



Press and Information

Court of Justice of the European Union
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Judgment in Case C-80/17

Fundo de Garantia Automóvel v Alina Antónia Destapado Pão Mole Juliana
and Cristiana Micaela Caetano Juliana

A vehicle which is not formally withdrawn from use and which is capable of being driven must be covered by motor vehicle insurance against civil liability even if its owner, who no longer intends to drive it, has chosen to park it on private land

Member States may provide that, when the person who was subject to the obligation to take out insurance against civil liability for the vehicle involved in an accident has failed to comply with that obligation, the national compensation body can bring an action against that person even though the latter has no civil liability for the accident

Mrs Alina Antónia Juliana was the owner of a motor vehicle registered in Portugal. Due to health problems, she stopped driving it and parked it in the yard of her house, but did not take steps formally to withdraw it from use. In November 2006, Mrs Juliana's son took possession of the vehicle without his mother's permission or knowledge. The vehicle went off the road, causing the death of Mrs Juliana's son and two others, who were in that vehicle as passengers. On the date of the accident, Mrs Juliana had not taken out insurance against civil liability in respect of the use of that vehicle (motor vehicle civil liability insurance). The Fundo de Garantia Automóvel (Motor Vehicle Guarantee Fund, Portugal) paid compensation to the persons entitled to such, through the passengers, for the damage and injuries resulting from the accident. Taking the view that Mrs Juliana was subject to the obligation to take out insurance against civil liability for her vehicle and that she had failed to comply with that obligation, the Fund then, in accordance with the possibility provided for by Portuguese law, sued in particular Mrs Juliana, claiming reimbursement from her of the sum of €437,345.85 which it had paid to the persons entitled to compensation through the passengers. Mrs Juliana submitted that she was not liable for the accident and that, since she had parked her vehicle in the yard of her house and since she did not intend to use it, she was under no obligation to take out a motor vehicle civil liability insurance contract.

The first directive relating to motor vehicle civil liability insurance¹ provides that civil liability in respect of the use of vehicles normally based in the territory of Member States must be covered by insurance. The second directive relating to motor vehicle insurance against civil liability² provides for the creation of a body with the task of providing compensation for damage to property or personal injuries caused in particular by a vehicle in respect of which the insurance obligation has not been satisfied. Member States may make provision for the settlement of claims between that body and the person responsible for the accident and other insurers or social security bodies required to compensate the victims.

¹ Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ 1972 L 103, p.1), as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p.14) ('First Directive').

² Second 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 motor vehicles (OJ 1984 L 8, p.17), as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 (OJ 2005 L 149, p.14). Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p.11) repealed in particular the First and Second Directives. Nevertheless, in view of that date of the facts, the case is still governed by the latter two directives.

Against that background, the Supremo Tribunal de Justiça (Supreme Court, Portugal), before which the Fundo de Garantia Automóvel brought its action, decided to refer questions to the Court of Justice. That court asks, first, whether the conclusion of a motor vehicle civil liability insurance contract is obligatory when the vehicle concerned is, solely by the choice of the owner, who no longer intends to drive it, parked on private land. Next, the Portuguese court seeks to ascertain whether the Second Directive precludes national legislation which provides that the compensation body has the right to bring an action against the person who was subject to the obligation to take out civil liability insurance in respect of the vehicle which caused the damage or injuries for which that body took responsibility, but who had not concluded a contract for that purpose, even if that person has no civil liability for the accident in which that damage occurred.

By today's judgment, the Court rules that, according to the First Directive, the conclusion of a motor vehicle civil liability insurance contract is obligatory when the vehicle concerned is still registered in a Member State and is capable of being driven but is parked on private land, solely by the choice of the owner, who no longer intends to drive it.

The Court first holds that a vehicle which has not been officially withdrawn from use and which is capable of being driven corresponds to the concept of 'vehicle' within the meaning of the First Directive, and therefore does not cease to be covered by the insurance obligation stated in that directive on the sole ground that its owner no longer intends to drive it and has immobilised it on private land. Mrs Juliana's vehicle was normally based in the territory of a Member State (Portugal) where it was still registered. Furthermore, that vehicle was in working order. The Court therefore holds that the vehicle was indeed subject to the insurance obligation set out in the First Directive. The Court adds that the fact that Mrs Juliana had parked the vehicle on private land, namely in the yard of her house, before her son took possession of it, and the fact that she no longer intended to drive it, is of no relevance in that regard.

Second, the Court rules that **the Second Directive does not preclude legislation which, as in Portuguese law, provides that the compensation body (in the present case, the Fundo de Garantia Automóvel) has the right to bring an action against not only the person or persons responsible for the accident, but also against the person who, though subject to the obligation to take out motor vehicle civil liability insurance for the vehicle which caused the accident, did not conclude a contract for that purpose, even though that person has no civil liability for the accident.**

While the **EU legislature** has sought to preserve the right of Member States to make provision for the settlement of the claims of the compensation body (in the present case, the Fundo de Garantia Automóvel) against in particular 'the person or persons responsible for the accident', **it did not harmonise the various matters relating to the actions brought by such a body (in particular the determination of the other persons against whom such actions might be brought), so that those aspects fall within the scope of the national law of each Member State.** It follows that national legislation can provide that, when the owner of the vehicle involved in the accident has failed to comply with his obligation to insure that vehicle, that compensation body can bring an action not only against the person or persons responsible for the accident, but also against that owner, irrespective of the civil liability of the latter in the occurrence of the accident.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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