persons, he will be exempt from this liability only if he can prove that the damage was due to the exclusive fault of the person harmed or to *force majeure* unconnected with the driving or functioning of the vehicle; defects in the vehicle or breakage or failure of any of its parts or mechanisms will not be considered *force majeure*.

The driver shall be liable to third parties for damage to property if he bears civil liability under the provisions of Article 1902 et seq. of the [Código Civil (Spanish Civil Code)], Article 109 et seq. of the [Código Penal (Spanish Criminal Code)] or the provisions of this Law.

If both the driver and the victim have been negligent, liability shall be apportioned fairly and compensation calculated on the basis of the liability of each party.

Vehicle owners who were not driving and are related to the driver in one of the ways set out in Article 1903 of the Civil Code and Article 120(5) of the Criminal Code shall be liable for any physical injury or damage to property caused by the driver. The owner shall not be liable upon providing proof that he acted with all due care to prevent the damage.

If the owner of a vehicle who was not driving is not covered by compulsory insurance, he shall bear joint civil liability with the driver for any physical injury or damage to property caused by the vehicle, unless he proves that the vehicle was stolen.'

Article 2(1) of the Reglamento del seguro obligatorio de responsabilidad civil en la circulación de vehículos de motor (Regulation on compulsory civil liability insurance for motor vehicles), codified by Real Decreto 1507/2008 por el que se aprueba el Reglamento del seguro obligatorio de responsabilidad civil en la circulación de vehículos a motor (Royal Decree 1507/2008 approving the Regulation on compulsory insurance against civil liability in respect of the use of motor vehicles) of 12 September 2008 (BOE No 222 of 13 September 2008, p. 37487), reads as follows:

'For the purposes of civil liability in respect of motor vehicles and the compulsory insurance cover governed by this Regulation, incidents arising from use of a vehicle refer to any incident stemming from the risk created by the use of motor vehicles referred to in the previous article, both in garages and parking areas and on public and private roads, or terrain suitable for traffic, urban and interurban, and on roads or terrain which, although unsuitable, are in general use.'

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

On 19 August 2013, Mr Luis Salazar Rodes parked his new car in the private garage of a building which is the property of Industrial Software Indusoft ('Indusoft').

On 20 August 2013, Mr Salazar Rodes, who wanted to show his car to a neighbour, started its engine but did not move it. On the night of 20 to 21 August 2013, Mr. Salazar Rodes' car, which had not been driven for more than 24 hours, caught fire, giving rise to a fire and damage to the Indusoft building. The electrical circuit of this car was the cause of the fire.

Mr Salazar Rodes had taken out insurance against civil liability in respect of the use of motor vehicles, from Línea Directa, an insurance company.

Indusoft had taken out home insurance with Segurcaixa, which paid it the total amount of EUR 44 704.34 for damage caused by that fire.

In March 2014, Segurcaixa brought an action against Línea Directa before the Juzgado de Primera Instancia de Vitoria-Gazteiz (Court of First Instance, Vitoria-Gazteiz, Spain) and claimed compensation of EUR 44 704.34, together with statutory interest, on the ground that the accident had originated in a 'use of a vehicle' covered by the insurance against civil liability in respect of the use of Mr Salazar Rodes' vehicle. That court dismissed the action, taking the view that the fire in question could not be regarded as a 'use of a vehicle' within the meaning of Spanish law.

Segurcaixa brought an appeal against the judgment of the Juzgado de Primera Instancia de Vitoria-Gazteiz (Court of First Instance, Vitoria-Gazteiz) before the Audiencia Provincial de Álava (Provincial Court, Alava, Spain), which upheld that appeal and ordered Línea Directa to pay the compensation sought by Segurcaixa.

Línea Directa lodged an appeal in cassation against the judgment of the Audiencia Provincial de Álava (Provincial Court, Alava) before the Tribunal Supremo (Supreme Court, Spain).

The Tribunal Supremo (Supreme Court, Spain) noted that the Audiencia Provincial de Álava (Provincial Court, Alava) adopted a broad interpretation of the concept of 'use of a vehicle', according to which, for the purposes of Spanish law, this concept covers a situation in which a vehicle parked in a private garage on a non-permanent basis has caught fire, when this fire was started by causes specific to the vehicle and without the intervention of third parties.

In that context, the referring court considers that the central question is whether insurance against civil liability in respect of the use of motor vehicles covers an accident involving a vehicle when its engine was not running and when that vehicle, which was parked in a private garage, posed no risk to road users.

In that regard, the referring court observes that, according to its case-law, on the one hand, the concept of 'use of a vehicle', within the meaning of Spanish law, covers not only situations in which a vehicle moves, but also those in which the engine of the vehicle is not running or situations in which a vehicle stops in the course of a journey and catches fire.

On the other hand, the Tribunal Supremo (Supreme Court) has already held that a fire involving a vehicle parked on a public road and covered in order to be protected from freezing was not a situation which fell within the concept of 'use of a vehicle' within the meaning of Spanish law.

That court states that, according to its case-law, where a vehicle is stationary and the accident has no connection with the transport function of that vehicle, it is not a 'use of a vehicle' which can be covered by compulsory insurance.

In that context, the referring court observes that, under Spanish law, the driver is not liable for damage caused as a result of the use of a vehicle where such damage is due to a case of *force majeure* which is unconnected with the driving of the vehicle. However, neither the defects in a vehicle nor the breakdown or failure of one of its mechanisms are considered to constitute *force majeure*. Therefore, in situations in which the accident is caused by a defect in a vehicle, that defect would not exempt the driver from liability and therefore would not exclude the insurance cover against civil liability in respect of motor vehicles.

The referring court considers, first, that if the fire occurs when the vehicle is stationary, but that fire originates in a function necessary or useful for the movement of the vehicle, that situation should be considered to be linked to the normal function of the vehicle.

Secondly, a situation in which a vehicle is parked in a private garage could be excluded from the concept of 'use of a vehicle' within the meaning of Article 3 of Directive 2009/103 where, either in the absence of a temporal proximity between the previous use of the vehicle and the fire or because of the way in which the accident occurred, there is no connection between that accident and the use of the vehicle.

In this respect, the referring court adds that if no account is taken of the temporal connection between the earlier use of the vehicle and the occurrence of the accident, that could result in compulsory insurance against civil liability in respect of the use of motor vehicles being placed on the same footing as homeowner's insurance covering liability arising from the mere possession or ownership of a vehicle.

In those circumstances, the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

Does Article 3 of [Directive 2009/103] preclude an interpretation that includes in the compulsory insurance cover damage caused by a fire in a stationary vehicle when the fire has its origin in the mechanisms necessary to performing the transport function of the vehicle?

If the answer to the first question is negative, does Article 3 of Directive 2009/103 preclude an interpretation that includes in the compulsory insurance cover damage caused by a fire in a vehicle when the fire cannot be linked to previous movement of the vehicle, in such a way that no connection with a journey can be discerned?

If the answer to the second question is negative, does Article 3 of Directive 2009/103 preclude an interpretation that includes in the compulsory insurance cover the damage caused by a fire in a vehicle when the vehicle is parked in a closed private garage?'

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

#### ***The admissibility of the first question***

Línea Directa considers that the first question is inadmissible on the ground that it raises a purely hypothetical problem. That undertaking claims that the fact that the fire in question originated in the electric circuit of the vehicle concerned is the only uncontested fact established by the referring court. On the other hand, it is not established that the fire originated in the mechanisms necessary to perform the transport function of that vehicle.

In that regard, it should be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the

Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 16).

However, in the present case, it is not manifestly evident that the interpretation of EU law sought in the context of the first question is unrelated to the actual facts of the main action or its purpose or that the problem is hypothetical. In that regard, it is apparent from the request for a preliminary ruling that that interpretation is intended to clarify the concept of 'use of vehicles', within the meaning of Article 3 of Directive 2009/103, on which the resolution of the dispute in the main proceedings, which concerns compensation for damage caused by a vehicle fire, depends. Furthermore, the referring court has provided sufficient factual and legal evidence to enable the Court to give a useful answer to the questions submitted to it.

### **Substance**

By its questions referred for a preliminary ruling, which it is appropriate to examine together, the referring court asks, in essence, whether the first paragraph of Article 3 of Directive 2009/103 must be interpreted as meaning that a situation, such as that at issue in the main proceedings, in which a vehicle parked in a private garage of a building has caught fire, giving rise to a fire, which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle had not been moved for more than 24 hours before the fire occurred, falls within the concept of 'use of vehicles' referred to in that provision.

The first paragraph of Article 3 of Directive 2009/103 provides that each Member State is, subject to Article 5 of that directive, to 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.

First, it must be observed that a vehicle such as that in issue in the main proceedings is covered by the concept of 'vehicle' referred to in Article 1(1) of Directive 2009/103, which is defined a 'vehicle intended for travel on land and propelled by mechanical power, but not running on rails'. Further, it is undisputed that that vehicle was normally parked in the territory of a Member State and that it is not affected by any derogation adopted under Article 5 of that directive.

As regards the question whether a situation such as that at issue in the main proceedings comes within the concept of 'use of vehicles' within the meaning of the first paragraph of Article 3 of that directive, it must be borne in mind that that concept cannot be left to the discretion 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 (judgment of 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraph 24).

Moreover, the aim of EU legislation concerning insurance against civil liability in respect of the use of vehicles, including Directive 2009/103, 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, judgment of 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraphs 25 and 26).

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 (judgment of 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraph 27).

In the light of those considerations, the Court has ruled that the first paragraph of Article 3 of Directive 2009/103 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 (judgment of 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraph 28).

The Court has stated that, as the motor vehicles referred to in Article 1(1) of Directive 2009/103, 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 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraph 29).

In that regard, it must be noted, first, that the fact that the vehicle involved in an 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 the first paragraph of Article 3 of Directive 2009/103 (see, to that effect, judgment of 15 November 2018, *BTA Baltic Insurance Company*, C-648/17, EU:C:2018:917, paragraph 38 and the case-law cited).

The question of whether or not the engine of the vehicle concerned was running at the time of the accident is not conclusive either (see, to that effect, judgment of 15 November 2018, *BTA Baltic Insurance Company*, C-648/17, EU:C:2018:917, paragraph 39 and the case-law cited).

On the other hand, it should be recalled that, according to the Court's case-law, no provision in Directive 2009/103 limits the scope of the insurance obligation, and of the protection which that obligation is intended to give to the victims of accidents caused by motor vehicles, to the use of such vehicles on certain terrain or on certain roads (judgment of 20 December 2017, *Núñez Torreiro*, C-334/16, EU:C:2017:1007, paragraph 31).

It follows that the scope of the concept of 'use of vehicles', within the meaning of the first paragraph of Article 3 of Directive 2009/103, does not depend on the characteristics of the terrain on which the vehicle is used and, in particular, the fact that the vehicle at issue is, at the time of the accident, stationary and in a car park (see, to that effect, judgment of 15 November 2018, *BTA Baltic Insurance Company*, C-648/17, EU:C:2018:917, paragraphs 37 and 40).

In those circumstances, it must be held that the parking and the period of immobilisation of the vehicle are natural and necessary steps which form an integral part of the use of that vehicle as a means of transport.

Thus, a vehicle is used in accordance with its function as a means of transport when it moves but, in principle, also while it is parked between two journeys.

In the present case, it must be held that parking a vehicle in a private garage constitutes a use of that vehicle which is consistent with its function as a means of transport.

That conclusion is not affected by the fact that the vehicle was parked for more than 24 hours in that garage. Parking a vehicle presupposes that it remains stationary until its next trip, sometimes for a long period of time.

As regards the fact that the accident at issue in the main proceedings results from a fire caused by the electrical circuit of a vehicle, it must be held that, since that vehicle, which caused that accident, meets the definition of 'vehicle', within the meaning of Article 1(1) of Directive 2009/103, there is no need to distinguish between the parts of that vehicle which caused the harmful event or to determine the functions which that part performs.

Such an interpretation is consistent with the objective of protecting the victims of accidents caused by motor vehicles, which has continuously been pursued and reinforced by the EU legislature, as stated in paragraph 34 of this judgment.

It should also be noted that, in respect of claims by third parties who have been victims of an accident, it follows from Article 13 of Directive 2009/103 that any statutory or contractual provision excluding from insurance cover damage caused by the use or driving of a vehicle by a person who has not complied with the legal obligations of a technical nature concerning the condition and safety of the vehicle concerned, must be deemed void.

In the light of the foregoing considerations, the answer to the questions referred is that the first paragraph of Article 3 of Directive 2009/103 must be interpreted as meaning that a situation such as that at issue in the main proceedings, in which a vehicle parked in a private garage of a building, used in accordance with its function as a means of transport, has caught fire, giving rise to a fire which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle has not been moved for more than 24 hours before the fire occurred, falls within the concept of 'circulation of vehicles' referred to in that provision.

#### **Costs**

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 (Second Chamber) hereby rules:

**Article 3 of 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, must be interpreted as meaning that a situation such as that at issue in the main proceedings, in which a vehicle parked in a private garage of a building, used in accordance with its function as a means of transport, has caught fire, giving rise to a fire which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle has not been moved for more than 24 hours before the fire occurred, falls within the concept of 'use of vehicles' referred to in that provision.**

[Signatures]

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\* Language of the case: Spanish.