

Case C-383/19**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

15 May 2019

Referring court:

Sąd Rejonowy w Ostrowie Wielkopolskim (Poland)

Date of the decision to refer:

12 February 2019

Applicant:

Powiat Ostrowski

Defendant:

Ubezpieczeniowy Fundusz Gwarancyjny, established in Warsaw

Subject matter of the case in the main proceedings

The parties are essentially in dispute as to whether, during the period from 7 February 2018 to 22 April 2018, there was an obligation to insure a Renault Clio 1.5 DCI vehicle, which became the property of the applicant (a local government authority) on the basis of a previous court decision, given that, during the period in question, the vehicle remained in a guarded car park, constituted scrap metal and could not be started, and therefore no injury or loss could have been caused in connection with the use of that vehicle.

Subject matter and legal basis of the reference

Pursuant to Article 267 TFEU, the referring court essentially seeks to establish whether 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, ‘Directive 2009/103’), requires the owner of a vehicle to take out civil liability insurance in respect of the use of

motor vehicles even in a situation where the vehicle is not capable of being driven, is on private property in the form of a guarded car park not on the public highway, and is to be destroyed in accordance with the wishes of its owner.

Questions referred

Must Article 3 of Directive 2009/103 be interpreted as meaning that the obligation to take out civil liability motor insurance extends even to situations in which a local government authority — a district — has acquired, on the basis of a court decision, title to a vehicle which is not capable of being driven, is on private property in the form of a guarded car park not on the public highway, and is to be destroyed in accordance with the wishes of its owner?

Or must it be interpreted as meaning that, in such circumstances, the local government authority, as the owner of the vehicle, is not obliged to take out insurance, without prejudice to the liability of the fund towards injured third parties?

Applicable provisions of EU law

Article 1(1), Article 3 and Article 5(1) and (2) 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).

Applicable provisions of national law

(1) Article 2(1)(14a), Article 10(2), Article 23(1), Article 27(6), Article 29(1), Article 28(2) and (3), Article 31(1), (3) and (4), Article 33, and Article 34(1) and (2) of the Ustawa z dnia 22 maja 2003 r. o ubezpieczeniach obowiązkowych, Ubezpieczeniowym Funduszu Gwarancyjnym i Polskim Biurze Ubezpieczycieli Komunikacyjnych (Law of 22 May 2003 on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau (Dz.U. of 2018, item 473, 'Law on Compulsory Insurance').

(2) Article 2(1) and Article 130a of the Ustawa z dnia 20 czerwca 1997 r. Prawo o ruchu drogowym (Law of 20 June 1997 on Road Traffic (Dz.U. of 2018, item 1990).

Succinct presentation of the facts and procedure

By decision of 16 January 2018, the Sąd Rejonowy w Ostrowie Wielkopolskim (District Court, Ostrów Wielkopolski) ordered that a Renault Clio 1.5 DCI

passenger vehicle be forfeited to Powiat Ostrowski (Ostrów District), a local government authority.

That ruling became final on 7 February 2018.

On 6 February 2018, Powiat Ostrowski submitted an application for the above decision to be served together with an order of enforceability and for the enforcement clause to be affixed.

On 20 April 2018, the decision in question was served on Powiat Ostrowski.

The Renault car referred to above constituted scrap metal, and therefore the owner decided to have the vehicle destroyed and de-registered.

In the period from 1 January 2018 to 22 April 2018, the vehicle was not insured against civil liability in respect of the use of motor vehicles.

Principal arguments of the parties in the main proceedings

The applicant, Powiat Ostrowski, seeks to establish that, in the period from 7 February 2018 to 22 April 2018, it was not obliged to insure a Renault Clio 1.5 DCI vehicle, of which it became the owner pursuant to a decision of the District Court, Ostrów Wielkopolski, of 16 January 2018. The final decision, accompanied by an enforcement clause, was served on the applicant on 20 April 2018, as a result of which the applicant concluded an insurance contract for the vehicle from 23 April 2018. The applicant contends that, in the period when the vehicle owned by the applicant was not covered by compulsory civil liability insurance, it remained in a guarded car park, was designated for destruction and could not be started, and therefore no injury or loss could have been caused in connection with the use of that vehicle. In the light of the above, in the applicant's opinion, the insurance obligation in respect of the vehicle in question is devoid of purpose.

The defendant, Ubezpieczeniowy Fundusz Gwarancyjny (Insurance Guarantee Fund) established in Warsaw, contends that the claim should be dismissed and that the costs of the proceedings should be awarded in its favour. According to the defendant, the technical condition of the vehicle is irrelevant to fulfilling the obligation to conclude a civil liability insurance contract for motor vehicle owners.

Brief statement of the reasons for the reference

- 1 Pursuant to Article 130a(10) et seq. of the Law of 20 June 1997 on Road Traffic, the starosta (district chief officer) may apply to the court for a decision on the forfeiture of a vehicle to the powiat (district). In proceedings concerning this application, the court determines whether all the conditions necessary to order forfeiture have been met, in particular whether the removal of the vehicle was

justified, whether due diligence was shown when searching for the person authorised to collect the vehicle, and whether the decision on forfeiture will not be contrary to the rules of social conduct.

- 2 When deciding on the forfeiture of an object (vehicle), the court examines the aforementioned aspects of the case and issues a decision that creates rights. Thus, once the court's decision has become final, the district becomes the owner of the vehicle and the district chief officer is obliged to execute the decision. Enforcement of the decision takes place in accordance with the rules and procedure specified in the *ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji* (Law of 17 June 1966 on enforcement proceedings in administration), taking into account the provisions of the Law on Road Traffic.
- 3 Until the decision on the forfeiture of the vehicle was issued, as well as subsequently, the vehicle was located in a guarded car park.
- 4 In order for the decision on the forfeiture of a vehicle to be enforced, it is necessary to apply to the court for service of the decision together with an order of enforceability and to pay a fee in the amount of PLN 6 (Article 77(1)(2) of the *ustawa z 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych* — Law of 28 July 2005 on court costs in civil cases, Dz.U. of 2018, item 300), which prolongs the proceedings and enforcement of the decision by the district chief officer.
- 5 Vehicles in relation to which a decision on forfeiture has been issued are subject to technical assessment by a vehicle expert. It is very often the case that the vehicle expert finds that the vehicle is waste and constitutes scrap metal.
- 6 A vehicle which is found to be unfit for use is delivered using a handover record to a disassembly facility in order to be destroyed. The disassembly facility issues a certificate confirming that the vehicle has been disassembled. That certificate is the basis for de-registering the vehicle.
- 7 In the present case, a Renault Clio 1.5 DCI passenger vehicle, which was subject to a final decision of the District Court, Ostrów Wielkopolski, of 16 January 2018, became the property of Powiat Ostrowski (a local government authority), constituted scrap metal, was not fit for use and was not in motion; it remained in a guarded car park on a permanent basis.
- 8 The doubts of the referring court concern the possibility of excluding the obligation to conclude a civil liability insurance contract in respect of the use of motor vehicles in a situation where an immobilised vehicle has been acquired by a local government authority, a district (on the basis of a final court decision), the vehicle is not capable of being driven, it is on private property in the form of a guarded car park not on a public road, and it is to be destroyed in accordance with the wishes of its owner.

- 9 In its judgment of 15 November 2018 (C-648/17, ECLI:EU:C:2018:917), the Court of Justice of the European Union held that the concept of ‘use of vehicles’ 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, emphasising that the concept of ‘use of vehicles’ covers any use of a vehicle that is consistent with its normal function, namely its function as a means of transport. In its judgment of 28 November 2017 (C-514/16, EU:C:2017:908), the Court held that this concept covers any use of a vehicle as a means of transport.
- 10 In the latest ruling of 4 September 2018 (C-80/17, ECLI:EU:C:2018:661), the Court maintained the above understanding of the concept of ‘use of vehicles’, but pointed out that a vehicle which is registered and therefore has not been officially withdrawn from use, and which is capable of being driven, corresponds to the concept of ‘vehicle’ within the meaning of Article 1 of the directive.
- 11 The present case, however, concerns a different issue, namely whether a local government authority (a district) is obliged to conclude a civil liability insurance contract in respect of the use of motor vehicles in a situation where the vehicle in question is not capable of being driven. It is therefore a different situation from the factual situation underlying the judgment in Case C-80/17.
- 12 The district became the owner of the vehicle on the basis of a court decision and, at the time it acquired title to it, the vehicle was not covered by a civil liability insurance contract for motor vehicle owners, it remained in a guarded car park, it was technically defective so that it could not be driven and, in accordance with the owner’s wishes, it was handed over to be destroyed, which is also what in fact happened.
- 13 In the light of the position taken by the Court in Case C-80/17, the referring court has doubts as to whether the ability of a vehicle to move and to be used as a means of transport constitutes a necessary element of the concept of ‘vehicle’ within the meaning of Article 1 of the directive, or whether the inability to use the vehicle as a means of transport due to the fact that it constitutes scrap metal and is to be destroyed deprives it of the characteristics of a ‘vehicle’ and therefore no obligation arises to conclude a civil liability insurance contract in respect of the use of motor vehicles (Article 3 of the directive). In addition, what is important is that already at the time the decision became final, i.e. when title to the vehicle in question was acquired, the vehicle could not fulfil its function as a means of transport and was not and would never be in motion, since it was to be destroyed on account of its technical condition, which was defined as scrap.
- 14 The answer to the question is important because Article 23(1) of the Law on Compulsory Insurance imposes on each motor vehicle owner the obligation to conclude a civil liability insurance contract for motor vehicle owners in respect of the use of motor vehicles, regardless of whether the vehicle is capable of being driven and whether it is to be destroyed on account of its technical condition

which prevents it from being used as a means of transport. The situation is similar in the case of the passing or transfer of title to a registered motor vehicle whose holder did not conclude a civil liability insurance contract for motor vehicle owners despite an obligation to do so. Likewise, in such a case, the holder to whom title has passed or been transferred is obliged to conclude a civil liability insurance contract for motor vehicle owners, regardless of whether the vehicle is suitable for use as a means of transport and despite the wishes of the owner who has designated it for destruction (Article 31(3) of the Law on Compulsory Insurance).

- 15 Bearing in mind the content of the Court's judgment in Case C-80/17, it would appear that in the above circumstances there is no obligation to conclude a civil liability insurance contract for injury or loss caused in connection with the use of that vehicle.
- 16 Such an obligation arises when the owner of a given vehicle uses it or puts it into a state which entails a risk arising from vehicle use and the vehicle is capable of being driven and is able to fulfil its function as a means of transport. In the present case, however, the local government authority, from the very moment it acquired title to the vehicle, did not intend to use it. Until the vehicle was designated for destruction, it remained in a guarded car park, and it was already not capable of being driven at the time when title was acquired, a situation which did not change until it was destroyed.
- 17 The doubts presented above, related to the interpretation of the aforementioned provisions of EU law and to the national practice in respect of their application which is binding on the basis of those provisions, justify referring the question set out above to the Court of Justice of the European Union for a preliminary ruling.
- 18 The referring court has therefore decided, on the basis of Article 267 of the Treaty on the Functioning of the European Union, to ask the Court of Justice for a preliminary ruling and, on the basis of Article 177(1)(3¹) of the kodeks postępowania cywilnego (Code of Civil Procedure), has stayed the proceedings.