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POJAM UPOTREBE MOTORNOG VOZILA U SMISLU OBAVEZNOG OSIGURANJA OD AUTO-ODGOVORNOSTI

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SAŽETAK

U ovom radu analiziran je pojam upotrebe motornog vozila u okviru obaveznog osiguranja vlasnika motornih vozila od odgovornosti za štetu pričinjenu trećim licima, sa posebnim osvrtom na požar kao uzrok nastanka štete. Rad se usredsređuje na zakonodavstvo Republike Srbije i Evropske unije i bavi se analizom sudske prakse. Cilj rada je da pruži jasnu sliku situacije kada se smatra da je šteta nastala upotrebom vozila, odnosno kada postoji obaveza osiguravača da štetu nadoknadi, a kada ne. Metode istraživanja uključuju analizu pravnih izvora, domaćeg zakonodavstva i direktiva EU, komparativnu analizu sudske prakse Suda pravde Evropske unije i domaćih sudova. Rezultati pokazuju značaj ujednačenog razumevanja pojma upotrebe vozila, a zaključak ističe potrebu daljeg usklađivanja srpskog zakonodavstva i sudske prakse s pravom EU.

Ključne reči: *obavezno osiguranje vlasnika motornih vozila, pojam upotrebe motornog vozila, direktive EU o osiguranju od auto-odgovornosti, sudska praksa.*

I Uvod

Upotreba motornih vozila nosi visok rizik nastanka šteta trećim licima, što uslovljava potrebu za adekvatnim pravnim regulisanjem obaveznog osiguranja u saobraćaju. Osiguranje od odgovornosti za upotrebu automobila, kao oblik obaveznog osiguranja u saobraćaju, štiti interese odgovornog i oštećenog lica, garantujući

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da će šteta biti nadoknađena čak i ako je štetnik nesolventan, jer se oštećeni, osim štetniku, zahtevom za naknadu štete može obratiti i osiguravaču.[2]

Međutim, osiguravač će imati obavezu naknade štete samo ukoliko je šteta koju je oštećeni pretrpeo pokrivena obaveznim osiguranjem u saobraćaju. Domaći propisi, kao i propisi Evropske unije (dalje u tekstu: EU), obavezuju vlasnika motornog vozila da zaključi osiguranje za štete prouzrokovane upotrebom motornog vozila, te je tako šteta koja je prouzrokovana upotrebom motornog vozila pokrivena ovim osiguranje, dok šteta koja nije proizašla iz upotrebe motornog vozila nije.[3]

Dakle, centralni pojam ovog vida osiguranja jeste „upotreba motornog vozila", čija interpretacija direktno utiče na obim pokrića osiguranja. Termin „upotreba motornog vozila" je gotovo u svim zakonima prihvaćen kao uslov nastupanja osiguranog slučaja kod obaveznog osiguranja u saobraćaju. Međutim, taj pojam nije precizno definisan, tačnije nije precizno određeno šta se sve smatra upotrebom motornog vozila, jer se radi o pravnom standardu.

Ujednačeno, konzistentno i što preciznije definisanje tog pravnog standarda u našoj teoriji i praksi od izuzetne je važnosti kako zbog pravne sigurnosti građana i osiguravajućih društava, tako i zbog harmonizacije domaćeg prava s pravom EU.[4] Obaveza harmonizacije domaćeg prava s pravom EU nije samo na zakonodavnoj već i na sudskoj vlasti, pa tako ne postoji samo potreba usklađivanja Zakona o obaveznom osiguranju u saobraćaju[5] sa izmenama Direktive (EU) 2009/103/EC[6] koje su izvršene Direktivom (EU) 2021/2118[7], već i potreba usklađivanja sudske prakse s praksom Suda pravde Evropske unije.[8]

[2] Nataša Petrović Tomić, *Pravo osiguranja – Sistem,* Beograd, 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* (ur. Zdravko Petrović), Beograd 2010, 12.

[4] Republika Srbija zaključila je Sporazum o stabilizaciji i pridruživanju EU (*Službeni glasnik RS* – Međunarodni ugovori, br. 83/2008), kojim je, između ostalog, preuzela obavezu da svoje pravo uskladi s pravom EU.

[5] Zakon o obaveznom osiguranju u saobraćaju – ZOOS, *Sl. glasnik RS*, br. 51/2009, 78/2011, 101/2011, 93/2012 i 7/2013 – odluka US.

[6] Direktiva 2009/103/EZ Evropskog parlamenta i Saveta od 16. septembra 2009. o osiguranju od građanske odgovornosti u pogledu upotrebe motornih vozila i kontroli obaveze osiguranja od takve odgovornosti, *Službeni list EU*, OJ L 263, 7. 10. 2009).

[7] Direktiva (EU) 2021/2118 Evropskog parlamenta i Saveta od 24. novembra 2021. o izmeni Direktive 2009/103/EZ o osiguranju od građanske odgovornosti u pogledu upotrebe motornih vozila, *Službeni list EU*, OJ L 430, 2. 12. 2021.

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

II Razvoj osiguranja od auto-odgovornosti u Republici Srbiji i Evropskoj uniji

Obavezno osiguranje od odgovornosti vlasnika motornih vozila obuhvata naknadu štete koju je osiguranik, u skladu sa zakonom, dužan da isplati trećim licima zbog štetnih posledica nastalih upotrebom motornog vozila. Suština tog osiguranja ogleda se u pokriću građanskopravne odgovornosti za štetu prouzrokovanu korišćenjem vozila u saobraćaju.[9]

Opasnosti savremenog doba, naročito one što proizlaze iz saobraćaja, nameću potrebu za uspostavljanjem efikasnog društvenog mehanizma zaštite.[10] Upravo u oblasti drumskog saobraćaja, osiguranje od odgovornosti pokazuje se kao najdelotvorniji instrument zaštite, i to ne samo interesa vlasnika motornih vozila već i lica koja trpe štetu. Nezgode u saobraćaju predstavljaju neizbežan rizik koji društvo mora prihvatiti kao cenu tehnološkog napretka i koristi koje upotreba vozila donosi. Međutim, postavlja se pitanje ko će snositi posledice tih rizika. Prema opštim pravilima građanskog prava, za štetu koju izazove opasna stvar, kao što je motorno vozilo, odgovoran je njen imalac, i to po principu objektivne odgovornosti, nezavisno od krivice.[11] S razvojem automobilske industrije i s porastom intenziteta saobraćaja, raste i verovatnoća nastanka štete, što je uslovilo potrebu da teret odgovornosti ne snosi isključivo vlasnika vozila. Tako je nastalo osiguranje od odgovornosti vlasnika motornog vozila – najpre kao sredstvo zaštite njihovih imovinskih interesa. Međutim, kako se broj saobraćajnih žrtava povećavao, tako se menjala i funkcija tog instituta: osiguranje od auto-odgovornosti postaje mehanizam kojim se prvenstveno obezbeđuje naknada štete oštećenim licima.[12]

Auto-osiguranje kao pravni institut nije oduvek bilo zakonski obavezno. Prvobitno se razvilo kao oblik dobrovoljnog imovinskog osiguranja, zasnovan na slobodnoj volji lica da zaštite sebe od potencijalne građanskopravne odgovornosti. Međutim, rast broja motornih vozila, razvoj saobraćaja i porast učestalosti saobraćajnih nezgoda doveli su do potrebe da se ta vrsta osiguranja normira kao obavezna, kako bi se obezbedila efikasna zaštita oštećenih lica i povećala pravna sigurnost u saobraćaju.[13] Prve države koje su uvele obavezno osiguranje od auto-odgovornosti bile su skandinavske zemlje – Danska (1920), Finska (1925), Norveška (1926), Švedska,

[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] Videti čl. 173 i 174 Zakona o obligacionim odnosima – ZOO, *Sl. list SFRJ, br. 29/78, 39/85, 45/89 – odluka USJ i 57/89, Sl. list SRJ,* br. 31/93, *Sl. list SCG*, br. 1/2003 - Ustavna povelja i *Sl. glasnik RS*, br. 18/2020.

[12] Nataša Petrović Tomić, str. 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, str. 126.

a zatim i Austrija (1929), dok su Velika Britanija (1930), Švajcarska (1932) i Nemačka (1939) sledile ubrzo nakon toga, da bi se nakon Drugog svetskog rata ovaj model proširio i na druge evropske države, kao što su Poljska (1951), Belgija (1956), Francuska (1958) i Čehoslovačka (1964).[14]

U Republici Srbiji, sistem obaveznog auto-osiguranja prošao je kroz više faza. Prvi korak ka njegovom uvođenju bio je Zakon o osiguranju imovine i lica iz 1976. Godine,[15] koji je postavio osnov za dalje uređenje ove oblasti. Nakon raspada SFRJ, pravna regulativa se razvijala kroz ZOIL iz 1990. i 1996. godine, sve do donošenja posebnog zakona o obaveznom osiguranju u saobraćaju iz 2009. godine, kojim je prvi put ova materija sistematski uređena posebnim zakonom. Tim zakonom je ustanovljena obaveza vlasnika vozila da zaključe ugovor o osiguranju od odgovornosti, osnovan je Garantni fond i definisani su jasni uslovi za isplatu naknade štete, a izmenama iz 2011. godine dodatno su precizirani postupak likvidacije šteta i uvedene su strože sankcije za nepribavljeno osiguranje vozila, što je doprinelo većoj stabilnosti tržišta osiguranja i zaštiti oštećenih lica.[16]

Zakonom o obaveznom osiguranju u saobraćaju propisana je obaveza vlasnika motornog vozila da zaključi ugovor o osiguranju od odgovornosti za štetu koju upotrebom vozila može pričiniti trećim licima, a koja se ogleda u smrti, telesnim povredama, narušavanju zdravlja, kao i uništenju ili oštećenju stvari.[17] S druge strane, osiguravač, koji obavlja poslove osiguranja te vrste, dužan je da prihvati ponudu za zaključenje ugovora ukoliko se ona ne razlikuje od opštih uslova pod kojima redovno posluje. Time se uspostavlja zakonsko ograničenje ugovorne slobode za obe ugovorne strane.[18]

U Evropskoj uniji, osiguranje od auto-odgovornosti razvijalo se postepeno kroz sedam direktiva donetih od 1972. do danas, sve u cilju uklanjanja prepreka slobodnom kretanju vozila i osiguranju jednakog tretmana žrtava saobraćajnih nezgoda u svim državama članicama. Hronološki, najvažnije direktive su: 1. Direktiva 72/166/EEZ[19] – uspostavlja osnovni okvir za obavezno osiguranje i sistem zelene karte; 2. Direktiva 84/5/EEZ[20] – uvodi minimalne iznose osigurane sume, definiše da su osiguranjem pokrivena i lica i stvari i uvodi obavezu postojanja Garantnog

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[14] Jasna Pak, *Pravo osiguranja,* Univerzitet Singidunum, Beograd, 2011, str. 247.

[15] Zakon o osiguranju imovine i lica – ZOIL, *Službeni list SFRJ,* br. 24/76.

[16] T. Brajović, 127.

[17] ZOOS, čl. 18 st. 1.

[18] Nataša Petrović Tomić, 541.

[19] Vidi: Direktiva 72/166/EEZ Saveta od 24. aprila 1972. o usklađivanju zakonodavstava država članica u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila i kontroli obaveze osiguranja, *Službeni list EU*, OJ L 103, 2. 5. 1972, str. 1–4.

[20] Vidi: Direktiva 84/5/EEZ Saveta od 30. decembra 1983. o usklađivanju zakonodavstava država članica u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila, *Službeni list EU*, OJ L 8, 11. 1. 1984, str. 17–20.

fonda; 3. Direktiva 90/232/EEZ[21] – obuhvata sve putnike u vozilu i uvodi koncept jedinstvene premije; 4. Direktiva 2000/26/EZ[22] – uređuje postupke u prekograničnim nezgodama („Direktiva žrtava posetilaca“)[23]; 5. Direktiva 2005/14/EZ[24] – dodatno harmonizuje prethodne direktive i modifikuje ih radi bolje zaštite oštećenih lica; 6. Direktiva 2009/103/EZ[25] – kodifikaciona direktiva koja objedinjeno reguliše sve ključne aspekte sistema osiguranja, uključujući minimalna pokrića, direktnu tužbu i izuzeća od osiguravajućeg pokrića.[26] Iako su prethodne direktive obuhvatale širok spektar pitanja, nijedna nije definisala pojam „upotrebe vozila“, mada je on bio ključan za određivanje pokrića osiguranja. Ta pravna praznina rezultirala je različitom sudskom praksom i tumačenjima država članica, te je usled toga doneta Direktiva (EU) 2021/2118,[27] kojom se menja i dopunjuje Direktiva 2009/103/EZ. Ta direktiva uvodi niz važnih novina: redefiniše pojmove „vozilo“ i „upotreba vozila“, povećava minimalne iznose sume osiguranja, uređuje zaštitu oštećenih lica u slučaju nesolventnosti osiguravača, te precizira uslove za proveru valjanosti osiguranja u prekograničnom kontekstu.[28]

Naročito je značajna nova definicija upotrebe vozila, prema kojoj se ona podrazumeva „u skladu sa funkcijom vozila kao prevoznog sredstva, nezavisno od terena, stanja kretanja ili tehničkih karakteristika“. Time se širi obuhvat osiguranja i omogućava doslednija primena prava osiguranja u praksi.

Donošenje Direktive 2021/2118 bilo je ključno za uspostavljanje pravne sigurnosti u dotičnoj oblasti, jer su se prethodna neujednačena tumačenja u državama članicama pokazala kao prepreka efikasnom ostvarivanju prava žrtava. Republika Srbija, kao kandidat za članstvo u EU, teži harmonizaciji sa ovim rešenjima, što se može videti i kroz domaću praksu i tumačenja pojma upotrebe motornog vozila u pravnoj doktrini.

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[21] Vidi: Direktiva 90/232/EEZ Saveta od 14. maja 1990. o usklađivanju zakonodavstava država članica u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila, *Službeni list EU*, OJ L 129, 19. 5. 1990, str. 33–35.

[22] Vidi: Direktiva 2000/26/EZ Evropskog parlamenta i Saveta od 16. maja 2000. o usklađivanju zakonodavstava država članica u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila, kojom se menjaju Direktiva 73/239/EEZ i Direktiva 88/357/EEZ, *Službeni list EU*, OJ L 181, 20. 7. 2000, str. 65–74.

[23] Detaljnije: Iva Tošić, „Razvoj koncepta auto-odgovornosti u pravu Evropske unije“, *Pravni život* br. 12/2017.

[24] Vidi: Direktiva 2005/14/EZ Evropskog parlamenta i Saveta od 11. maja 2005. o izmenama direktiva 72/166/EEZ, 84/5/EEZ, 88/357/EEZ i 90/232/EEZ u vezi sa osiguranjem od građanske odgovornosti u pogledu upotrebe motornih vozila (*Službeni list EU*, OJ L 149, 11. 6. 2005, str. 14–22).

[25] Vidi: Direktiva 2009/103/EZ, 11–31.

[26] Detaljnije: Danijela Šaban, „Pojam uporabe motornog vozila u pravu osiguranja od automobilske odgovornosti“, *Anali Pravnog fakulteta Univerziteta u Zenici*, br. 17/2016, 278–281.

[27] Vidi: Direktiva (EU) 2021/2118, s1–27.

[28] Jasenko Marin, „Novine u zakonskom uređenju osiguranja od automobilske odgovornosti u Republici Hrvatskoj“,*Tokovi osiguranja* 4/2024, 1–3.

III Pojam upotrebe motornog vozila

U okviru osiguranja od auto-odgovornosti, predmet pokrića nije celokupna građanskopravna odgovornost lica koje prouzrokuje štetu, već isključivo njen deo koji zakon prepoznaje kao obavezno osigurani rizik. Na taj način dolazi do distinkcije između građanskopravne odgovornosti štetnika in integrum i odgovornosti osiguravača in terminus, tj. ograničene odgovornosti koja proizlazi iz zaključenog ugovora o obaveznom osiguranju.[29] Imajući u vidu da je odgovornost osiguravača strogo ograničena normativnim okvirom i obimom obaveze predviđene zakonom, od ključnog je značaja precizno utvrditi granice tog pokrića.

Jedan od najvažnijih aspekata u tom smislu jeste tumačenje pojma „upotrebe motornog vozila", jer se upravo polazeći od značenja tog pojma određuje da li se konkretna šteta nalazi unutar ili izvan okvira osiguranog pokrića.[30] Kako zakonodavac u pozitivnom pravu Republike Srbije ne nudi izričitu definiciju „upotrebe vozila" u kontekstu osiguranja od auto-odgovornosti, tumačenje ovog pojma u praksi postaje zadatak pravne teorije i sudske prakse. Od toga kako se taj pojam razume i primenjuje zavisi i obim zaštite oštećenih lica, ali i dužina i složenost postupaka za naknadu štete.

Pored domaćih izvora, poseban značaj u oblikovanju savremenog razumevanja ovog pojma ima pravo Evropske unije, u okviru kojeg su direktive EU i sudska praksa, naročito presude Suda pravde EU, bile odlučujuće za definisanje i usmeravanje zakonodavnih izmena.

1. Pojam upotrebe motornog vozila u zakonodavstvu Evropske unije

Uprkos značaju pojma „upotrebe motornog vozila", on dugo nije bio zakonski definisan u tekstovima direktiva EU, već je njegovo tumačenje bilo prepuštano pravnoj teoriji i sudskoj praksi država članica, što je dovodilo do neujednačenih rešenja i razlika u pravima oštećenih lica. S obzirom na sve izraženiju potrebu da se postigne jedinstveno i stabilno tumačenje pojma „upotrebe" na teritoriji EU, naročito u kontekstu različitih tipova vozila (npr. radnih mašina, parkiranih vozila, vozila u privatnim prostorima), kao i u cilju proširenja zaštite žrtava, Evropski zakonodavac je 2021. godine usvojio sedmu direktivu – Direktivu (EU) 2021/2118 kojom su izvršene izmene Direktive 2009/103/EZ.[31] Najvažnija izmena je svakako redefinisanje pojma „upotrebe vozila".

Prema novoj definiciji, sadržanoj u članu 1 stav 1 tačka 1a) Direktive 2021/2118, upotreba motornog vozila obuhvata „svaku upotrebu vozila koja je u skladu s njegovom funkcijom kao prevoznog sredstva, bez obzira na svojstva terena na kojem

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

[30] Ibid.

[31] J. Marin, 5-10.

se koristi i na to da li se u trenutku nezgode kreće, stoji ili obavlja neku drugu radnju koja proističe iz njegove prevozne funkcije“.[32]

Takvo normativno određenje pojma rezultat je potrebe da se prekine s dotadašnjim oslanjanjem isključivo na sudsku praksu, te da se stvori pravna sigurnost. Direktiva time ne ostaje na deklarativnom nivou, već postaje konstitutivan akt koji standardizuje široko funkcionalno tumačenje pojma upotrebe u skladu sa savremenim potrebama saobraćaja i osiguranja.[33]

Novom regulativom i na zakonodavnom nivou, ali i na teoretskom nivou, dolazi do prelaska iz klasičnog pojma „aktivne upotrebe“ vozila (koja podrazumeva kretanje) ka širem, funkcionalnom modelu tumačenja koji obuhvata i pasivne situacije – kao što su parkiranje, stajanje, utovar, istovar, pa čak i tehnički kvarovi na mestu mirovanja.[34]

Nova definicija inspirisana je sudskom praksom Suda pravde EU, pogotovo presudom u predmetu Vnuk (C-162/13), koja je otvorila proces zakonodavnih promena. Uvođenjem te definicije pravna nesigurnost je znatno smanjena i došlo je do pozitivnih pomaka u ostvarenju ciljeva iz članova 114 i 169 UFEU – zaštite potrošača i unapređenja jedinstvenog tržišta osiguranja.

2. Pojam upotrebe motornog vozila prema sudskoj praksi Suda pravde EU

U nedostatku precizne zakonske definicije u ranijim direktivama, pojam „upotrebe vozila“ u okviru prava EU razvijan je pretežno kroz praksu Suda pravde Evropske unije (ESP), koji je interpretacijom konkretnih slučajeva postepeno izgradio osnovne kriterijume za njegovu primenu. Te presude ne samo da su rešavale pojedinačne sporove već su i direktno uticale na tumačenje pojma i bile ključne za kasniju zakonodavnu intervenciju, konkretno donošenje Direktive 2021/2118.

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

U tom predmetu se radilo o nezgodi koja je nastala kada je traktor u dvorištu farme udario osobu koja se bavila skladištenjem sena. Sud je utvrdio da se pojam „upotreba vozila“ ne sme tumačiti restriktivno kao isključivo kretanje vozila po javnim putevima, već obuhvata svaku upotrebu u skladu s osnovnom funkcijom vozila kao prevoznog sredstva, bez obzira na lokaciju.

[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.

[35] Presuda Suda EU u predmetu C-162/13 od 4. 12. 2014., Damjan Vnuk / Zavarovalnica Triglav, ECLI:EU:C:2014:2146, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62013CJ0162, 20. 6. 2025.

Ta presuda se smatra prekretnicom jer je ukazala na potrebu za usklađivanjem tumačenja pojma upotrebe vozila na nivou cele EU.

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

U tom slučaju traktor je bio zaustavljen, ali mu je motor radio kako bi pokrenuo pumpu za prskanje vinograda. Tom prilikom vozilo se prevrnulo i usmrtilo radnika. Sud je naglasio razliku između funkcije vozila kao prevoznog sredstva i njegove alternativne (radne) funkcije, i utvrdio da kada radna funkcija prevladava, događaj nije obuhvaćen pojmom „upotreba vozila" u smislu direktiva o osiguranju.

Ta presuda ukazala je na značaj utvrđivanja toga da li je vozilo u trenutku nastanka štete imalo funkciju prevoznog sredstva ili pak neku drugu funkciju.

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

Ta presuda se bavila vojnom vežbom tokom koje se vozilo prevrnulo u zoni neprilagođenoj za drumsku upotrebu. Iako se radilo o specifičnim okolnostima, sud je konstatovao da je funkcija vozila bila prevozna i da je događaj obuhvaćen pojmom „upotrebe" jer se radilo o kretanju u svojstvu prevoznog sredstva.

Zaključak presude je da teren na kom se nezgoda dogodila nije relevantan ukoliko je vozilo obavljalo svoju funkciju prevoznog sredstva.

2.4. *Presuda BTA Baltic Insurance (C-648/17)*[38]

Ovde se radilo o situaciji u kojoj je putnik, otvarajući vrata parkiranog vozila, oštetio susedno vozilo. Sud je ocenio da je i takva radnja deo uobičajene prevozne funkcije vozila, jer omogućava ulazak i izlazak putnika, pa je u skladu s pojmom upotrebe vozila u kontekstu osiguranja.

[36] Presuda Suda EU u predmetu C-514/16 od 28. 11. 2017., *Isabel Maria Pinheiro Vieira Rodrigues de Andrade i dr. / Crédito Agrícola Seguros*, ECLI:EU:C:2017:908, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62016CJ0514, 20. 6. 2025.

[37] Presuda Suda EU u predmetu C-334/16 od 20. 12. 2017., *José Luís Núñez Torreiro / AIG Europe Limited i dr.*, ECLI:EU:C:2017:1007, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62016CJ0334, 20. 6. 2025.

[38] Presuda Suda EU u predmetu C-648/17 od 15. 11. 2018., *BTA Baltic Insurance Company AS / Baltijas Apdrošināšanas Nams AS*, ECLI:EU:C:2018:917, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62017CJ0648, 20. 6. 2025.

2.5. *Presuda Linea Directa Aseguradora (LDA, C-100/18)*[39]

U tom predmetu vozilo je bilo parkirano duže od 24 časa u privatnoj garaži, kada je usled kvara na električnim instalacijama izbio požar koji je oštetio nepokretnost. Sud je utvrdio da i takva situacija može biti obuhvaćena pojmom „upotrebe vozila", jer se uzrok štete može povezati s funkcijom vozila kao prevoznog sredstva i njegovim tehničkim stanjem, iako se u trenutku nezgode nije nalazilo u pokretu.

Posredi je izuzetno značajna presuda jer ukazuje na to da vozilo ne mora biti u pokretu, niti mu motor mora biti upaljen da bi se moglo smatrati da je u upotrebi.

Prethodno prikazane presude ukazuju na to da je ESP dosledno razvijao široko, funkcionalno i teleološko tumačenje pojma „upotreba vozila", imajući u vidu cilj osiguranja – zaštitu žrtava. Upravo njihova raznolikost, ali i potreba za jedinstvenim standardom, bile su povod za zakonodavca da u Direktivi (EU) 2021/2118 konačno ponudi normativnu definiciju ovog pojma, koja sada uključuje upotrebu vozila „u skladu s njegovom funkcijom kao prevoznog sredstva", bez obzira na teren, stanje kretanja ili konkretan trenutak.

3. Pojam upotrebe motornog vozila u pravu Republike Srbije

3.1. *Pojam upotrebe u pravnoj teoriji*

U pravu Republike Srbije, kao i u pravu EU, u okviru obaveznog osiguranja od auto-odgovornosti pokriva se odgovornost štetnika, to jest vlasnika ili korisnika motornog vozila. Ipak, važno je utvrditi osnov te odgovornosti. Dok se građanskopravna odgovornost štetnika zasniva na opštim pravilima obligacionog prava,[40] obaveza osiguravača da naknadi štetu prouzrokovanu upotrebom vozila proizlazi iz ugovor o osiguranju od auto-odgovornosti, njegovih uslova i relevantnih odredaba Zakona o obaveznom osiguranju u saobraćaju. Ta razlika u pravnoj osnovi ima za posledicu da se odgovornost štetnika i odgovornost osiguravača ne moraju u potpunosti poklapati. Naprotiv, osiguranje od auto-odgovornosti pokriva samo jedan deo te odgovornosti – onaj što je zakonom prenesen na osiguravača. Jedan od ključnih elemenata koji određuje granice osiguravačeve odgovornosti jeste pojam „upotrebe motornog vozila".[41]

[39] Presuda Suda EU u predmetu C-100/18 od 20. 6. 2019., *Línea Directa Aseguradora SA v. Segurcaixa Sociedad Anónima de Seguros y Reaseguros*, ECLI:EU:C:2019:517, dostupno na adresi: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A62018CJ0100, 20. 6. 2025.

[40] Videti čl. 173 i 174 ZOO.

[41] Odredbom čl. 18 ZOOS propisano je da je vlasnik motornog vozila dužan da zaključi ugovor o osiguranju od odgovornosti za štetu koju upotrebom motornog vozila pričini trećim licima u vidu smrti, povrede tela, narušavanja zdravlja, uništenja ili oštećenja stvari, iz čega se izuzimaju štete na stvarima koje je primio na prevoz.

U tom smislu, upotreba motornog vozila predstavlja Zakonom o obaveznom osiguranju u saobraćaju definisani osigurani rizik, čije precizno razumevanje ima direktne posledice na obim osiguravačeve obaveze, te je od ključne važnosti da se sadržaj ovog pojma jasno razluči, kako bi se ustanovilo da li je konkretan štetni događaj pokriven obaveznim osiguranjem od auto-odgovornosti ili nije.[42]

Zakon o obaveznom osiguranju u saobraćaju ne definiše pojam „upotreba vozila", što samo po sebi nije loše imajući u vidu da je pitanje da li je šteta posledica upotrebe motornog vozila činjenično pitanje koje zavisi od okolnosti konkretnog slučaja.[43] Međutim, ukoliko nema ujednačene sudske prakse, navedeno može dovoditi do pravne nesigurnosti.

U delu pravne teorije šteta nastala upotrebom motornog vozila vezuje se za saobraćajnu nezgodu, pri čemu se pravi razlika između saobraćajne nezgode u užem smislu, koja predstavlja sudar motornih vozila i saobraćajne nezgode u širem smislu, one kod koje nema fizičkog kontakta dva ili više vozila (sletanje s puta, ispadanje predmeta iz vozila i sl.).[44]

Deo pravne teorije ukazuje na potrebu ekstenzivnog tumačenja i ističe da osiguranje od odgovornosti ne pokriva samo štete nastale usled saobraćajne nezgode.[45] Tako, prof. Nataša Petrović Tomić zaključuje da i sledeće situacije spadaju pod upotrebu vozila: 1) zaslepljivanje farovima usled čega je došlo do skretanja s puta; 2) ukoliko je jedan vozač načinom upravljanja vozilom primorao drugog da udari u treće lice; 3) ukoliko je jedno vozilo nanelo zemlju na kolovoz pa je drugo vozilo proklizalo; 4) kada usled oštećenja na vozilu dođe do zapaljenja i požara koji ošteti stvari trećeg lica; 5) sve vrste zaustavljanja na putu i radova na vozilu i svaka vožnja koja se preduzima iz sedišta pa do povratka u sedište.[46]

Na potrebu širokog tumačenja ukazuje i prof. Predrag Šulejić navodeći da se pod upotrebom smatra i zaustavljanje na putu, radovi na vozilu i svako stajanje na putu u toku vožnje, ali ukazuje i na to da je u svakom slučaju potrebno utvrditi uzročnu vezu između štete i upotrebe vozila, s tim što ta veza ne mora biti neposredna već šteta može nastupiti i na drugom mestu ili kasnije.[47] Dalje se ukazuje na to da je pogrešno upotrebu vezivati samo za situacije kada je šteta nastala na javnom putu, te da se osiguranje odnosi i na situacije kada je šteta nastala i na putevima koji nemaju javni karakter, kao i da za upotrebu nije nužno da se vozilo kreće snagom sopstvenog motora već može biti i vučeno.[48]

[42] L. Belanić, 347–348.

[43] Za razliku od važećeg zakona, ZOIL iz 1967. godine je smatrao da je potrebno bliže definisati pojam upotrebe vozila, pa je članom 15 st. 2 bilo propisano da se smatra kako je vozilo u upotrebi za vreme vožnje i za vreme stajanja na putu u toku vožnje.

[44] Detaljnije: N. Petrović Tomić, 544–545.

[45] Ibid.

[46] Ibid, 545.

[47] Predrag Šulejić, *Pravo osiguranja,* Beograd 2005, 441–442.

[48] Ibid, 442–443.

Dakle, upotrebu motornog vozila ne treba isključivo vezivati za saobraćajnu nezgodu, niti za kretanje vozila, kao ni za javni put, već, po ugledu na evropsko pravo, prilikom tumačenja ovog pojma treba imati u vidu da je funkcija obaveznog osiguranja u saobraćaju pre svega zaštita trećih oštećenih lica, te ovaj pojam treba tumačiti ekstenzivno, ali vodeći računa o prevoznoj funkciji vozila.

Međutim, naša sudska praksa i dalje nije ujednačena i primećuje se odstupanje od tumačenja tog pojma u skladu s funkcijom motornog vozila kao prevoznog sredstva, bez obzira na teren, stanje kretanja ili konkretan trenutak.

3.2. Pojam upotrebe u domaćoj sudskoj praksi

S obzirom na to da pozitivno pravo Republike Srbije, pre svega Zakon o obaveznom osiguranju u saobraćaju, ne sadrži izričitu definiciju pojma „upotreba motornog vozila", sudska praksa ima ključnu ulogu u određivanju granica obaveze osiguravača u slučajevima nastanka štete. Analiza relevantnih presuda pokazuje da se tumačenje pojma „upotrebe" u praksi sudova razlikuje, te da sudske odluke osciliraju između: restriktivnog tumačenja, prema kojem je upotreba isključivo vezana za kretanje vozila u saobraćaju, i funkcionalnog (šireg) pristupa, koji priznaje i radnje poput parkiranja, istovara, mirovanja s upaljenim motorom ili tehničkog kvara kao oblike upotrebe – ako su u vezi s funkcijom vozila kao prevoznog sredstva.

U ranijoj sudskoj praksi nailazimo na stavove gde se smatra da je vozilo u upotrebi dok stoji na autobuskom stajalištu radi ulaska i izlaska putnika; da nanošenje ilovače na kolovoz predstavlja upotrebu ako je to prouzrokovalo klizavost puta i prevrnuće; ali da šteta nije nastala iz upotrebe ukoliko je oštećeni gurao vozilo ili ako je došlo do trovanja plinom u zatvorenoj garaži.[49]

Kada je u pitanju mesto (put) na kom se šteta dogodila, ranije je bilo kolebanja, pa se tako u jednoj presudi zaključuje da šteta naneta radniku koji je pomagao prilikom istovara smeća na javnom đubrištu nije pokrivena obaveznim osiguranjem u saobraćaju jer nije nastala na mestu gde se saobraćaj odvija, a u drugoj odluci se navodi da ne postoji obaveza zajednice osiguranja ako je šteta nastala traktorom na njivi jer se ne radi o javnom putu, dok se u trećoj odluci, suprotno prethodnom, smatra da fabričko dvorište u kojem je došlo do nezgode treba smatrati putem jer se po njemu odvija saobraćaj, pa makar i ograničeno – za službena vozila.[50]

U novijoj sudskoj praksi takođe nije postignuto potpuno ujednačeno tumačenje. Tako je u predmetu Gž 1292/2018, Apelacioni sud u Novom Sadu zauzeo stav da je povreda koju je putnik zadobio prilikom ulaska u vozilo obuhvaćena pojmom

[49] VSH, Gž. 1174/70 od 11.5.1971; VSH, GŽ. 1600/71 od 16. 6. 1971; VSS, Gž. 705/69 od 12. 10. 1969; VSH, Gž. 1777/74, od 17. 4. 1975, sve prema: P. Šulejić, 441.

[50] VS SRS, Pž. 102/72 od 18. 2. 1972; Gž. 156/74 od 20. 1. 1975; VSS, Pž. 1451/71 od 31. 3. 1972; sve prema: P. Šulejić, 442.

upotrebe motornog vozila u smislu ZOOS. Sud je naveo da čin ulaska putnika u vozilo predstavlja radnju neposredno vezanu za korišćenje vozila u njegovoj osnovnoj funkciji – prevozu lica i stvari, te da takva radnja ima dovoljno čvrstu uzročnu i funkcionalnu vezu sa osnovnom svrhom vozila.[51] Time je prihvaćen funkcionalni pristup pojmu upotrebe, koji prevazilazi uži koncept kretanja vozila.

Nasuprot tome, u predmetu Rev 4191/2020, Vrhovni kasacioni sud zauzima restriktivan stav, smatrajući da vozilo koje se nalazi u fazi popravke ne može biti smatrano vozilom „u upotrebi" u smislu obaveznog osiguranja. Sud je istakao da šteta nije nastala kao posledica uobičajene upotrebe vozila, već prilikom servisiranja i osposobljavanja vozila za njegovu osnovnu namenu, čime se jasno isključuje osiguravajuće pokriće za radnje koje nisu neposredno povezane sa saobraćajem ili prevozom.[52] Taj slučaj jasno pokazuje sudsko razgraničenje između aktivne uloge vozila u saobraćaju i stanja u kome se vozilo tehnički osposobljava ili održava – što, prema stavu suda, ne potpada pod obavezno osiguranje. Taj stav predstavlja primer formalnog i suženog tumačenja pojma upotrebe, ograničenog na aktivno uključivanje vozila u saobraćajni proces.

Dalje, u presudi Rev 18331/2024, razmatrana je situacija gde je došlo do sudara automobila u pokretu i priključnog vozila, pri čemu je drugostepeni sud smatrao da nema odgovornosti osiguravača priključnog vozila jer to vozilo nije dejstvovalo samo. Revizioni sud našao je da je priključno vozilo koje je vučeno funkcionalno povezano, te da okolnost da nije dejstvovalo samostalno nije odlučujuća.[53] Takvim tumačenjem prihvaćen je funkcionalni model koji upotrebu vozila ne vezuje striktno za njegovu mehaničku aktivnost, već za namenski kontekst i uzročnu povezanost.

Te presude potvrđuju da domaća sudska praksa oscilira između šire funkcionalne i uže tehničke interpretacije, pri čemu je granica između „upotrebe" i „neupotrebe" vozila uslovljena činjeničnim okolnostima konkretnog slučaja, a ne striktno ustanovljenim pravnim standardom. S jedne strane, apsolutno je potrebno voditi računa o specifičnim okolnostima svakog slučaja, ali s druge, ovako oblikovana praksa može dovesti do različitih pravnih ishoda u sličnim situacijama, čime se ugrožava pravna sigurnost i doslednost. U tom smislu, sve češće se u teoriji naglašava potreba za preciznijim zakonskim određenjem pojma upotrebe, po ugledu na standarde uspostavljene Direktivom (EU) 2021/2118, koja unosi funkcionalnu definiciju i obezbeđuje ujednačeno tumačenje u državama članicama.

4. Pojam upotrebe motornog vozila u sudskoj praksi u slučaju požara

Jedna od naročito složenih situacija u praksi tiče se pitanja da li se nastanak požara na vozilu može smatrati „upotrebom motornog vozila" u smislu obaveznog

[51] Apelacioni sud u Novom Sadu, Gž 1292/2018 od 28. 5. 2018 godine.

[52] Vrhovni kasacioni sud RS, Rev 4191/2020 od 15. 7. 2021. godine.

[53] Vrhovni kasacioni sud RS, Rev 18331/2024 od 18. 9. 2024. godine.

osiguranja od auto-odgovornosti. Ta pravna dilema dodatno je izražena u slučajevima kada vozilo nije bilo u pokretu, niti se neposredno koristilo za prevoz, ali je ipak došlo do štetnog događaja zbog njegove tehničke funkcije ili kvarova na sistemima. Sudovi su zauzimali različite stavove, oscilirajući između širokog funkcionalnog i restriktivnog tumačenja, što komplikuje pravni položaj oštećenih i pitanje postojanja obaveze osiguravača.

U nastavku će biti prikazane neke odluke sudova Republike Srbije koje su se bavile tim pitanjem, s posebnim osvrtom na to kako se pojam „upotrebe“ tumači kada do štete dolazi usled pojave požara na vozilu.

U jednom predmetu Privrednog suda u Beogradu[54] odlučivano je o tužbenom zahtevu za naknadu štete nastale usled izbijanja požara na parkiranom motornom vozilu, koje je bilo osigurano kod tuženog osiguravača po osnovu obaveznog osiguranja od auto-odgovornosti. Požar se zatim proširio na susedno vozilo, koje je bilo u svojini tužioca, izazvavši materijalnu štetu. Tužilac je tvrdio da je osiguravač dužan da nadoknadi štetu, budući da je štetni događaj potekao od osiguranog vozila, bez obzira na to da li se ono kretalo ili nije. Naročito je ukazano da je u pitanju šteta koja potiče od opasne stvari, te da bi u skladu sa svrhom obaveznog osiguranja i zaštitnom funkcijom tog instituta, osiguravač trebalo da odgovara. Sud je, međutim, u potpunosti odbio tužbeni zahtev, obrazlažući svoju odluku time da u konkretnom slučaju nije bila ispunjena osnovna pretpostavka odgovornosti osiguravača – da je šteta nastala upotrebom vozila, odnosno da tužilac nije dokazao da je u trenutku nastanka štete postojala bilo kakva radnja upotrebe vozila u skladu s funkcijom prevoznog sredstva. Navodi se da je vozilo koje je izazvalo požar bilo parkirano, nije bilo pokrenuto, nije se koristilo za prevoz ljudi ili stvari, niti je bilo uključeno u bilo kakav saobraćajni proces. Dalje se navodi da nije došlo do saobraćajne nezgode u smislu Zakona o bezbednosti saobraćaja na putevima,[55] jer je, u smislu tog zakona, za postojanje saobraćajne nezgode potrebno da je makar jedno vozilo bilo u pokretu. Zaključuje se da je, kako u konkretnom slučaju toga nije bilo, prigovor nedostatka pasivne legitimacije osnovan, te da je tužbeni zahtev neosnovan.

Ta presuda predstavlja primer restriktivnog tumačenja pojma upotrebe motornog vozila, koje se oslanja isključivo na funkcionalno stanje vozila u trenutku nastanka štete i koje se vezuje za postojanje saobraćajne nezgode u užem smislu. Takav pristup zanemaruje mogućnost da vozilo, i kada je nepokretno, može proizvesti štetne posledice koje su uzročno povezane s njegovom prevoznom funkcijom ili tehničkim svojstvima (npr. akumulator, elektroinstalacija, rezervoar goriva itd.). Time se, praktično, sužava opseg zaštite koju institut obaveznog osiguranja treba

[54] Presuda Privrednog suda u Beogradu P 6410/2023 od 21. 3. 2024. godine.

[55] Zakon o bezbednosti saobraćaja na putevima*, Sl. glasnik RS*, br. 41/2009, 53/2010, 101/2011, 32/2013 – odluka US, 55/2014, 96/2015 – dr. zakon, 9/2016 – odluka US, 24/2018, 41/2018, 41/2018 – dr. zakon, 87/2018, 23/2019, 128/2020 – dr. zakon, 76/2023 i 19/2025.

da pruži, i stvara pravna nesigurnost za oštećene, jer postaje sporno da li osiguranje pokriva štete čak i kada ne postoji krivica štetnika, ali postoji kauzalna veza između vozila i štete.

Za potrebe poređenja ovde ćemo se osvrnuti na jednu presudu Vrhovnog suda Republike Hrvatske,[56] u kojoj je odlučivano o požaru koji je izbio na parkiranom vozilu unutar garaže, a koji je izazvan kvarom na instalaciji. Iako se vozilo nije kretalo, niti je neposredno učestvovalo u saobraćaju, sud je ipak ocenio da se radi o „upotrebi vozila" u smislu osiguranja od auto-odgovornosti. Ključno obrazloženje bilo je da je uzrok požara proistekao iz tehničkih karakteristika i funkcionalnih svojstava samog vozila, što omogućava da se takav događaj podvede pod širu funkcionalnu definiciju upotrebe.

Ta presuda, iako ne pripada domaćoj sudskoj praksi, ilustrativna je za pristup koji ne ograničava upotrebu vozila isključivo na njegovo kretanje ili aktivno učešće u saobraćaju, već priznaje i situacije u kojima vozilo, usled svojih tehničkih svojstava, proizvodi štetne posledice dok miruje. Takvo tumačenje bolje odgovara funkciji osiguranja kao sredstva zaštite trećih oštećenih lica i omogućava širu, materijalno-pravičnu zaštitu.

Prethodno prikazana prvostepena presuda Privrednog suda u Beogradu dobija svoj epilog u postupku po pravnom leku gde Privredni apelacioni sud u Beograd[57] presuđuje da prvostepeni sud nepravilno zaključuje kako tuženi nije pasivno legitimisan, jer se pod upotrebom vozila smatraju i one situacije kada se parkirano vozilo zapalilo usled kvara na električnim instalacijama, izazvavši požar. Međutim prvostepena odluka biva potvrđena uz obrazloženje da je uzrok nastanka štetnog događaja od uticaja na donošenje odluke, te da je na tužiocu bio teret dokazivanja okolnosti koja je dovela do nastanka požara na motornom vozilu, odnosno da tužilac nije dokazao na koji je način došlo do požara: da li je pitanju kvar na instalacijama automobila, koji je doveo do samozapaljenja, ili je u pitanju ljudski faktor. Dakle, tužbeni zahtev se odbija uz primenu tereta dokazivanja i zaključak da tužilac nije dokazao da se uzrok požara na vozilu nalazio u mehanizmu nužnom za upotrebu prevozne funkcije tog vozila.

Ta drugostepena odluka ima naročit značaj jer eksplicitno prihvata mogućnost da i požar koji je izbio na parkiranom vozilu može predstavljati „upotrebu motornog vozila" u smislu člana 18 stav 1 ZOOS-a, pod uslovom da postoji uzročna i funkcionalna povezanost s tehničkim sistemima vozila koji služe njegovoj osnovnoj prevoznoj funkciji. Time se odstupa od ranijeg restriktivnog pristupa i afirmiše šira, funkcionalna interpretacija pojma upotrebe, koja je bliža rešenjima prihvaćenim u pravu EU. Ipak, ta presuda istovremeno pokazuje i suštinsku procesnopravnu

56 Presuda VSRH, Rev 2643/12-2 od 23. 4. 2014. godine, prema D. Šaban, 289–290.

57 Presuda Privrednog apelacionog suda u Beogradu Pž 2792/24 od 11. 9. 2024. godine.

prepreku, pitanje dokazivanja uzroka štete. Ta presuda takođe potvrđuje da sudska praksa počinje da prepoznaje složenost pojma upotrebe, ali ističe i da u sporovima ove vrste odlučujuću ulogu i dalje ima konkretna činjenična osnova i valjanost izvedenih dokaza.

Međutim, u nevezanom predmetu Rev 4570/2024,[58] Vrhovni kasacioni sud Republike Srbije razmatrao je da li požar koji je izbio na parkiranom motornom vozilu koje nije bilo uključeno u saobraćaj može predstavljati slučaj „upotrebe vozila" u smislu člana 18 stav 1 ZOOS. Sud je zauzeo stav da ne postoji odgovornost osiguravača u situaciji kada je šteta izazvana vozilom koje se u trenutku nastanka nezgode nalazilo u stanju mirovanja i nije se koristilo za prevoz lica ili stvari. Sud je ukazao na to da sama činjenica da je vozilo bilo uzrok požara nije dovoljna da se zaključi da se radi o njegovoj „upotrebi" u smislu ZOOS. Za postojanje odgovornosti osiguravača, prema shvatanju suda, neophodno je da se šteta može dovesti u neposrednu funkcionalnu vezu sa svojstvom vozila kao sredstva prevoza. U konkretnom slučaju, ta veza nije postojala jer vozilo nije bilo u pokretu, niti se obavljala bilo kakva radnja koja bi ukazivala na njegovu aktivnu ulogu u saobraćaju.

Takvo tumačenje odražava restriktivni pristup u sudskoj praksi kada je reč o granicama pokrića obaveznog osiguranja od auto-odgovornosti. Daje se mišljenje da se štete izazvane vozilima koja se u trenutku nezgode nalaze u statičnom, tehnički pasivnom stanju, čak i kada su neposredan uzrok štete, ne smatraju štetama iz kategorije upotrebe vozila, i kao takve ne ulaze u sferu pokrića obaveznog osiguranja. Takav pristup je suprotan modernim tokovima u pravu osiguranja, pogotovo u pravu Evropske unije, gde se, kako je to istaknuto u presudama Rodrigues de Andrade i LDA, „upotreba" vozila ne vezuje striktno za kretanje ili saobraćaj, već se tumači funkcionalno, u svetlu tehničke prirode i potencijala vozila da izazove štetu.

Primer širokog tumačenja je presuda Privrednog suda u Požarevcu, P. br. 126/12,[59] kojom se ukazuje na postojanje odgovornosti vlasnika vozila po osnovu ZOO, čak i kada vozilo miruje i ne učestvuje u saobraćaju, ukoliko izazove štetu svojom opasnom prirodom. Iako se u tom predmetu nije radilo o odgovornosti po osnovu ZOOS, ona je značajna jer ukazuje da je kod štete nastale požarom irelevantno koji je konkretan uzrok unutar stvari doveo do njenog nastanka. U tom predmetu, došlo je do požara na parkiranom putničkom vozilu tuženog koje se nalazilo u boksu samouslužne auto-perionice tužioca. Izveštaji veštaka potvrdili su da je požar potekao iz unutrašnjosti vozila (zona putničkog prostora), te da se proširio i pričinio štetu objektu perionice. U obrazloženju, sud nije ulazio u konkretan tehnički uzrok zapaljenja (da li je to bio kvar na gasnoj instalaciji, varnica ili nešto drugo), već je istakao da je za

[58] Videti presudu Vrhovnog suda Republike Srbije Rev 4570/24 od 29. 5. 2024. godine.

[59] Presuda Privrednog suda u Požarevcu P. br. 126/12 od 18. 12. 2012. godine, koja je potvrđena presudom Privrednog apelacionog suda 3 Pž. 978/13 od 21. 3. 2013. godine, dostupno na: http://www.propisionline.com/Login?ReturnUrl=%2f.

odluku relevantna uzročna veza između vozila i štete, a ne tehnički detalji mehanizma nastanka požara. Sud je primenio pravila o objektivnoj odgovornosti za štetu od opasne stvari iz ZOO i zaključio da putničko vozilo samo po sebi jeste opasna stvar, budući da po svojoj tehničkoj prirodi i karakteristikama nesumnjivo može ugroziti život i zdravlje ljudi, kao i imovinu. Sud je konstatovao da postoji oboriva zakonska pretpostavka uzročne veze, koju tuženi nije uspeo da pobije.

Analiza tih presuda pokazuje napetost između šireg pojma odgovornosti vlasnika vozila i užeg pojma odgovornosti osiguravača. Dok sudovi u klasičnim parničnim postupcima prepoznaju vozilo kao opasnu stvar čije statično postojanje može proizvesti štetu i osnovati odgovornost, sudska praksa u osiguravajućim sporovima sve češće insistira na postojanju upotrebe u funkcionalnom, ali i u saobraćajnom smislu kako bi odgovornost osiguravača postojala.

Navedeno potvrđuje da praksa nije ujednačena, te da je pojmu upotrebe potrebno dati jasniju zakonsku definiciju, koja bi uskladila pravne posledice i obezbedila doslednost. Takođe, otvara se pitanje da li se zaštita trećih oštećenih lica narušava prelaskom sa objektivne ka usko definisanoj osiguravačevoj odgovornosti, što je naročito važno sa stanovišta javnog interesa i pravne sigurnosti.

IV Zaključak

Pojam „upotrebe motornog vozila“ predstavlja centralni pravni standard u kontekstu obaveznog osiguranja od auto-odgovornosti, čije razumevanje direktno određuje obim odgovornosti osiguravača. Kroz analizu zakonodavnih okvira, sudske prakse i pravne teorije, očigledno je da se ovaj pojam mora tumačiti u skladu s funkcionalnom svrhom motornog vozila, a ne formalistički ograničeno na kretanje vozila po javnim putevima.

Republika Srbija, kao država u procesu pristupanja EU, suočava se sa izazovom harmonizacije ne samo zakonodavstva već i sudske prakse sa standardima prava Evropske unije. Direktiva (EU) 2021/2118, kao ključna tačka preokreta u evropskom pravu osiguranja, uvodi široku, funkcionalnu definiciju „upotrebe vozila“, zasnovanu na njegovoj osnovnoj nameni kao prevoznog sredstva, nezavisno od kretanja, lokacije ili stanja mirovanja. U tom smislu, osnovna svrha obaveznog osiguranja, zaštita trećih oštećenih lica, dolazi u prvi plan, a tumačenje pojma „upotrebe“ mora služiti tom cilju.

Srpsko pravo, iako formalno obuhvata slične ciljeve, još uvek u značajnoj meri oscilira u sudskoj praksi. Na jednoj strani nalazimo presude koje prihvataju širi, funkcionalni pristup i priznaju upotrebu i u kontekstu parkiranja, istovara, tehničkog kvara i požara; na drugoj, restriktivne odluke koje striktno vezuju upotrebu za aktivno kretanje i prisustvo vozila u saobraćaju. takve oscilacije proizvode pravnu nesigurnost i potencijalno onemogućavaju ostvarenje prava oštećenih lica.

Potrebno je stoga izvršiti dve paralelne reforme. Prvo, neophodna je izmena i dopuna Zakona o obaveznom osiguranju u saobraćaju u skladu sa Direktivom (EU) 2021/2118, kojom bi se jasno normirala definicija „upotrebe vozila“ u funkcionalnom smislu. Drugo, i možda još važnije, neophodno je raditi na ujednačavanju sudske prakse, koje bi interpretaciju pojma „upotrebe“ usmerilo ka teleološkom pristupu – onom koji služi svrsi osiguranja i štiti oštećene.

U svakom konkretnom slučaju, kada se razmatra da li postoji obaveza osiguravača na isplatu, odlučujuće bi trebalo da bude sledeće:

1. da li je vozilo u trenutku štetnog događaja bilo u funkciji prevoza ili u radnji neposredno povezanoj s tom funkcijom (uključujući parkiranje, istovar, pripremu za vožnju, itd.);
2. da li postoji uzročna veza između štete i tehničkih karakteristika vozila kao sredstva za prevoz ljudi i stvari;
3. da li bi isključenje pokrića, u konkretnom slučaju, dovelo do očiglednog narušavanja svrhe obaveznog osiguranja i zaštite trećih lica.

Lično smatram da pojam „upotrebe motornog vozila“ ne može ostati u domenu široke i raznolike sudijske ocene, jer to otvara prostor za pravnu nesigurnost i nejednakost građana pred pravom. Normativna preciznost, uz uvođenje opšteg standarda, predstavlja uslov sine qua non postizanja predvidljivosti prava, dok funkcionalno tumačenje, dosledno sprovođeno u praksi, garantuje pravičnost i zaštitu javnog interesa.

U skladu s tim, potrebno je preduzeti korake u pravcu harmonizacije, kako bi domaći sistem osiguranja postao pouzdan, pravičan i usklađen sa evropskim pravnim vrednostima, koje, ne samo formalno, već suštinski, stavljaju žrtvu u centar zaštite.

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Milica Goravica[1]

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]

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

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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.

[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]

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[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.

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[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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