

# **PORTUGAL**

M I Oliveira Martins

## **Compulsory Insurance against Civil Liability in Respect of the Use of Motor Vehicles**

- *European Court of Justice (Grand Chamber), 4 September 2018, Case C-80/17, Reference for a Preliminary Ruling.*
- *Supreme Court of Justice, 8 November 2018 (Proc 770/12.3TBSXL.L1.S1, Rapporteur Abrantes Geraldés).*
  - *Compulsory Insurance against Civil Liability in Respect of the Use of Motor Vehicles; Obligation to take out a Contract of Insurance; Vehicle Parked on Private Land; Right of the Compensation Body to Bring an Action against the Owner of the Uninsured Vehicle*

## **Facts of the case**

- Vehicle parked on private land: not formally withdrawn from use, but not intended to be used
- Civil liability insurance not taken out in its regard
- Taken without knowledge or consent of the owner
- Involved in a road traffic accident
- National compensation body paid compensation to the victims, but claimed redress from the owner
- Owner submitted that she (i) was not liable for the accident and (ii) had no obligation to take out insurance

## **Preliminary ruling – First question**

- 1) Must art 3(1) of the First Motor Insurance Directive be interpreted as meaning that the conclusion of an insurance contract against civil liability in relation to the use of a motor vehicle is obligatory when the vehicle concerned is parked on private land, solely by the choice of the owner, who no longer intends to drive the vehicle?
  - Yes. A vehicle which is registered and therefore has not been officially withdrawn from use, and which is capable of being driven, corresponds to the concept of 'vehicle' within the meaning of art 1(1) of the First Directive.

## **Portuguese Supreme Court – First question**

Ruling of the ECJ is in line with:

- the Portuguese norms on compulsory motor liability insurance that extend coverage to cases such as those of theft, where damage is caused by persons who do not have express or implied authorisation to drive the vehicle;
- the scope of granting protection to victims, for whom it is irrelevant how the driver got access to the vehicle.

## **Preliminary ruling – Second question**

- 2) Must art 1(4) of the Second Motor Insurance Directive be interpreted as precluding national legislation which provides that the body referred to in that provision has the right to bring an action against the person who was subject to the obligation to take out insurance against civil liability, but who had not concluded a contract for that purpose, even if that person was not liable for the accident in which the damage or injuries occurred?

## **Preliminary ruling – Second question**

- No. European legislation did not intend to 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 matters fall within the scope of the national law of each Member State

## Portuguese Supreme Court – Second question

Gordian knot. The Portuguese norms in force were not clear in this regard and the case law was contradictory.

- After paying, the Fund was subrogated to the rights of the victim (art 25<sup>o</sup>, 1).

*(but)*

- In such cases, the Fund had a right to file a suit against the persons subject to the duty to take out insurance, and these persons could in turn bring suit against other persons liable for the accident (art 25<sup>o</sup>, 3).



## Portuguese Supreme Court – Second question

- The norms tailored the right of the Fund as a right to surrogate in the rights of the victim
- To make the owner answer before the Fund would be to impose upon him/her the consequences of civil liability for road accidents although he/she was not liable.
  - *Deserves endorsement. Vs. Forwarding of the consequences of strict liability to a person whose wrongdoing was of a totally different nature (breach of the duty to take out insurance). Allowing damage to lie with the Fund means distributing its consequences amongst a greater number of people.*