The concept of a "traffic event" in EU jurisprudence

The Court of Justice of the European Union determines that a person falling due to a patch of oil spilt in a garage by a vehicle is a traffic event

Decision of the Court of Justice of the European Union of 11 December 2019

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1. Introduction

To be able to refer to an accident as covered by the Law on civil liability and insurance in the use of motor vehicles, which was endorsed by Royal Decree-Law (RDL) 8/2004 of 29 October (the "LRCSCVM" for the Spanish), it must be categorised as a "traffic event" caused by a "motor vehicle". If these two circumstances are not attendant, the special regulatory framework that is established in the LRCSCVM and its regulations does not apply.

What we are dealing with are the two most basic and decisive circumstances in civil liability from road traffic. For this reason, doctrinal commentaries have questioned the fact that both of these concepts, which determine the scope of application of the law, have been relegated by Article 1.6 of the LRCSCVM to regulatory implementation of it.

As matters stand, both concepts are being studied by EU institutions with the aim of adapting the regulatory framework of Member States to the latest jurisprudence of the Court of Justice of the European Union, which was initiated by the CJEU Judgment of 4 September 2014 (the Vnuk case), which was followed by the CJEU Judgments of 28 November 2017 (the Rodrigues de Andrade case), 20 December 2017 (the Núñez Torreiro case), 4 September 2018 (the Juliana case), 15 November 2018 (the Balcia Insurance case), 20 June 2019 (the LDA case) and the Decision of 11 December 2019 (the Zurich Insurance case), which is the subject of this commentary.

These court decisions are framing the concepts of "motor vehicle", which is in fact defined in the 2009 codified Directive and, above all, that of "use of vehicles", which is not defined in the Directive, although, as we shall go on to examine, the Court of Justice of the EU is working on outlining it, given that, as it stated in the CJEU Judgment of 4 September 2014 (the Vnuk case), this is an independent concept, the interpretation of which cannot be left to each Member State to determine. This assertion is perhaps the one which has, as a result of

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It is therefore sometimes not necessary for the vehicle to be moving in those places which we have mentioned for it to be possible to speak of traffic accidents. In this case the decisive issue will be that events should be within the realm of traffic, i.e. they should be part of traffic risk. The most everyday examples are vehicle fires which cause damage to other vehicles or property, motorbike falls or vehicles moving without having been started yet with the same effect, loss that occurs on getting into or out of a vehicle, etc.

this judgment, led to courts in the Member States seeking preliminary rulings on various issues relating to this matter, which have in turn brought about the judgments listed in the preceding paragraph.

For these reasons, on 24 May 2018, the "Proposal to amend 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" was brought before the European Commission.

2. The concept of a "traffic event"

The notion of a "traffic event" or, to use the CJEU's terminology, "use of vehicles", is (as already stated) currently subject to review by European institutions to adapt the regulatory framework of Member States to the latest jurisprudence of the Court of Justice of the EU. Therefore, after examining the matter of the Spanish legal system, we shall refer to these CJEU judgments, as well as to the Proposal to amend codified Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles.

2.1. Definition of a "traffic event" in Spanish law

The definition of "traffic events" is regulated in Article 2 of the currently effective Compulsory motor car third-party liability insurance (MTPL) Regulations. Paragraph one, which lays down the general rule on what "traffic event" should be taken to mean, retains the same wording as the previous Regulations. It thus once again refers to the risk created by driving motor vehicles and says that "traffic events are understood to mean those arising from the risk created by driving the motor vehicles that are referred to in the preceding paragraph".

Section two of paragraph one contains the spatial element in the definition. It indicates the places where traffic accidents or events can happen: garages and carparks, public and private roads or land suitable for vehicle use, in both an urban and inter-urban context, as well as roads or land commonly used even if they are not suitable as described.

We note that, with respect to the regulations which they replaced, the reference to garages and carparks is kept, since manoeuvres at the start or end of the drive generate minor risks which, though debatable in certain cases, such as on getting into or out of a vehicle that is stationary or a blow involving a vehicle door, fall within the scope of driving and are generally held to be traffic events as a result.

It can be seen that, given such a broad definition, in principle and has had been the case previously, it is unlikely that any accident caused by a motor vehicle would stand outside the scope of application of the special regulatory framework that we are discussing. Only in those cases where vehicle access is virtually impossible or circumstances that are expressly excluded as traffic events under our current regulations, as is very common with respect to industrial or farming activities, will they not fall within the scope of traffic events.

In this regard, doctrine and jurisprudence have taken the view that the concept of a "traffic event" is of a *de facto* nature where, to define it, a complex set of factors needs to be taken into account, such as the vehicle type in each case, the activity which they are used for and the site where the loss event takes place. The general rule is that traffic events (which can be regarded as such for our purposes here) are linked to the dynamics that are characteristic of the motor vehicle itself and its movement in spatial terms for the transportation ends which are involved in them.

Whatever the case, the definition of a traffic event in the regulations must be associated with driving vehicles, even if their engine has stopped, because such cases can also entail a risk for road users (let us imagine for a moment those accidents that are caused by not activating the vehicle's safety mechanisms properly, which causes them to move without a driver).

It is therefore sometimes not necessary for the vehicle to be moving in those places which we have mentioned for it to be possible to speak of traffic accidents. In this case the decisive issue will be that events should be within the realm of traffic, i.e. they should be part of traffic risk. The most everyday examples are vehicle fires which cause damage to other vehicles or property, motorbike falls or vehicles moving without having been started yet with the same effect, loss that occurs on getting into or out of a vehicle, etc.

Even though our case law is not unanimous in this respect, we can say that, generally speaking, such cases are understood to be traffic events, either because it is considered that they are part of traffic risk (electrical faults, short-circuits, parking the car without applying the safety mechanisms, etc.) or on account of the effects of the criterion for assigning liability in the LRCSCVM, which compels the insurer of the person originating the loss to prove, for example, that a vehicle fire for which they are liable was attributable to *force majeure*, the action of a third party or the exclusive fault of the victim.

2.2. Exceptions to consideration as traffic events

Article 2.2 of the MTPL Insurance Regulations governs cases that stand outside categorisation as an accident or a traffic event, such as taking part in sporting events, performing industrial or farming work, travelling on roads not suited for traffic and using the vehicle as a means of committing intentional crimes.

These are situations where, although the accident occurs with the involvement of a motor vehicle (and even in some cases in a place that is suitable for traffic), there is express exclusion in the regulatory norm on various different grounds, since they are viewed as being removed from traffic activity. The reason for exclusions of this kind is clearly warranted, which does not mean that it is immune from various problems being raised in practice on account of the vast assortment of cases that emerge. Here we are referring to activities or events where there is no intention to move as traffic.

We should note that some of these exclusions are currently open to debate as a result of legal precedents that have emerged from the Court of Justice of the European Union. Thus the exclusion as a traffic event of motor vehicles travelling on roads or land where the legislation stated in Article 1 does not apply runs counter to what is determined in the CJEU Judgment of 20 December 2017. Let us not forget that the jurisprudence of the Court of Justice of the EU constitutes Community Law and therefore compels the legislating state to amend any legal provision that opposes it according to the interpretation offered by said court. Likewise judges are also obliged to apply the jurisprudence pronounced by the Court of Justice in its interpretation of Community Law.

2.3. The influence of EU jurisprudence

With regard to this matter we have to stress the influence which the jurisprudence of the Court of Justice of the EU has been exerting in favour of treating these accidents as traffic events, starting with the CJEU Judgment of 4 September 2014. In this judgment the European Court indicated to us that if a vehicle performs a function that is usual for it, then we are dealing with a traffic event.

There have subsequently been two pronouncements by the Court of Justice of the EU regarding this same question. The first, which was raised by a Portuguese court, was decided in the CJEU Judgment of 28 November 2017. This concerned a claim by the aggrieved parties in connection with a female Portuguese citizen who had died in an accident that occurred on a farm where she was working.

In this case she was crushed by a tractor that had been halted on a flat earthen path with the engine running to operate a herbicide spray pump. The EU Court concluded that losses caused by work machine vehicles should only be covered by the MTPL insurance when they are being used as a means of transport, which was not what happened in this case.

The second case, which was pronounced on in the CJEU Judgment of 20 December 2017, relates to a matter referred for a preliminary decision by a Spanish court (the Albacete Provincial High Court). The facts concern an accident caused by a lieutenant in the armed forces who was in a vehicle when he was taking part in night-time military exercises in a practice area located in Chinchilla (Albacete).

In this case the EU Court held that the military vehicle was being used as a means of transport at the time when it overturned and therefore that the concept of "use of vehicles" in Article 3 of Directive 2009/103 should be construed in the sense where it contradicts national legislation (Art. 2 of Royal Decree 1507/2008), which allows the exclusion from MTPL insurance cover of losses caused by driving motor vehicles on roads or land that are "not suitable for vehicle use", except for those which, though not suitable as described, are nevertheless "commonly used".

More recently the CJEU has again pronounced on this matter. This was in the CJEU Judgment of 15 November 2018. In this case, the European Court decided on an issue raised by a Latvian Court, which asked it whether the concept of "use of vehicles" regulated in the 2009 codified Directive includes a situation such as that in the main litigation, i.e. the opening of the doors of a parked vehicle which causes damage to the vehicle that was next to it. In this judgment the CJEU concludes that "Article 3 of Directive 72/166 should be interpreted in the sense that the concept of 'use of vehicles' to which the abovementioned provision refers includes a situation where the passenger of a vehicle parked in a carpark strikes and damages the vehicle parked next to it when they open the door of the initial vehicle."

In 2019 there were two other pronouncements by the CJEU. The first of them was referred by Spain's Supreme Court and concerns the damage caused by the fire suffered in the electrical circuit of a vehicle acquired by its owner only days beforehand, on 20 August 2013. At the time when the fire occurred, at 3:00 hrs on the day in the court records, the vehicle was parked in the garage of a single family home owned by the company Industrial Software Indusoft S.L., where it had been parked without being driven for more than twenty-four hours. The Supreme Court asked the EU Court whether an interpretation contradicts Article 3 of Directive 2009/103/EC which includes the damage caused by the fire in a parked car in the compulsory insurance cover when the fire originates from the mechanisms required for the vehicle to perform its transport function.

In its judgment of 20 June 2019 the CJEU accepts that a situation counts within the concept of "use of vehicles" where a vehicle parked in a private garage burns and causes a fire that originates in its electric circuitry and damages the building, even though the vehicle has been stationary for over 24 hours at the time when the fire breaks out.

The CJEU holds that parking and the period in which a vehicle is stationary are natural and necessary states that are an integral part of its use as a means of transport. As a result, the vehicle is in principle being used in its role as a means of transport while it remains parked between two journeys.

The second matter heard by the EU Court in 2019 relates to a person falling over due to a patch of oil in a garage, which is the object of this commentary and so we shall analyse it in section three of this article.

2.4. Amendment of the Motor Vehicles Directive

Having looked at the latest CJEU judgments, we should note that the 2009 codified Directive does not establish a definition of "use of vehicles". For this reason it is the CJEU which is weaving together its case law on this matter and stating in some of its decisions that, on the one hand the concept of "use of vehicles" represents an autonomous concept in EU Law, where its interpretation cannot be left to determination by each Member State, while on the other hand the EU legislator has constantly pursued and stiffened its resolve to protect the victims of accidents caused by these vehicles.

This has meant that the key reason for the Proposal to amend the Directive cited is to reflect the case law of the EU Court. Thus the Proposal of 24 May 2018 says that: "A number of judgments of the Court of Justice of the European

Union, mainly those in the "Vnuk", "Andrade" and "Torreiro" cases, have clarified the scope of the Directive." It goes on to add that "... to ensure legal certainty and clarity, the present proposal codifies the Court jurisprudence in EU legislation. This ensures uniform implementation of the Court case law in national law".

As we have seen, the CJEU bases itself on a very broad understanding of what "use of vehicles" should be taken to mean bearing in mind the role characteristic of each vehicle, regardless of the road or terrain on which it travels or in cases of getting into or out of them. It has also held that damage caused by a stationary vehicle falls within the concept of "use of vehicles" if its purpose is as a means of transport (CJEU Judgment of 20 June 2019).

For this reason the Proposal to amend the 2009 Directive adds a continuation to paragraph 1 of Article 1 therein, and determines that "motor vehicles are intended normally to serve as means of transport, irrespective of such vehicles' characteristics, and that the use of such vehicles covers any use of a vehicle consistent with its normal function as a means of transport, irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion".

At the time of writing, we are immersed in this legislative process and cannot guess what the future holds for this proposal, since there is a whole raft of finer points that need to be ironed out and it seems that there is no consensus among Member States yet.

3. Analysis of the Decision of the Court of Justice of the European Union of 11 December 2019

In this case the lady owning a motor vehicle had MTPL cover with Zurich Insurance. The vehicle was parked normally in a private garage space belonging to the owner. Due to its mechanical condition, the vehicle was leaking oil and other fluids, which ended up spreading out into neighbouring parking spaces.

On 19 September 2015, the claimant in the case was going to pick up her own vehicle which was parked in one of the adjacent spaces, when she slipped on a patch of oil and sustained bodily injury after falling onto the ground. On account of this she filed an out-of-court claim with the insurer of the vehicle which was leaking, and after it turned her down she brought a claim against the owner of the vehicle and her insurer, alleging that she had been injured as a result of a traffic accident and claiming for damages for the bodily injury and property damage which she had sustained from falling over.

The court of first instance found in favour of the claimant, since it understood that the case indeed concerned a traffic event because using a vehicle in garages is a situation that is covered as such in Spanish law. After this ruling, both the owner and her insurer filed an appeal with the Zaragoza Provincial High Court, which in turn referred the matter for a preliminary decision to the CJEU.

With regard to this matter, the Zaragoza Provincial High Court understood that the issue at the heart of it turned on determining whether, in light of Article 3 of Directive 2009/103/EC, a situation such as that in the core litigation can be considered to be a "traffic event" (where ordinary use of the vehicle leads to it leaving a patch of oil both at the space where it is normally parked and over the surrounding area due to its mechanical condition and this produces third party risk) and can therefore fall within the orbit of the obligation to insure motor vehicles.

In its recitals, and as it had already done in the CJEU Judgments to which we have referred in earlier paragraphs, the EU Court alludes to the twin aims in the motor vehicles insurance directive (2009/103/EC) of guaranteeing, on the one hand, the free movement of both vehicles normally parked on EU territory and the persons occupying them, and on the other hand, that the victims of accidents caused by such vehicles receive comparable treatment wherever the accident has taken place within the European Union.

Furthermore, as it already said in the CJEU Judgment of 20 June 2019 (the vehicle fire), it maintains that developments with regard to this legislation make it clear that the EU legislator has constantly pursued and stiffened its resolve to protect the victims of accidents caused by such vehicles.

So, to justify its final decision, the CJEU makes reference to previous judgments concerning this matter, saying that the fact that a vehicle which has taken part in an accident was stationary at the time when it took place does not in itself rule out the possibility of the use of the vehicle at the time being included within the scope of its function as a means of transport, and therefore within the concept of "use of vehicles" for the purposes of Article 3, paragraph one, of Directive 2009/103/EC. Neither is it decisive whether the engine of the vehicle in question is running or not at the time when the accident takes place (CJEU Judgment of 20 June 2019).

Finally, in response to the preliminary decision sought, it rules that Article 3, paragraph one, of Directive 2009/103/EC should be construed to mean that the concept of "use of vehicles" therein should be taken to include a situation where a vehicle that has manoeuvred or been parked in a private garage causes an accident in the garage by dint of its function as a means of transport.

4. Conclusions

In the Decision of 11 December 2019, the CJEU again refers to what "use of vehicles" should be understood to mean and, as we have seen, broadens this concept, once more endowing it with the kind of proportions to extend to and protect traffic accident victims. It will thus be unlikely that any accident caused by a motor vehicle can escape being considered as a "traffic event" covered by compulsory civil liability insurance or, if this does not exist, by the guarantee fund in the country where the vehicle concerned is normally parked.

As can be noted, not just from this decision, but also from all those where it has ruled on this matter, the EU Court confers a very broad interpretation on the concept of a "traffic event" and even includes situations where the vehicle is parked, driving on roads unfit for this purpose, or engaging in farm-work, etc. Such an extensive interpretation is to some extent at loggerheads with the provisions of Article 2 of the MTPL Insurance Regulations, which lays down certain exclusions which would run counter to EU jurisprudence.

This situation produces a certain degree of legal uncertainty for those of us among the various stakeholders who have to interpret these matters. Moreover, these decisions could have an impact on how we insure certain vehicles in Spain. At the moment, what we might consider to be business, industrial or farming activities are covered by means of liability insurance that is specific to them and separate from MTPL insurance. In other cases, these vehicles are covered by the business operation liability insurance of the enterprise for which they perform such tasks. Obviously, besides performing these activities, when these vehicles travel on public, private or commonly-used roads, they must also have the relevant MTPL insurance.

In any event, let us hope that work concludes soon on amending Directive 2009/103/EC which, as we said earlier, among other things is aimed at integrating EU jurisprudence on the "use of vehicles". Thus, once the amendment has been approved, we shall have to adapt our legislation to accommodate the provisions in it, which will lead to current contradictions being clarified and, most importantly, the necessary legal certainty will be achieved.