

Motor Third Party Liability after CJEU Interpretation of the Directive 103/2009/EC in Vnuk Judgment

Olga Shevchenko

Master degree in law, Vilnius University
Currently a PhD candidate, Private Law Department
The Faculty of Law, Vilnius University
Sauletekio av. 9, LT-10222 Vilnius, Lithuania
Tel. (+370 5) 236 6175
Email: <olga.shevchenko.vu@gmail.com>

The aim of this article is to assess the consequences of the interpretation of the terms ‘vehicle’ and ‘use of a vehicle’ in the light of the case of *Damijan Vnuk v Zavarovalnica Trigalev* (C-162/13) the Court of Justice of the European Union (CJEU) in accordance with the objectives set out in the Motor Insurance Directive.

Keywords: the Court of Justice of the European Union, civil liability, vehicle, Motor Insurance Directive.

Transporto priemonių valdytojų civilinė atsakomybė po 103/2009/EB direktyvos ESTT išaiškinimo VNUK bylos sprendime

Šio straipsnio tikslas – įvertinti sąvokų „transporto priemonė“ ir „transporto priemonės naudojimas“ aiškinimo pasekmes, atsižvelgiant į Europos Sąjungos Teisingumo Teismo sprendimą byloje *Damijan Vnuk v Zavarovalnica Trigalev* (C-162/13) ir Europos Sąjungos transporto priemonių draudimo direktyvoje siekiamus tikslus.

Pagrindiniai žodžiai: Europos Sąjungos Teisingumo Teismas, civilinė atsakomybė, transporto priemonė, Transporto priemonių draudimo direktyva.

Introduction

Once the territory of the member states of the European Union became free to cross in terms of freedom of movement, individuals started to cross the borders more easily and frequently by different means of transport for both personal and commercial purposes. That led to the significant increase in vehicle circulation. Naturally, the growth in number of vehicles which are required to possess an insurance coverage when entering the territory of different member states, is proportionally connected with the growth of cross-border road traffic collisions.

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Motor Insurance Directive (MID)¹ was established for the purposes establish the regulation of the motor third party liability (MTPL) within the European Union dimension. Despite the fact that MTPL is covered by MID, there is still a huge range of divergences existing in the handling of concerned files among the member states of the European Union; as well as complications for victims to measure the right for compensation. Due to the above-mentioned reasons, there is a strong necessity for precise assess applicable to law while resolving an issue related to the particular law and its governance in the particular MTPL case. Naturally, the existence of the European Union legal act empowers national courts to bring issues in term of preliminary ruling² procedure before the Court of Justice of the European Union (CJEU) enabling to interpret concerned provisions. *In esse*, CJEU interpretations might bring particular new contradictions within the domestic laws of the member states as it happened after the judgment *Damijan Vnuk v Zavarovalnica Triglav d.d. (Vnuk)*³ publishment.

As a result of the ex-post evaluations, public consultations and impact assessment, in May 2018, European Commission introduced proposal⁴ (hereinafter Proposal) seeking to amend Motor Insurance Directive 2009/103/EC in the light of the *Vnuk* judgment and further *Rodrigues de Andrade C-514/16*⁵ with *Torreiro C-334/16*⁶ cases clarifying the scope of the Directive.

The aim of this article is to assess the consequences of the Court of Justice of the European Union (CJEU) interpretation of the concepts ‘vehicle’ and ‘use of a vehicle’ in the light of the case of *Damijan Vnuk v Zavarovalnica Triglav* (C-162/13) in accordance with the objectives set out in the Motor Insurance Directive.

The research object of this article should be considered as motor third party liability regulation after the Court of Justice of the European Union interpretation of concepts ‘vehicle’ and ‘use of a vehicle’ in *Damijan Vnuk v Zavarovalnica Triglav* (C-162/13) case. Motor third party liability regulation as the object of this research should be understood strictly within the frames of new interpretation of the above-stated concepts brought by the Court of Justice of the European Union⁷. Despite the fact this article mentions two more CJEU judgments, in particular *Rodrigues de Andrade* and *Torreiro*, those should be considered as a classic case law of CJEU affirmation of the position has been previously taken.

The objectives of this article are to examine both outcomes and impacts which took their reflection in the modern motor insurance sector in the EU after the introduction of CJEU Judgment in the *Vnuk* case. In order to achieve the aim of this research it is also necessary to scrutinize European Commis-

¹ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability. *Official Journal* L 263.

² In terms of the Article 267 of the Treaty on the Functioning of the European Union of 26 October 2012. *Official Journal* C 326, 2012, P. 0001–0390.

³ *Damijan Vnuk v Zavarovalnica Triglav d.d.* Judgment of the Court (Third Chamber) of 4 September 2014, Case No. C-162/13, ECLI:EU:C:2014:2146.

⁴ European Commission Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability. *Official Journal* COM/2018/336 final.

⁵ *Isabel Maria Pinheiro Vieira Rodrigues de Andrade, Fausto da Silva Rodrigues de Andrade v José Manuel Proença Salvador, Crédito Agrícola Seguros – Companhia de Seguros de Ramos Reais SA, Jorge Oliveira Pinto.* Judgment of the Court (Grand Chamber) of 28 November 2017, Case No. C-514/16, ECLI:EU:C:2017:908.

⁶ *José Luis Núñez Torreiro v AIG Europe Limited, Sucursal en España and Unión Española de Entidades Aseguradoras y Reaseguradoras (Unespa).* Judgment of the Court (Sixth Chamber) of 20 December 2017, Case No. C-334/16, ECLI:EU:C:2017:1007.

⁷ Such sectors as losses assessment and member states domestic motor third party regulation should not be considered as the research object for the purposes of this contribution.

sion's Proposal to amend the Directive 103/2009/EC as the result of numerous public consultations, ex-post evaluations, impact assessment and scholars' researches which were carried out in the concerned field. It has to be said that European Commission's Proposal will be analysed within the frames of provisional regulation after the new interpretation of concepts 'vehicle' and 'use of a vehicle' were established, hence the rest of sub-fields are to be introduced only. On the other hand, the analysis of future foreseeable influences expected within the motor third party liability regulation after Directive 103/2009/EC will be amended. Another task of this article should be interpreted as the introduction to both strong and weak points of proposed re-consideration of MTPL regulation within the European Union dimension. Bearing in mind the sharp situation within the motor third party liability regulation in the EU (e.g. delays in settlement, underestimated compensation, obstacles while exercising the right for compensation, uncertain regulation and etc.), this article reflects significant relevance to the analysis provided. The analysis addresses determination of both main consequences in motor third party liability regulation after the CJEU interpretation of the Motor Insurance Directive in *Vnuk* judgment and potential solutions that might be available to resolve legal uncertainties that occurred.

This article includes particular examples of domestic motor third party liability regulation approaches in member states, legal acts and judgments by the local courts, thus it reflects either divergent or similar legal tools among the member states of the European Union. British, French and Swedish motor third party liability regulation systems were selected as the examples of rather divergent traditional approaches which were established as well-developed mechanisms ensuring the right for compensation for both pecuniary and non-pecuniary losses occurred as a consequence of road traffic collision.

In order to achieve the aim of this article, *the logical analysis method* was the key one applied through the prism of evaluation of the currently valid motor third party liability regulation provisions. It was also used for evaluation of the study of further amendments within the concerned field expecting to be ultimately established in the nearest future. *The synthesis method* was used in this article, thanks to which, by providing with conclusions and studying outcomes which have already been met within the motor insurance sector, it became possible to analyse the impacts expected to occur in the nearest future. *The comparative method* was also widely applied in this article while collating the range of domestic and European Union provisions within the motor insurance sector. *The linguistic method* was narrowly applied within Section 1 through analysis of existing translations of the Motor Insurance Directive reflecting divergences and further uncertainties. Seeking for admission of both particular statements and Court jurisprudence within this article, the range of CJEU judgments, local courts' rulings and concerned institutions' feedbacks were provided through *the descriptive method*.

Bearing in mind the high level of relevance of the particular research, there is a number of studies available within the European Union dimension. However, Author relies on very few previous researches in the concerned field as the majority of scholars' articles are either outdated or provide with the analysis of issues, which should be considered out of scope of this research. Those studies have been published so far taking into account particular issues discussed in this article, namely Berryman's Lace Mawer (BLM) Motor Group 'Briefing Note: *Vnuk v Zavarovalnica Triglav d.d.* [2014] CJEU C-162/13' published in April 2015 and Road Safety, Standards & Services Director Ben Rimmington of the Department for Transport of United Kingdom 'REFIT review of the Motor Insurance Directive' published on 18 August 2017. It has to be said that in Republic of Lithuania motor third party liability is regulated strictly within the frames of Law on compulsory insurance against civil liability in respect of the use of motor vehicles⁸, which should be considered as qualitative legal instrument providing

⁸ Lietuvos Respublikos Transporto priemonių valdytojų civilinės atsakomybės privalomojo draudimo įstatymas. Official Gazette *Valstybės žinios*, 2007, Nr. 63.

with the high level of victims' protection. In the light of the recent CJEU judgment in case C-648/17⁹, Lithuanian insurers have taken a firm position to re-consider treatment of cases where collisions have taken place with stationary (engine off) vehicles if pecuniary losses occur due to either driver or passenger opening the door. Bearing in mind ambiguous position of both practitioners and scholars with the regard of the above-stated issue, it should be expected a number of further research papers to be published in the nearest future. In the meantime, there is very few scholars' studies in regard of motor third party liability were published in Lithuania. Here, Author does not rely on the above-stated scholars' researches due to the divergences of the issues analysed¹⁰.

Although public consultations about the considered topic have already taken place, as well as particular European Union institutions' reports and Proposal to amend Directive 2009/103/EC have been introduced to the society, this article is one of the first ones which provides with analysis of both outcomes and impacts after sufficient European Union legal steps have been taken.

It must be mentioned that legal perspectives in respect of the further motor third party liability regulation have been analysed in details in this article. As far as the structure of the article is concerned, the one consists of legal analysis of the most influential concepts which have their sufficient impact on the motor third party liability regulation within the European Union. The evaluation of the CJEU concerned interpretations and determination of outcomes as well as sufficient impacts expected in the nearest future, has already been presented. Section 1 defines both concepts of 'vehicle' and 'use of a vehicle' in terms of the purposes of currently valid Directive 2009/103/EC; evaluates upcoming amendments for changing Motor Insurance Directive through the prism of analysis of CJEU jurisprudence and Proposal. In the light of existing public liability, employer's liability and motor third party liability insurances Section 2 analyses the correlation and further impacts among the above-stated types of insurance coverage. Following the CJEU practice, Section 3 aims to provide legal analysis of the motor third party liability coverage for the purposes of motor sport events, as well as further assessment of losses and right for compensation.

1. Concepts of 'Vehicle' and 'use of a vehicle' for the purposes of the MID after *Vnuk* Judgment

1.1. Court of Justice of the European Union judgment in *Damijan Vnuk v Zavarovalnica Triglav d.d. (Vnuk)* case

Damijan Vnuk v Zavarovalnica Triglav d.d. (Vnuk) CJEU judgment provided with the significant impact within the scope of motor third party liability claims throughout the European Union concluding that compulsory motor-vehicle insurance shall be applicable in respect to any use of vehicle consistent with the normal function of that vehicle. The above-mentioned decision reflects the necessity to abolish all existing restrictions in respect to the territory of vehicle usage, namely distinguishing public area from the private territory. CJEU case law is ensuring legal certainty and clarity, thus shall be understood as binding to conform for all member states guaranteeing uniform implementation.

Here, member states might face obstacles due to the numerous legal discrepancies after the judgment's publication. For instance, the UK has faced with an obstacle while having the new CJEU

⁹ *AAS „BTA Baltic Insurance Company”, anciennement „Balcia Insurance” SE v „Baltijas Apdrošināšanas Nams” AS*. Judgment of the Court (Sixth Chamber) of 15 November 2018, Case No. C-648/17, ECLI:EU:C:2018:917.

¹⁰ Scholars' articles provide with the analyses within motor insurance sector, which nevertheless appear to be outdated or concerns subject-matter that is apparently out of scope of this article (e.g. legal regulation of the automated vehicles (AVs), non-pecuniary losses sustained as a consequence of traffic collision).

ruling which contradicts the Road Traffic Act 1988 claiming that vehicle in the context of road traffic collision shall be a 'vehicle operating on roads'¹¹. At the same time it put the obligation on insurers to provide with the compulsory coverage for those vehicles operating on roads and/or public areas.

Vnuk judgment brought the new scope in respect of both concepts of 'vehicle' and 'use of a vehicle' calling all member states to adopt their domestic laws corresponding to the EU policy. In terms of the *Vnuk* decision it should be admitted that such classes of vehicles operating for agricultural, construction and sport purposes will be included into the scope of the vehicles to be compulsory covered and recognized as a subject of the motor third party liability.

In the *Vnuk* case, the claimant Mr. Damijan Vnuk brought the claim in his domestic state Slovenia in regard of the incident which occurred on 13 August 2007. The applicant was injured in the accident with the trailer and was hit by the ladder attached to the farm tractor during the collision. The farm tractor was moving backwards in order to get parked within the barn in a private area. Mr. Vnuk was advised to bring the claim to the motor insurer of the *Zavarovalnica Triglav* who was the owner of the above-mentioned farm tractor. Requiring 15 944,10 euros as a compensation, Mr. Vnuk's claim was rejected by two courts. Thus, the Court of Appeal in Slovenia pointed out that a tractor during its usage as a propulsion instrument cannot be recognized as a vehicle performing its normal functions in a regular context. The Supreme Court (*Vrhovno sodišče*) decided to bring this matter in accordance with Article 288 of the Treaty on the Functioning of European Union (TFEU) to the Court of Justice of the European Union for preliminary ruling purposes seeking to determine the scope of the 'use of a vehicle' in accordance with Directive 72/166/EEC¹² (amended by Directive 103/2009/EC). The Court of Appeal of Slovenia established that none of the Directives provides with the definition of scope of 'use of a vehicle', thus it might be a case for indicating the above stated term in whatsoever ways, including the usage of the roads and public areas.

The main issue connected with the above-mentioned facts was to put the reflected necessity in terms of CJEU and to interpret Article 3 of Directive 72/166/EEC which puts an obligation on the insurer to assure the binding third party liability insurance covering usage of vehicles normally based in that particular member state. As in *Vnuk* case, the farm tractor was reversing on a private farm area with the purpose to bring the trailer attached to the tractor into a barn it could not be clearly defined as a regular use of vehicle for the purposes of the MID. The term 'use of a vehicle' was unclear up to the CJEU ruling in *Vnuk* case. As a regular practice in CJEU complicated cases, *Vnuk* case was brought to the Advocate General (AG) in order to acquire an expert opinion. AG Mengozzi defined circumstances described above as a regular usage of vehicle fall within the scope of the Directive 72/166/EEC.

The opinion of Advocate General Mengozzi was induced by feedbacks from German, Irish and British law-enforcement institutions, which were insisting on the necessity to initiate the oral proceedings with the aim to re-consider particular aspects and decisions made in order to define the usage of vehicle such as using motor vehicle on roads. Speaking about this issue, the UK, for instance, faced with an obstacle while having the new CJEU ruling which contradicts the Road Traffic Act 1988 claiming that vehicle in the context of road traffic collision shall be a 'vehicle operating on roads'¹³. At the same time it forced insurers to provide those vehicles operating on roads and/or public areas with the

¹¹ The Road Traffic Act 1988 of the United Kingdom, Chapter 52. First published 1988. Reprinted 2000. Section 185.

¹² Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability. *Official Journal* L 103.

¹³ The Road Traffic Act 1988 <...>. Section 185.

compulsory insurance. Nevertheless, the European Commission stated that Directive's provision must apply in regard to any vehicle or self-propelled machine irrespective of the area, either private or public.

In the process of determination of the 'use of a vehicle' it became clear that both the purposes of the vehicle performing particular motor acts and the 'vehicle' itself were undefined in the light of the Directive. Consequently, due to the interpretation provided in *Vnuk* case, the definition of 'vehicle' became much wider, including the agricultural machines in particular as another class of the motor vehicles for the purposes of the Directive.

1.2. New scope of the concepts' interpretation for the purposes of the MID

Despite the fact there is no obligation for member states to uniform definitions such as 'accident' or 'use' for the purposes of the MID, the Court stated that the concept of the 'use of a vehicle' must be addressed precisely in each member state. Indisputably, such misunderstandings of the scope of 'use of a vehicle' in the terms of the Directive appeared due to peculiarities of translations into the national languages of member states. The translation from English into French can be taken as a vivid example. Despite the fact that the English version of the Directive reflects the term 'use of a vehicle', the French version of the Directive provides with the term '*la circulation de véhicules*' which means 'circulation'¹⁴ of vehicles. This obviously reflects different meaning from the interpretation given by the Court of Justice of the European Union in the *Vnuk* case. Taking into consideration the French example, it must be also admitted that both Spanish and Italian versions correspond to the French one providing with '*la circulación de vehículos*' and '*dalla circolazione dei veicoli*' instead of the English one. While the above-stated states provided with the translation which is divergent from the original English version, Lithuanian translation of the Directive is free for exceeding within the official journal and it does not include the term of 'use of a vehicle' entirely. Instead of that, the Lithuanian translation of Article 14 provides "*Valstybės narės imasi visų priemonių, būtinų užtikrinti, kad visos transporto priemonių valdytojų civilinės atsakomybės privalomojo draudimo sutartys: <...>*". It means that 'member states are to take all appropriate measures to ensure that all motor third party liability insurance contracts <...>'. As soon as CJEU became aware of the differences between the translations (French example) of the EU legal document, latter admitted a necessity to interpret such norms in the light of the general scope and purpose of such ruling¹⁵. The above-mentioned CJEU ruling put even more queries about the scope of EU terms interpretation, as the recitals of the MID neither straightforwardly frame the scope of the rulings nor give member states guidelines on how to interpret latter in the uniform manner. There is also an abstract description of inconsistent versions of 'use of a vehicle' and 'circulation' within the European Commission Staff Working Document Impact Assessment of 2018¹⁶ which reflects divergence within the English-French versions. Nevertheless, the above-pointed staff working document does not contain any data regarding the rest of translations which do not correspond to the English version.

¹⁴ The circulation of vehicles is possible to notify from the title of the Directive 103/2009/EC, Article 7, Article 14 and Article 20 '*la circulation de véhicules*'.

¹⁵ Within the *Torreiro* Judgment CJEU found out particular restrictions were put on the 'use of a vehicle' under the Spanish law. It has to be noted that major effect took the term of 'use of a vehicle' that is a lack within the Spanish translation of Directive; instead one provides for 'circulation of a vehicle' – '*la circulación de vehículos*'.

¹⁶ European Commission Staff Working Document Impact Assessment accompanying the documents Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability. *Official Journal* SWD/2018/247 final.

Although CJEU has not provided with the straightforward ruling on the territorial scope of the compulsory third party liability insurance, it has broadened the scope of the geographical usage of the vehicle in the private farm area. Consequently, a range of new issues has been created to be solved in the context of the MID. As a result of the decision taken in the *Vnuk* case, the ‘use of a vehicle’ in terms of the Directive must be defined regardless the public or private area, regardless the type of a motor vehicle which is being operated, therefore, the new volume must be applied to the Directive.

The *Vnuk* decision pointed out that the concept of ‘vehicle’ shall be distinguished from the concept of ‘use of a vehicle’. It marked the contrast between particular domestic regulations of the member states and the EU laws, such as the Road Traffic Act 1988 of the United Kingdom which presented a more narrowed definition of the concept of ‘vehicle’ and limited the scope to the public roads only. In the light of the Directive, the ‘vehicle’ shall be understood as *any motor mechanical vehicle intended moving on land other than rails and trailer whenever united or not*, while the Road Traffic Act 1988 within its Section 185 narrowed the scope of the ‘vehicle’ to “a mechanically propelled vehicle intended or adapted for use on roads”¹⁷.

Due to the *Vnuk* judgment, the concept ‘vehicle’ is now broadening up to the esoteric vehicles which perform engine movements on both private and public roads/areas. The examples of such vehicles are motor scooters, Segways, electrically power assisted cycles (EPACs) as well as vehicles created for the sport purposes and which do not normally operate on the roads of regular motor traffic; “[v]ehicles intended for road use but which are no longer on the road (snow cars, museum exhibits, those declared under SORN, query ‘tools of the trade’) and specialist trade vehicles (e.g. construction plant, fork lifts etc.)”¹⁸. Article 4 of the Directive established an obligation that there are certain types of vehicles which must be included into the list of regular vehicles within the member states. At the same time, such states as Austria derogate vehicles with the maximum speed of below 25 km/h¹⁹, while Germany derogates agricultural vehicles not over 20 km/h²⁰. All existing derogations must be covered by the motor third party liability insurance in the terms of Article 10²¹ of the MID. The obligation to guarantee reimbursement of both pecuniary and non-pecuniary losses sustained by the victim due to the road traffic collision must be put on the insurer.

Following the CJEU practice, a particular issue related to broadening the concepts and applied within the motor third party liability regulation appeared. European Commission has introduced REFIT review (Inception Impact Assessment)²² with the aim to reconsider the Motor Insurance Directive and to ensure effectiveness for victims who claim losses sustained as a consequence of the road traffic collisions with or without cross-border element. After the number of ex-post evaluations, public consultations and precise analysis of the feedbacks which main aim was to draw the attention of the European Commission

¹⁷ The Road Traffic Act 1988 <...>.

¹⁸ Berryman Lacey Mawer (BLM) Motor Group. Briefing Note: *Vnuk v Zavarovalnica Triglav d.d.* [2014] CJEU C-162/13 of April 2015. *Research Education Development Journal*, p. 1–13, p. 6.

¹⁹ KFG 1967 – Kraftfahrzeuggesetz 1967. § 21 Vorrichtungen zum Freihalten des Blickfeldes für den Lenker.

²⁰ Bundesministerium der Justiz und für Verbraucherschutz. Straßenverkehrs-Zulassungs-Ordnung (StVZO) vom 26. April 2012 (BGBl. I.S. 679), die zuletzt durch Artikel 1 der Verordnung vom 20. Oktober 2017 (BGBl. I.S. 3723) geändert worden ist.

²¹ Directive 2009/103/EC <...>. Article 10 (1) “Each Member State shall set up or authorize a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided in Article 3 has not been satisfied”.

²² European Commission. Inception Impact Assessment. REFIT review of the Motor Insurance Directive of July 24, 2017. Q4 2017. Ref. Ares/2017/3714481.

in the light of Inception Impact Assessment, the Proposal²³ to amend Motor Insurance Directive was finally introduced in May 2018. Particularly, the Proposal addresses re-considerations in such sectors as (1) insolvency of the insurer, (2) claims history, (3) risks due to absence of insurance, (4) minimum amounts of coverage and (5) scope of the Directive considering broadened concepts of ‘vehicle’ and ‘use of vehicles’. Proposal should be considered as a document consists from the European Commission’s professional finalization providing with the legal provisions aim to fulfil legal gaps occurred as a consequence of the previous CJEU interpretations within the concerned judgments, such as *Vnuk*, *Rodrigues de Andrade* and *Torreiro* cases. Furthermore, Proposal includes particular sub-fields that were necessary to be clarified beyond the scope of the interpretation of concepts ‘vehicle’ and ‘use of a vehicle’, such as (a) elaboration on cases of the insurer’s insolvency, (b) regulation of claims’ tracking system at the European Union level, (c) risks with regard to the uninsured vehicles and (d) review of the minimum amount of coverage that must be established in each member state. It has to be said that all sub-fields appear to be included within the Proposal aim to provide with the high level of victims’ protection and favourable policyholders’ status.

Despite the fact that Inception Impact Assessment inserts esoteric vehicles which produce engine movements corresponding to the scope of the Directive; the Proposal claims that member states may exempt latter from the scope of ‘vehicle’ for the purposes of the Directive if there is such a necessity²⁴. The above-stated fact might lead to the number of new uncertainties and disproportions which may cause the inability of the member states to ensure uniformly favorable coverage for the cross-border victims, as well as deterioration in victims’ right for compensation. Once the main goal of the MID is to improve the victims’ status smoothing and unifying the process of reimbursement, the exemption choice transferred to the member states should be considered as the contradiction to the aim of the Directive itself.

In judgment C-514/16 of 28th November 2017 the CJEU ruled on one more MTPL case involving a stationary agricultural tractor with the engine running to drive a spray pump for applying herbicide. In the above-mentioned case, the issue was brought for preliminary ruling by the *Tribunal Relação de Guimarães* (Court of Appeal, Guimarães, Portugal) in respect of the interpretation of the concept of ‘use of a vehicle’ for the purposes of MID. In the concerned case the incident occurred at an agricultural holding where the stationary tractor was working. The tractor was keeping the engine-on with the purpose to drive the spray pump for herbicide inside a drum mounted on the back of that tractor. Due to a heavy rain, the weight of the tractor, vibrations caused by the running engine and the spray pump, the tractor overturned and hit four employees working therein. That lead to a fatal incident. Third party has sued the insurer who rejected requiring the compensation for non-pecuniary losses in terms of pain and suffering. The issue, brought for further interpretation to the CJEU, contained a question whether the obligation in accordance with Article 3(1) of the First MID shall be applied to all vehicles at any place, regardless public or private area, in move or not, including the usage of the tractor, even though latter was standing still performing agricultural work.

In the light of the earlier *Vnuk* decision, CJEU pointed out that the concept of ‘use of a vehicle’ for purposes of the First MID is not only limited to the road use, but is also related to any vehicle usage considering the normal function of that vehicle, thus, the “[s]cope of the ‘use of a vehicle’ does not

²³ European Commission Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability. *Official Journal* COM/2018/336 final.

²⁴ European Commission Proposal for a Directive <...>.

depend of the characteristics of the terrain on which the motor vehicle is used²⁵ (the above-stated consideration was transferred to the codified determination of the ‘use of a vehicle’ within the Proposal to amend the Directive 2009/103/EC). Since the Directive itself precludes the usage of vehicle which is corresponded to the vehicle serving in terms of transport, it was unnecessary to rule on the static condition (vehicle standing still). Consequently, since the agricultural tractor caused death to the employee working at the same time nearby, it cannot be interpreted as a ‘use of a vehicle’ at the moment of the incident in terms of the MID.

Once the scope of the ‘use of a vehicle’ was not automatically implemented into the domestic legal systems of the member states, latter have either did not give any explanations in regard to the CJEU ruling or kept challenging interpretation in domestic courts. For instance, the UK’s courts have numerous times broadened the definition of ‘use of a vehicle’²⁶. The example is the decision within the *Dunthorne v Bentley*²⁷ case, where one person was stuck on the road as a consequence of an engine breakdown of the vehicle, another person was coming from the other side of the road with the aim to assist, and while crossing the road was hit by the vehicle driving in the regular traffic in that area²⁸. The driver of the latter vehicle was injured as a consequence of the incident, hence the driver made a claim on personal injuries to the insurer of the person who was crossing the road. The court interpreted such circumstances as the ones described in the scope of ‘use of a vehicle’ in the light of both Road Traffic Act of 1988 and the MID, thus reimbursed non-pecuniary losses in full, interpreting *fabula* as if the person crossing the road was using the vehicle at the moment of the accident.

In the *Gardner v Moore*²⁹ case, the claimant sued the driver who drove into the sidewalk and hit him³⁰. Despite the fact it was an intentional criminal act, however, it was interpreted as the one corresponding to the motor third party liability incident, and made it possible for claimant also to receive a compensation from the insurer of the perpetrator’s vehicle in accordance with the Directive. Although the above-mentioned court decisions have already broadened the scope of ‘use of a vehicle’, the Road Traffic Act of 1988 still does not meet the new frames explicated by CJEU within the *Vnuk* judgment, where ‘use of a vehicle’ was extended up to the stationary engine-on tractor and farm machines and the regular function of a ‘vehicle’ was introduced as the one which is not necessarily connected with moving and/or being in traffic.

At the same time, in accordance with Swedish approach, ‘in traffic’ (*skada till följd av trafik*) does not necessarily mean being in move, e.g. in the case where a vehicle operator started the vehicle’s engine in the winter and proceeded to brush the snow off the car, but suddenly fell down on a slippery road surface. As a result the vehicle operator has sustained injuries, the latter may bring a non-pecuniary losses claim to his/her own MTPL insurer, since the above-stated *fabula* will fall within the scope of ‘use of a vehicle’ under Swedish law (including the fact of non-pecuniary losses sustained by the owner/operator of the same insured vehicle) as follows from the Court practice in Sweden. In accordance with French law, namely *Loi n° 85-677*³¹, the vehicle may not be necessarily in a traffic to be granted a status of the participant of a car accident. Thus, it might be a case when stationary

²⁵ *Isabel Maria Pinheiro Vieira Rodrigues de Andrade* <...>, Para 35.

²⁶ *Berrymans Lace Mawer (BLM) Motor Group* <...>, p. 6.

²⁷ *Dunthorne v Bentley and another*. CA 26 February 1996, EWCA Civ 1353, [1996] PIQR P323.

²⁸ *Berrymans Lace Mawer (BLM) Motor Group* <...>, p. 6.

²⁹ *Gardner v Moore*. HL 1984, [1984] AC 548.

³⁰ *Berrymans Lace Mawer (BLM) Motor Group* <...>, p. 7.

³¹ *Loi n° 85-677* du 5 juillet 1985 tendant à l’amélioration de la situation des victimes d’accidents de la circulation et à l’accélération des procédures d’indemnisation. Version consolidée au 17 septembre 2018.

vehicle could burn down while being parked at the whatever parking area and could cause losses of the property for a third party (e.g. road infrastructure, road surface, environmental losses, real estate, etc.). Contrary to French approach, the above-stated scenario occurred in Lithuania, when the vehicle of the insurer burned down while standing still. The claim of the insurer was rejected as the incident was not interpreted within the scope of ‘use of a vehicle’ for the purposes of the motor third party liability.

In the light of the Proposal the amendment to Article 1 of the MID provides with compulsory uniform codification of the determination of ‘use of a vehicle’³² seeking to eliminate existed uncertainties among the European Union member states. Uniformed scope of the baseline concept inserted within the Directive might smooth victims’ exercise of the right for compensation.

2. Interaction between Employer’s Liability (EL), Public Liability (PL) and MTPL insurances

The *Vnuk* judgment has also raised sufficient issue of interaction between Employer’s Liability (EL), Public Liability (PL) and MTPL insurances in the context of uncertainty of applicable provisions. EL insurance protects employees through guarantee of losses coverage that do not fall within the scope of worker’s compensation in a common sense. EL insurance protects legal entities from compensating employees in regard to the workplace injuries directly, illnesses and deaths that are beyond the scope of employees’ compensation. For instance, MID provides with the requirement in regard to the motor insurer to cover liability for personal injuries of passengers caused as a result of vehicle usage rather than for a driver, while EL insurer shall provide with the coverage of personal injuries of employees who suffered as a result of being either passengers or drivers themselves while using a vehicle for business purposes. However, in case an employee sustained non-pecuniary losses within the road accident occurred due to the fault of the driver covered by MTPL insurance, the EL insurance should be out of settlement scope. An injured party has an indisputable right to make a claim to the EL insurer, as well as to require compensation the MTPL insurer.

In the light of the *Vnuk* decision which broadened the scope of the geographic area where vehicle can be used, appeared a risk of uncertainty which is connected with the employees who suffered personal injuries during the course of work in terms of vehicle usage in the private area, such as company’s territory. Consequently, in case car collision has taken place where particular party was found liable, those employees have the right to make a claim to the MTPL insurer rather than to the EL insurer. In terms of the earlier UK’s case ruling within the *Axa v NU* case when the employee working at the *cherry picker*³³ could not be treated as the one being carried in a vehicle in terms of the MID, thus a personal injury claim could not be relevant to the scope of the motor third party liability insurance³⁴. In *Axa v NU* case, the court established that a person sustained non-pecuniary losses during the normal course of work shall be covered by the EL insurance. Nevertheless, particularly following the *Vnuk* judgment and the broadened scope of both ‘vehicle’ and ‘use of a vehicle’, appeared a huge uncertainty whether at the end of the day such case might be applied within the scope of the MID.

Bearing in mind interactions between EL and MTPL insurances, two main consequences should be analysed further, in particular a) double-compensation cases and b) compensations below the monet-

³² Article 1 “1a. ‘use of a vehicle’ means any use of such vehicle, intended normally to serve as a means of transport, that is consistent with the normal function of that vehicle, irrespective of the vehicle’s characteristics and irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion”.

³³ Cherry picker is a hydraulic crane with a railed platform at the end for raising and lowering people.

³⁴ *Berrymans Lace Mawer (BLM) Motor Group* <...>, p. 9.

ary limits victims are entitled by Law. In the first case scenario, victim suffered non-pecuniary losses as a consequence of vehicles' collision during the ride for business purposes might bring a claim to both EL and MTPL insurers at the same time. Taking into account there is no mutual database collecting EL and MTPL insurers' files, in the end of the day it might be a case of double-compensation. In accordance with the Motor Insurance Directive all member states must collect data in regard of road traffic collisions has taken place in particular state within the Motor Insurers Bureau's database, which makes it possible to track whether particular car accident was already registered within the system. In the meantime, there is no possibility to track incidents that were registered in EL insurers' system. Accordingly, until EL insurer brings a recourse claim against the insurance company where motor third party liability of the liable driver was covered, victim might be a subject received double compensation for the same incident. In the second case scenario, victim suffered personal injuries in traffic collision during a ride for business purposes, might bring a claim against EL insurer only. In such a case, victim might be a subject receiving compensation within the monetary limits established by EL insurance contract. It has to be said that there are no minimum amounts of coverage established for the purposes of the EL insurance at the European Union level, hence insurance contract may limit the amount to be settled³⁵. Regulation (EC) No 118/97³⁶ addresses social security schemes at the European Union level in the precise manner, in particular covers aspects with regard to the accidents at work. However, Regulation does not provide with the minimum amounts of coverage that might protect victims sustained losses caused by road traffic collision, which has taken place in course of a ride for business purposes. Oppositely, Motor Insurance Directive provides with the minimum amounts of coverage must be established in each member state, which means that victim is entitled to reimbursement within the limits established by MID. In the above-stated case, claimant might be a subject of a lower compensation than one is entitled by Law. It has to be said that in case neither EL nor MTPL insurance mechanisms provide with the well framed regulation on the case transfer and/or mutual database (for traffic accidents only), both double compensation scenario and reimbursement that does not correspond to victim-favourable limits might take a place.

Despite the existence of both MTPL and EL insurances, there is also the public liability (PL) insurance which forces to deal with particular uncertainties in the liability claims management compacting the access to the right for compensation. PL insurance is necessary to protect businesses from public claims in respect of sustained both personal injuries and material damages caused as a result of a business performance in a public area. Following the *Vnuk* judgment in particular, appeared the issue whether both personal injuries and material damages which occurred as a result of vehicle usage for both business and household purposes and whether it might be related to the scope of the MID instead of the public liability insurance as it used to be before.

The risk of uncertainty among EL, PL and MTPL insurances is also increasing due to the perspective of the limits of compensation. While the PL coverage is the subject to unlimited policy in respect of sustained personal injuries, the MTPL limits are framed within the Directive providing the ultimate amount of coverage³⁷. Bearing in mind the aim of the victims' rights within the European

³⁵ For instance, in Great Britain there is a limit up to 5 million pounds with regard to the EL insurance coverage. EL insurance is compulsory insurance that is covered by Employers' Liability (Compulsory Insurance) Act 1969.

³⁶ Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71. *Official Journal* L 28.

³⁷ Communication from the Commission to the European Parliament and the Council, The adaptation in line with

Union dimension, it is the matter of time when the ultimate interpretation will strengthen victims' position in respect of the higher compensation by either increasing the limits indicated within the MID or transferring non-pecuniary claims to the body to guarantee a higher coverage. The Proposal does not contain any data related to EL, PL and MTPL coincidences provoking further uncertainties and, perhaps, obstacles. However, taking into account the ultimate goal of the insurance coverage in general, it must be admitted that as long as there is a possibility to bring civil liability damage claim in terms of the civil law which is established within all member states' legal systems, there is no necessity to include all risks within one particular block of insurance sector (EL, PL or MTPL either).

3. Regulation of losses caused during the motorsport events after the Vnuk judgment

Motorsport is one of the areas *Vnuk* judgment might turn the way round all primary practice in respect to the liability which arises out of usage of motorsport transport during the motorsport events. Bearing in mind the fact that the *Vnuk* judgment dismissed previous frames regarding the scope of 'vehicle' and 'use of a vehicle', motorsport transport became the one framed under the EU law in terms of the MTPL insurance. Prior to the *Vnuk* decision it was usual to claim both pecuniary and non-pecuniary losses caused as a result of motorsport transport which was performing during the motorsport event. Furthermore, some member states have provided with much narrowed definitions of the 'vehicle' and 'use of a vehicle' within their domestic laws and due to that motorsport transport was fully out of scope of the MTPL coverage. For instance, the Road Traffic Act of 1988 narrowed the definition of the 'vehicle' up to the 'mechanically operated vehicles adapted to the road usage'³⁸, while motorsport transport could not be treated as the vehicle adapted to the same purpose. Due to the particular requirements, an obligation to re-consider their currently valid domestic legal provisions in respect of the concerned matter was put on the member states.

Motor Sports Association must authorize the motorsport events, by enforcing all bodies organizing the motorsport performance to obtain public permission in case they are willing to organize such an event. In case participants and/or motorsport event visitors either sustain personal injuries or property damages, the PL insurance should provide with coverage of latter losses. The complication might arise out of the motorsport event in case the latter was not authorized by the public governmental body, thus neither personal injuries nor material damages would be covered by the PL insurance. In the light

inflation of minimum amounts of cover laid down in Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability. *Official Journal* COM/2016/246 final. In accordance with the above-stated Communication: 1. in the case of personal injury, the minimum amount of cover is increased to 1 220 000 EUR per victim or 6 070 000 EUR per claim, whatever the number of victims; 2. in the case of material damage, the minimum amount is increased to 1 220 000 EUR per claim, whatever the number of victims. It has to be said that particular member states have different minimum amounts of cover due to their transposition periods, namely Slovakia and Slovenia (transposition period ended in December 2011): a. in the case of personal injury, the minimum amount of cover is increased to 1 050 000 EUR per victim or 5 240 000 EUR per claim, whatever the number of victims; b. in the case of material damage, the minimum amount is increased to 1 050 000 EUR per claim, whatever the number of victims. Czech Republic, Greece and Latvia (transposition period ended in May 2012), as well as Bulgaria, Estonia, Italy, Lithuania, Malta, Poland, Portugal and Romania (transposition period ended in June 2012): a. in the case of personal injury, the minimum amount of cover is increased to 1 050 000 EUR per victim or 5 210 000 EUR per claim, whatever the number of victims; b. in the case of material damage, the minimum amount is increased to 1 050 000 EUR per claim, whatever the number of victims.

³⁸ The Road Traffic Act 1988 <...>, Section 143.

of the above-mentioned fact the MTPL insurance after the *Vnuk* judgment should be recognized as a new guarantee for victims suffered both pecuniary and non-pecuniary losses as a cause of the use of motorsport during the motorsport performance. Nevertheless, there is a huge range of the queries which are still remain unsolved, such as liability relations between one motorsport transport driver in regard to another equal vehicle driver; and a motorsport vehicle driver in regard to the passengers, co-drivers and navigators.

In the light of the Proposal, the hard measures have to be taken in respect of the codification of the concept of ‘use of a vehicle’, bearing in mind that stakeholders have failed to prove that the latter will generate any excessive costs³⁹. European Commission provided with the argument that certain member states have already integrated particular provisions within their domestic legal systems in the light of the *Vnuk* judgment considering imposition of the MTPL coverage for the concerned vehicles during the motorsport events. Here, it should be stressed that the above-stated argumentation within the Proposal leads to the conclusion that the baseline reason of codification of the term ‘use of a vehicle’ is insufficient administrative costs.

Consequently, the re-consideration of the MID in the light of both *Vnuk* judgment and further European Commission’s Proposal added even more uncertainties by including motorsport incidents into the scope, and by doing that undermined the victims’ right for compensation.

Recommendations and conclusions

In the course of the research the author ended up with the following conclusions:

1. CJEU judgment in *Damijan Vnuk v Zavarovalnica Triglav d.d. (Vnuk)* provided with the significant impact within the scope of motor third party liability regulation throughout the European Union, concluding that compulsory motor insurance shall be applicable in respect to any use of vehicle consistent with the normal function of that vehicle, broadening the concept of ‘vehicle’ up to the agricultural technique vehicles, electrically power assisted cycles (EPACs), Segway, cherry-pickers, motor scooters, etc. At the same time, the *Vnuk* Judgment abolished all previous restrictions distinguishing private and public areas, roads and motorsport tracks in terms of the concept of ‘use of a vehicle’.
2. *Vnuk* decision pointed out that the concept ‘vehicle’ shall be distinguished from the concept of ‘use of a vehicle’, separating vehicle’s mechanical parameters and the scope of applicability.
3. Once the scope of applicability was broadened up to the usage beyond the public roads, it made particular domestic regulations of the member states be contrary to the European Union law.
4. An exemption right in respect of the types of transport which are inserted within the scope of ‘vehicle’ for the purposes of the Directive might lead to the number of new uncertainties and disproportions whereas member states will not be able to ensure uniformly favorable coverage for the cross-border victims, hence to deteriorate victims’ right for compensation. Once the main goal of the Proposal is to improve victims’ status smoothing and unifying the process of reimbursement, the exemption choice transferred to the member states should be considered contrary to the aim of the Directive itself.
5. In the light of the *Vnuk* decision which broadened the scope of the geographic area of vehicle usage, there is a risk of uncertainty that the employees suffered personal injuries during the course of work in terms of vehicle usage in the private area, such as company’s territory, might be able to

³⁹ European Commission Proposal for a Directive <...>, p. 9.

make a claim to the MTPL insurer rather than EL insurer. The risk of the uncertainty among EL, PL and MTPL insurances is also arising because of the perspective of compensation limits. While the PL coverage is a subject of unlimited policy in respect to the personal injuries suffered, the MTPL limits are framed within the Directive and address limited amount of coverage. The Proposal to amend the Directive does not correspond to the above-stated issue, hence does not contain any data in regard of the possible uncertainties.

6. Re-consideration of the Motor Insurance Directive which addresses liability solution in respect of the losses caused during the motorsport events might be a wrong step confusing victims even more. It must be admitted that it also provides with the opportunity to perform fraudulent acts in a concerned area must take into account that employers and organizers of different range of the motorsport events might be out of burden to ensure both personal injuries and material damages compensation as they might pass all responsibility to the person who was operating the vehicle in terms of a mobile device.

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Transporto priemonių valdytojų civilinė atsakomybė po 103/2009/EB direktyvos ESTT išaiškinimo *Vnuk* bylos sprendime

Olga Shevchenko

S a n t r a u k a

Po to, kai ES piliečiams buvo suteikta judėjimo laisvė pagal ES pagrindinių teisių chartijos 45 straipsnį, atsirado galimybė laisviau ir dažniau kirsti Europos Sąjungos šalių narių teritorijas įvairiomis transporto priemonėmis asmeniniais ir komerciniais tikslais, dėl to stipriai išaugo transporto priemonių eismas. Vairuodami žmonės paprastai nesusimąsto apie tikimybę patekti į eismo įvykį ir tikriausiai nepagalvoja apie galimus įvairius sunkumus siekiami gauti kompensaciją. Europos Sąjungos atsakingos institucijos sukūrė didžiulį mechanizmą, skirtą kompensuoti eismo įvykio metu patirtą turtinę ir neturtinę žalą nukentėjusiems asmenims. Vis dėlto išliko tam tikrų spragų ir neaiškumų, kurie sukelia sunkumų nukentėjusiems asmenims, siekiantiems pasinaudoti teise gauti visą ir juos tenkinančią kompensaciją.

Po to, kai 1972 m. buvo priimta pirmoji Transporto priemonių draudimo direktyva, Europos Sąjungos Teisingumo Teismas (toliau – ESTT) daug kartų aiškino klausimus, susijusius su esamų spragų užpildymu, tokiu būdu vystydamas teisinį instrumentą, skirtą pagerinti nukentėjusių nuo eismo įvykio asmenų teisinę padėtį. Straipsnyje nagrinėjamas ESTT sprendimas *Damijan Vnuk prieš Zavarovalnica Triglav d.d. (Vnuk)* byloje, kuris įpareigojo užtikrinti didesnę apsaugos lygį asmenims, nukentėjusiems dėl eismo įvykio. Taip pat straipsnyje tiriami dėl aukščiau minėto ESTT sprendimo atsiradę teisinio reglamentavimo neaiškumai, susiję su transporto priemonių valdytojų civiline atsakomybe.