CZECH LEGISLATION ON MOTOR VEHICLE LIABILITY INSURANCE BEFORE AND AFTER THE TRANSPOSITION OF THE MID DIRECTIVE IN TERMS OF ITS COMPLIANCE WITH SELECTED CASE LAW OF THE EU COURT OF JUSTICE

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Abstract: In terms of its scope and impact, motor vehicle liability insurance is one of the most important forms of compulsory insurance in the Czech Republic. Given the fundamental cross-border implications of vehicle operation ("use of vehicles"), this topic is greatly affected by EU legislation. The most recent amendment to EU legislation in this area was introduced by 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 motor vehicles, and the enforcement of the obligation to insure against such liability. This Directive was transposed into Czech law by a completely new piece of legislation, specifically Act No. 30/2024 Sb., on motor vehicle liability insurance. According to the Czech Ministry of Finance, one of the objectives of the new legislation was to take account of European case law and experience.
This article therefore aims to assess the compliance of the Czech legislation governing this insurance with selected case law of the EU Court of Justice, both prior to [i.e., with regard to Act No. 168/1999 Sb., on motor vehicle liability insurance and on amendments to certain related laws (Act on motor vehicle liability insurance), as amended] and following the transposition of Directive 2021/2118/EU.

Keywords: insurance; liability insurance; motor vehicle liability insurance; damage; compensation of damage

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I. INTRODUCTION

Motor vehicle liability insurance can be regarded as one of the most significant forms of compulsory liability insurance not only in the Czech Republic, but also in other member states of the European Union, both in terms of the number of vehicles to which the insurance applies and the number of insurance policies taken out, and in terms of the persons who may be affected by motor vehicle liability and its insurance. This refers to vehicle owners and operators, drivers, policyholders, insured persons, direct

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victims (especially those who have suffered harm to health), and secondary victims such as surviving family members.

Given the nature of vehicle operation ("use of vehicles"), this is also an issue with major international implications and has therefore been regulated for many decades by EU directives. Developments in this field necessitated amendments to the harmonisation legislation, leading to the gradual adoption of five "motor vehicle directives"[1]. This was followed by Directive 2009/103/EC of the European Parliament and of the Council 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, constituting a codified version of the first to fifth motor vehicle directives.

The most fundamental legislation currently in force in the European Union is arguably Directive 2021/2118/EU of the European Parliament and of the Council of 24 November 2021 (hereinafter the "MID Directive"), amending Directive 2009/103/EC of the European Parliament and of the Council.

In the wake of the MID Directive, the Czech legislation on motor vehicle liability insurance also underwent a fundamental change in 2024 – after almost 25 years. Act No. 168/1999 Sb., on motor vehicle liability insurance and on amendments to certain related laws (Act on motor vehicle liability insurance), as amended (hereinafter the "original Act"), which entered into force for the most part on 1 January 2000 and was replaced by an entirely new legislative act – Act No. 30/2024 Sb., on motor vehicle liability insurance (hereinafter the "new Act"), with most of its provisions entering into effect on 1 April 2024.

In order to harmonise Czech legislation with the requirements and objectives of the MID Directive, the Czech legislature chose to enact completely new legislation instead of amending the existing law, as was the case in some other countries (for example, the Slovak Republic decided to merely update the existing law, with effect from 1 August 2024[2]). Moreover, this occurred in a situation where Czech legislation had already undergone changes, *inter alia*, following the adoption of Act No. 89/2012 Sb., the Civil Code, as amended[3] (hereinafter the "new Civil Code").

One of the stated objectives was to take into account European case law and experience.

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[1] Council Directive 72/166/EEC of 24 April 1972 on the Approximation of the Laws of Member States Relating to Insurance Against Civil Liability in Respect of the Use of Motor Vehicles, and to the Enforcement of the Obligation to Insure Against Such Liability; Second Council Directive 84/5/EEC of 30 December 1983 on the Approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles; Third 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 Motor Vehicles; 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 Motor Vehicles and Amending Council Directives 73/239/EEC and 88/357/EEC (Fourth Motor Insurance Directive); and Directive 2005/14/EC of the European Parliament and of the Council.

[2] Original Slovak Act No. 381/2001 Sb., on compulsory motor third-party liability insurance.

[3] By Act No. 303/2013 Sb., Amending Certain Legislative Acts in Connection with the Adoption of the Recodification of Private Law.

The judgments of the EU Court of Justice (hereinafter the "CJEU") examined by the sponsor of the bill introducing the relevant legislative amendment are set out in the explanatory memorandum.

The aim of this paper is to assess the compliance of the Czech motor vehicle liability insurance legislation prior to the new Act with selected judgments of the CJEU mentioned in an explanatory memorandum to the new Act. It is essential to analyse the extent to which the original legislation on motor vehicle liability insurance was contrary to this case law, whether any such inconsistencies justified the need for such a far-reaching change to domestic legislation, and whether the new legislation, the new Act, ensured compliance with the existing European approach and case law of the CJEU. The analysis relates solely to selected judgments of the CJEU, which can generally be said to have a broader impact on the scope and effects of this legislation on legal relationships.

The analysis is required not only in relation to the aforementioned judgments of the CJEU, but also with regard to the legislation on insurance to which the given legal case relates. Indeed, despite efforts at harmonisation, the legislation of individual member states in this area may not be uniform. The analysis must also be carried out in relation to the legal framework governing motor vehicle liability as such, since the existence of this liability is a prerequisite for paying out an indemnity under the insurance and is therefore a condition *sine qua non* for the payout. Furthermore, the conclusions of the assessment may also be affected by the provisions of other legal regulations of the member state, whether in the field of public or private law.

Hence, this issue cannot be viewed solely through the prism of linguistic interpretation, although this may be regarded as the central point. This form of insurance has a long history and has evolved in line with the development of motor vehicles themselves – a process that has particularly accelerated in recent years (for example, autonomous vehicles, and electromobility). A shift can be observed in this regard in both EU legislation and the legislation and case law of the individual member states.

The significance of teleological interpretation needs to be emphasised not only in – but all the more so – in the context of EU legislation on this issue. This interpretation method has become increasingly important for motor vehicle liability insurance especially in recent years, not least due to the interconnection of this issue with EU legislation, where interpretation, provided primarily by courts (and followed by the parties drafting legislation and the legislature, as appropriate), should ensure that this legislation is interpreted in accordance with EU law.

Finally, systematic interpretation must also be taken into consideration – in principle, it treats insurance as a private-law contractual relationship governed by general civil-law provisions, with all the consequences that this entails. Furthermore, it follows from the CJEU's judgments analysed above and from a comparison of the legislation to which those decisions relate that the legal framework governing liability for damage arising from the use of a vehicle across member states' borders encompasses a wide range of prerequisites, limitations, and conditions which may affect the outcome of specific cases, especially in relation to the insured and injured parties, and may therefore influence the actual effect of EU legislation on legal relationships in the field of motor vehicle use.

II. ANALYSIS OF THE CZECH LEGAL REGULATION AND RELEVANT CJEU'S JUDGMENTS

The explanatory memorandum to the new Act refers to over twenty judgments and orders of the CJEU[4] issued between 2005 and 2023.

The cited decisions of the CJEU can be examined from several perspectives:

- the temporal perspective
- the thematic perspective
- the manner of resolving any inconsistency.

From the temporal perspective, it is important to consider primarily whether the issue in question had already been raised before the effective date of the MID Directive (and, if so, for what length of time), and whether and how it had been dealt with by existing domestic legislation[5] or case law.

In terms of distinguishing among the relevant decisions based on their topic, certain groups of issues can be pinpointed that recur in EU case law and their interpretation thus varies across the member states. Here too, however, the decisive factor is whether it can be inferred from the given decision that the Czech legislation is inconsistent with EU law and, if so, how and to what extent this inconsistency could and should have been remedied.

Any inconsistency of a member state's legislation or interpretation can then be resolved in various ways, whether by adopting a new law, by amending existing legislation, or by following an interpretation presented by the competent authorities (in accordance with the competences of the member states concerned). That said, the approach will always depend on the nature of any inconsistency. Various legal solutions have their own effects and limitations, e.g., limitations on the interpretation of the law (e.g., with regard to the deficiency in the Czech legislation governing this type of insurance under the original Act in relation to the claims of foreign social security institutions;[6] more details on this below).

Furthermore, it should be borne in mind that the aim of EU legislation on motor vehicle liability insurance is to harmonise insurance covering such civil liability, rather than the member states' civil liability regimes as such. Consequently, any discrepancy in the outcome of a legal case relating to motor vehicle liability insurance does not necessarily constitute a shortcoming requiring legislative changes in the member state concerned or further harmonisation measures.

The decisions under scrutiny can be divided into several groups based on their topic.

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4 Explanatory memorandum to new Act, General Part, point 5.3: Selected decisions of the EU Court of Justice.

5 The original Act was amended more than twenty times.

6 E.g., decision of the Constitutional Court, File No. II. ÚS 1011/21 of 29 November 2021.

1.1 A major group of preliminary questions referred to the CJEU concern the use of vehicles, whether this involves assessing the nature of the vehicle's activity (function) (e.g., vehicles serving a dual purpose as both a means of transport and a work machine) or the place where the damage occurred and its circumstances (public roads, private roads, enclosed spaces within a building, etc.).

One of the best-known decisions in this area is the **judgment of the CJEU of 4 September 2014 in Case C-162/13, *Damijan Vnuk v. Zavarovalnica Triglav d.d.*** The harmful event was caused by a tractor during the storage of hay bales in a barn when the driver of the tractor with an attached trailer, while reversing into the barn, struck a ladder on which the injured party was standing, causing him to fall. The dispute therefore concerned the question of whether the tractor's operation should be regarded as that of a means of transport or as the use of a machine or a propulsion device. Several interesting conclusions emerged from the CJEU's ruling on a preliminary question referred in this case, such as (in simplified terms):

- a comparison of different language versions has shown that, in terms of the relevant concepts, the individual versions exhibit differences *"as regards the type of situation covered by the insurance obligation for which it provides, differences which are, moreover, to be found in the actual title of that directive,* […]*"*
- *"Consequently, the fact that a tractor, possibly with a trailer attached, may, in certain circumstances, be used as an agricultural machine has no effect on the finding that such a vehicle corresponds to the concept of 'vehicle'* […]*"*
- the assessment of whether *"the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn is to be regarded as being covered by the concept of 'use of vehicles'* […]*"* cannot be left to the assessment of each member state.
- the general need for an autonomous and uniform interpretation of EU law (unless the relevant provisions refer to the law of the member states for the definition of their meaning and scope) generally throughout the European Union; the interpretation must take into account not only the literal meaning of the text, but also the context and objectives of the legislation in question.

With regard to the subject matter of the dispute, the court ruled that *"the concept of 'use of vehicles' in that article covers any use of a vehicle that is consistent with the normal function of that vehicle. That concept may therefore cover the manoeuvre of a tractor in the courtyard of a farm in order to bring the trailer attached to that tractor into a barn* […]*"*.

The above interpretation of the concept of "use of a vehicle" based on the nature of the activity that gave rise to the damage was subsequently confirmed in the **CJEU's judgment of 28 November 2017 in Case C-514/16 (*Rodrigues de Andrade*)**. In this case, the damage occurred during the process of spraying vines with herbicide. The tractor's engine was running solely to power the spray pump. Several factors were at play in this case, including the weight of the tractor, vibrations caused by its engine and the sprayer pump, the handling of the herbicide spray hoses, and heavy rain. A landslide

occurred, resulting in the tractor falling from terraced ground and several persons sustaining injuries. Following a referral from the Portuguese Court of Appeal, the CJEU therefore addressed, in simple terms, the question of *"*[…] *whether the concept of 'use of vehicles' also covers the use of a vehicle as a machine generating motive power when the vehicle itself is not travelling".* This decision (in line with previous case law) also served as a basis for conclusions regarding the EU interpretation of the concept of "use of a vehicle", for example that the concept *"is not limited to road use, that is to say, to travel on public roads"* but that concept also covers *"any use of a vehicle that is consistent with the normal function of that vehicle,"* and its use *"does not depend on the characteristics of the terrain on which the motor vehicle is used"*; the scope of the obligation to take out the relevant compulsory insurance is not limited by the EU legislation *"to the use of such vehicles on certain terrain or on certain roads"*. It is not decisive, either, whether or not the vehicle's engine was running at the time of the harmful event. In relation to the case in question, the CJEU therefore concluded that the concept of "use of vehicles" does not cover a situation *"in which an agricultural tractor has been involved in an accident when its principal function, at the time of that accident, was not to serve as a means of transport but to generate, as a machine for carrying out work, the motive power necessary to drive the pump of a herbicide sprayer"*.

The relevance of the accident site is addressed in the **CJEU's judgment of 20 December 2017 in Case C-334/16 (*Torreiro*)**, where the Court provided interpretation regarding an accident at a military training area. There was no dispute regarding the nature of the vehicle's operation, i.e., its use; the point of contention was the interpretation regarding the location of the accident. The conclusion of the CJEU was that the relevant provision of the Directive *"*[precludes] *national legislation* […] *which makes it possible to exclude from compulsory insurance cover injuries and damage that result from the driving of motor vehicles on roads or terrain that are not 'suitable for use by motor vehicles', with the exception of roads or terrain which, although not suitable for that purpose, are nonetheless 'ordinarily so used'"*.

Another ruling relating to the place where the damage occurred is the **CJEU's judgment of 20 June 2019 in Case C-100/18 (*Línea Directa*)**. The dispute before Spanish courts concerned the interpretation of the concept of "use of vehicles" in the context of damage to a building resulting from a fire in a vehicle parked in the garage of the building.

According to the explanatory memorandum,[7] the CJEU concluded in this ruling that *"*[…] *the concept of 'use of vehicles', as set out in this provision, covers a situation such as that at issue in the main proceedings, in which a vehicle – being used in accordance with its function as a means of transport and parked in a private garage of a building – caught fire, giving rise to a fire whose origin was in the electrical circuit of that vehicle, and caused damage to that building, even though the vehicle in question had not been in motion for more than 24 hours prior to the outbreak of the fire"*.

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[7] Explanatory memorandum to new Act, General Part, point 5.3: Selected decisions of the EU Court of Justice.

With regard to the place of the harmful event, reference can also be made to the **CJEU's judgment of 11 December 2019 in Case C-431/18, *María Pilar Bueno Ruiz v. Irene Conte Sánchez***, where the concept of "use of a vehicle" was also applied in relation to an accident involving a vehicle parked in a private car park.

1.2 Czech case law has addressed the use of a vehicle in numerous decisions, both in terms of the nature of the activity during which the damage occurred and in terms of the location.

The legal basis for assessing this issue was formed by the provisions of Act No. 40/1964 Sb., the Civil Code, as amended (hereinafter the "original Civil Code"), later by the provisions of new Civil Code, concerning damage caused by the use (i.e., operation) of means of transport.[8] Because of time consequences the majority of decisions of the Supreme Court mentioned below gives an interpretation of the provisions of original Civil Code.

The new Act modified this general civil-law framework by defining the "use of a vehicle" for the purposes of motor vehicle liability insurance[9] as follows: *"*[…] *any use of a vehicle corresponding to its usual function as a means of transport, irrespective of the vehicle's characteristics, the terrain on which it is used, and whether the vehicle is stationary or in motion"*. Furthermore, it established a rebuttable legal presumption that: *"If it is not clear for what purpose the vehicle was being used at the time the harmful event occurred, it shall be presumed that it was being used as a means of transport."*

In my opinion, as part of the transposition of the MID Directive, the definition of "use of a vehicle" was therefore established only for certain civil-law relationships. This definition, which remains relatively general despite certain attempts at its clarification,[10] may ultimately result in different assessment of the "use of a vehicle" for the purposes of motor vehicle liability insurance and in other cases. Only time will tell whether the definition of "use of a vehicle" under the new Act is consistent with general civil law.

In terms of existing Supreme Court's case law on the individual requirements of EU legislation concerning the definition of "use of a vehicle", reference can be made primarily to the judgments set out below.

As regards determining the nature of "use of a vehicle" – as a means of transport or as a work machine, the Supreme Court addressed this issue as early as 2006, when it concluded in its **judgment File No. 25 Cdo 3125/2005 of 27 September (Rc 77/2007)**, for example:

"If the damage was caused by a work machine while the latter was being used for its intended purpose, rather than while being transported using its own motive power, this does not constitute damage arising from the specific nature of the use of a means of transport, nor does it give rise to the operator's liability under Section 427 of the Civil Code."

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[8] In particular, Section 2927 of new Civil Code; prior to its effective date, Sections 427 and 428 of original Civil Code.

[9] Section 2(4) of the new Act.

[10] Taken almost verbatim from recital 5 in the preamble to the MID Directive, which refers to the judgments of the CJEU in Cases C-162/13 (*Vnuk*), C-514/16 (*Rodrigues de Andrade*) and C-334/16 (*Torreiro*).

In the given case, the claim concerned compensation for damage to pallets, where the damage occurred during the loading and handling of a pallet containing paving slabs at a building site, rather than during the use of a means of transport. The machine therefore functioned as a work machine (backhoe-loader) and was used for tasks for which it was designed and, hence, did not serve as a means of transport. According to the aforementioned Supreme Court ruling: *"A work machine is considered a motor vehicle only if it is travelling from one place to another using its own motive power. Hence, in this case, the damage is not caused by the specific nature of operation, i.e., a particular circumstance inherent to the use of a means of transport."*

A further conclusion regarding the operation of a work machine follows from the Supreme Court's **decision File No. 25 Cdo 3697/2021 of 28 June 2023**. In this case, during the unloading of building materials using a wheeled excavator fitted with a front bucket, a pallet of "Ytong" blocks fell from the vehicle's cargo bed onto the injured party, who succumbed to his injuries. Here, too, the Supreme Court concluded that: *"At that time, the machine was therefore being used for the purpose for which it was designed as a work machine, and was not serving as a means of transport."*

By contrast, in its **judgment File No. 25 Cdo 272/2013 of 18 February 2015**, the Supreme Court concluded that the machine in question had been used as a vehicle. The incident occurred while a tractor was using its motive power to recover a combine harvester stuck in a field. Although the tractor was being used for its intended purpose, namely the performance of field work, the court perceived the decisive factor in the nature of the activity during which the damage occurred. The immediate cause of the damage in this case was not the operation of the work machine, but rather the tractor's motive power, which the court considered a specific aspect of the use of a motor vehicle. In its reasoning, it then referred, amongst other things, to the CJEU's judgment in Case C-162/13 (*Vnuk*).

The Supreme Court ruled on a specific type of "vehicle" in **decision File No. 25 Cdo 3229/2017 of 27 June 2017**. The vehicle in question was an infantry fighting vehicle, which had already been decommissioned and was being used to film a commercial (on a public road). Thus, although the vehicle was not designed to travel on public roads, it was nevertheless travelling on such a road using its own motive power, and the court therefore concluded that it had been serving a transport function.[11]

Finally, the Supreme Court concluded that a vehicle was being "used" even in situations where it was stationary. Reference can be made in this context, for example, to **judgment File No. 25 Cdo 3925/2013 of 18 March 2015**, where it was held that: *"A motor vehicle is in use even if, as a result of the driver's failure, it creates an obstacle for other road users (including traffic of a different kind) and this poses an immediate risk of collision to these users, regardless of whether the engine of such a vehicle is running at the time of the harmful event or whether the vehicle became immobile immediately prior to the harmful event, and for whatever reasons."*

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[11] JANDOVÁ, L. – VOJTEK, P. *Zákon o pojištění odpovědnosti z provozu vozidla: komentář* [Motor Vehicle Liability Insurance Act: Commentary]. 2nd ed. Praha: C. H. Beck, 2019, p. 181.

However, a vehicle may still be considered to be in use even when it has long remained stationary; therefore, this does not constitute damage arising, for example, immediately before or after the end of a journey. In its **decision File No. 25 Cdo 3485/2016 of 31 August 2017 (Rc 149/2018)**, the Supreme Court concluded that: *"A fault in the electrical wiring of a car parked in a garage, which led to the car catching fire and a subsequent fire in the building, gives rise to the vehicle operator's no-fault liability for damage caused by the specific nature of motor vehicle use (Section 427 of the Civil Code)."*

According to the reasoning of the decision: *"There is no doubt that electrical wiring is an integral part of a vehicle, is of a technical nature, serves to enable the vehicle to operate, and poses a potential hazard in the event of a failure, both while the vehicle is in motion and when it is stationary. A fault in such a technical component of a parked car is an internal fault capable of manifesting itself externally and causing adverse effects to the surrounding area, as was the case here. Such a fault is therefore an undesirable manifestation of precisely those characteristics of the vehicle which are associated with its use, arise from its nature as a means of transport, and even have their origin in the use of the vehicle, as is also intended by the provisions of Section 428 of the Civil Code, which – as a matter of fact – precludes the possibility of liberation from strict no-fault liability of the vehicle's operator in the case of technical faults (cf. e.g., the Supreme Court's resolution of 29 March 2011, File No. 25 Cdo 948/2010, File C 9719). What is decisive here is not how much time has elapsed since the vehicle was parked or since any operations relating to its use were carried out, but rather that a technical fault in the vehicle – which was roadworthy and had not been taken out of service for a long period or permanently – resulted in characteristics typical of its use, as set out in the wording of Section 427 of the Civil Code and in accordance with its intended meaning. If increasingly sophisticated vehicles are equipped with technical devices which, even when the vehicle appears to be stationary or has been taken out of service (in the sense of its movement), can cause harm comparable to the adverse effects of moving vehicles, then such types of accidents must also be regarded as a manifestation of the specific nature of motor vehicle traffic. It can therefore be concluded that the damage caused by a fault in the electrical wiring of a parked (not permanently decommissioned) car, which led to the vehicle catching fire and a subsequent fire in the building, is damage caused by the use of a motor vehicle, in respect of which Section 427 of the Civil Code imposes on the operator no-fault liability for such damage* […]*."*

In my opinion it can be concluded based on the above overview that the interpretation provided by the Supreme Court in its case law regarding the "use of a vehicle" is (with reference to the case law of the CJEU and an interpretation in conformity with EU law) relatively broad and, in principle, corresponds to the judicial views held even prior to the transposition of the MID Directive. However, developments in the automotive industry and in machinery must be taken into consideration in this regard; case law must respond to such developments as they gradually give rise to new situations and questions.

2. CJEU CASE LAW ON MOTOR VEHICLE LIABILITY FOR DAMAGE

2.1 Some of the CJEU decisions cited in the explanatory memorandum to the new Act concern the question of motor vehicle liability as such – its preconditions and scope, including the treatment of multiple perpetrators, the injured party's contributory conduct, etc. In this respect the CJEU's case law should be expected to remain restrained, since the stated aim of the motor vehicle directives was not to harmonise the legislation on this liability for damage, but rather the insurance of that liability in cases where national law establishes such liability. One may refer, for example, to the CJEU's judgment in Case C-707/19, which – citing the Third Motor Vehicle Directive – states that *"the obligation to provide insurance cover against civil liability for damage caused to third parties by motor vehicles is distinct from the extent of the compensation to be afforded to them on the basis of the civil liability of the insured person. Whereas the former is defined and guaranteed by EU legislation, the latter is, essentially, governed by national law."* The CJEU goes on to hold that *"EU legislation does not seek to harmonise the rules of the Member States governing civil liability and the Member States are, in principle, free to determine the rules of civil liability applicable to road accidents"*.[12] On the other hand, the Directive's aim is to *"ensure the protection of victims of accidents caused by motor vehicles, an objective which has consistently been pursued and reinforced by the EU legislature* […]*"*,[13] and, according to the Directive, motor vehicle liability insurance has *"an impact on the free movement of persons and vehicles"*. According to the CJEU, the aim of this EU legislation is, besides ensuring the free movement of vehicles and persons, also to *"guarantee that the victims of accidents caused by those vehicles will receive comparable treatment irrespective of where in the European Union the accidents occurred* […]*"*.

The approach distinguishing between motor vehicle liability for damage and the scope of insurance covering this liability can be illustrated, for example, by the **CJEU's judgment of 10 June 2021 in Case C-923/19, *Van Ameyde España SA v. GES, Seguros y Reaseguros SA***. The question referred by the Spanish Tribunal Supremo concerned damage caused by a road tractor to the semi-trailer coupled to it at the time of the accident (the tractor and the semi-trailer had different owners, each separately insured). The CJEU concluded that the relevant provisions of the directive had to be interpreted as meaning that *"*[…] *they do not preclude an interpretation of national legislation which excludes from cover, and therefore from compensation, by compulsory insurance against civil liability in respect of the use of a road tractor, material damage caused by that tractor to the semi-trailer which was coupled to it when the accident occurred"*. Thus, in my opinion, even though liability for the damage might have arisen under local law, that liability need not – in accordance with the aims of the directive – be covered by motor vehicle liability insurance.

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[12] Citing, for example, earlier CJEU's judgment of 23 October 2012 in Case C-300/10, *Vítor Hugo Marques Almeida v. Companhia de Seguros Fidelidade-Mundial SA*.

[13] Citing the CJEU's judgment of 4 September 2018 in Case C-80/17 (*Juliana*).

The CJEU has, moreover, frequently addressed the question of the apportionment of liability or contributory fault; the judgments set out below may be noted in this regard.

CJEU's judgment of 30 June 2005 in Case C-537/03, *Candolin v. Vahinkovakuutusosakeyhtiö Pohjola*, according to which, in the circumstances of that case (which involved a state of intoxication on the part of both the driver and the other passengers), the motor vehicle directives *"preclude a national rule which allows the compensation borne by the compulsory motor vehicle insurance to be refused or limited in a disproportionate manner on the basis of the passenger's contribution to the injury or loss he has suffered"*.

CJEU's judgment of 23 October 2012 in Case C-300/10, *Vítor Hugo Marques Almeida v. Companhia de Seguros Fidelidade-Mundial SA*, according to which, in circumstances such as those of that case, the directives must be interpreted as meaning that *"they do not preclude national provisions which, where two motor vehicles collide giving rise to personal injury to the passenger in one of the vehicles and the event is not attributable to the fault of the drivers of those vehicles, allows the civil liability of the insured persons, and, consequently, the compensation for that passenger, to be limited or excluded"* (the front-seat passenger was not wearing a seat belt, was thrown through the windscreen in the accident, and suffered deep lacerations to the head and face).

CJEU's order of 21 March 2013 in Case C-362/11 (*Gomes Oliveira*), according to which the directives must be interpreted as *"not precluding national provisions falling within civil liability law that allow exclusion or limitation of the right of the victim of an accident to claim compensation under the civil liability insurance of the motor vehicle involved in the accident, on the basis of an individual assessment of the exclusive or partial contribution of that victim to his own loss or injury"*.

CJEU's judgment of 19 April 2007 in Case C-356/05 (*Elaine Farrell v. Alan Whitty and Others*), according to which the directive must be interpreted as *"precluding national legislation whereby compulsory motor vehicle liability insurance does not cover liability in respect of personal injuries to persons travelling in a part of a motor vehicle which has not been designed and constructed with seating accommodation for passengers"*.

CJEU's judgment of 17 March 2011 in Case C-484/09, *Manuel Carvalho Ferreira Santos v. Companhia Europeia de Seguros SA*, according to which the relevant provisions of the directive must be interpreted as *"not precluding national provisions which, in the case of a collision between two motor vehicles which has caused damage, where neither driver is at fault, apportions the liability for that damage in accordance with the extent of the contribution of each of those vehicles to the occurrence of the damage and, in the event of doubt in that regard, fixes the contributions at parity"*.

CJEU's judgment of 23 January 2014 in Case C-371/12, *Enrico Petillo and Carlo Petillo v. Unipol Assicurazioni SpA*, according to which the relevant provisions of the directive must be interpreted as meaning that they do not preclude national legislation *"which lays down a specific compensation scheme for non-material damage resulting from minor physical injuries caused by road traffic accidents, limiting the compensation payable for that damage in comparison with the compensation allowed for identical damage arising from causes other than those accidents"*.

2.2 From CJEU judgments mentioned above I come to the conclusion that CJEU case law in this area is comparatively more lenient and its conclusions tend to leave the member states a wider margin of discretion, confining themselves to laying down the basic rules relating to insurance. This may be assumed to be so, among other reasons, precisely because the regulation of motor vehicle liability for damage tends to be the domain of member states' national laws. Czech case law on contributory fault – or, in newer terminology, the injured party's contributory share – follows essentially Czech law and the individual circumstances of the case. Its legal basis lies in Section 2818 of new Civil Code[14] (formerly Section 441 of original Civil Code). It is necessary to mention that although Section 441 of original Civil Code referred to "contributory fault", it did not – even according to the Supreme Court's interpretation – concern a question of "fault" (i.e., culpability – intent or negligence), but rather the circumstances attributable to the injured party (which could in principle include mere chance).[15] This provision applies generally, irrespective of any further grounds of exoneration relating to the individual types of liability for damage. The specific cases have involved both the injured party's exclusive fault (culpability) and possible contributory fault (knowingly riding with an intoxicated driver, failure to wear a seat belt, crossing the road other than at a pedestrian crossing or other improper movement on the road, an unsuitable child seat, etc.). Among the more general conclusions that emerge from the case law, one may note, in particular, the treatment of situations in which the injured party's contributory fault consists in knowingly travelling with a driver who is under the influence of alcohol. In this respect, domestic case law has settled on the conclusion that the injured party's contributory share may run up to one half (depending on the individual circumstances), but the injured party cannot be required to bear the damage in full (since the immediate cause of the accident and of the personal injury is, as a rule, the use of the vehicle itself).[16] In my opinion, it can be inferred from the foregoing that domestic case law was, in essence, also consistent with EU case law on liability for damage (and its possible relationship to insurance) referred to above.

For the sake of completeness, it can be noted in simple terms as regards the case of the tractor, semi-trailer and damage caused between them, that pursuant to the original Act (Section 7), the insurer does not indemnify property damage arising between the vehicles of a combination consisting of a motor vehicle and a trailer; an equivalent rule is laid down in Section 22(c) of the new Act.

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[14] Where damage has arisen, or has been augmented, also as a consequence of circumstances attributable to the injured party, the perpetrator's obligation to compensate is reduced proportionately. However, where the circumstances burdening one or the other party contribute to the damage only in a negligible manner, the damage is not apportioned.

[15] JANDOVÁ – VOJTEK, *c. d.*, p. 112.

[16] See, e.g., judgment of the Supreme Court, File No. 25 Cdo 2451/2007 30 September 2009 (C 7833), File No. 23 Cdo 3604/2010 of 26 Octobre 2010 (C 8996), File No. 25 Cdo 91/2010 of 24 February 2011 (C 9409).

3. OPPORTUNITIES FOR IMPROVEMENT

On the other hand, certain shortcomings of the previous legal framework governing motor vehicle liability insurance – and of the case law development in the interpretation of the national legislation – must also be acknowledged.

3.1 The first point includes, e.g., the question of claims of foreign social-security institutions and of the reimbursement of disability-pension benefits. Here, by contrast, the crucial role is played by domestic case law. The Supreme Court addressed this issue, for example, in its judgment in File No. 25 Cdo 589/2020 of 26 January 2022. In that case, a German social-security institution and provider of accident insurance asserted a direct claim against the insurer under motor vehicle liability insurance (by way of a recourse based on automatic passage of disability-pension benefits from the person directly injured). Having been unsuccessful in first-instance proceedings, the institution argued on appeal that its position should be assimilated to that of a public health-insurance fund or a sickness-insurance authority and their recourse claim for the reimbursement of expenditure on health care and sickness insurance (claims which would be covered under the Czech insurance framework). The Supreme Court did not accept that argument, taking the view that the claim in question (disability-pension benefits) differed both factually and legally. No Czech legal provision establishes such a claim, and notwithstanding the EU rules on social security,[17] the claimant could not be granted the claim under Czech law, given the statutory scope of motor vehicle liability insurance. The Supreme Court further referred (as regards insurance) to a comparable decision of the Constitutional Court (File No. II. ÚS 1011/21 of 29 November 2021 – a dispute between a Slovak social-insurance institution and a vehicle operator), in which the Constitutional Court likewise unequivocally held that the original Act did not establish any claim for reimbursement of a disability pension against the liability insurer. While the Constitutional Court described this framework as *"deficient"*, it ruled out the possibility that the defect might be remedied by the judiciary, holding that the remedy had to be ensured by the legislature. For the sake of completeness, it may be recalled that the Supreme Court took a similar view as to the scope of this insurance in its decision in File No. 25 Cdo 1334/2020 of 21 April 2022, where the dispute concerned a German provider's claim for pension-insurance contributions. In that case, too, it was held, among other things, that *"this claim exists only against the perpetrator and is not covered by liability insurance"*, while the Supreme Court *"supported the call for a legislative solution"*.

This shortcoming was subsequently removed by a provision of the new Act – specifically Section 18(d) – under which the insured person has the right to have the insurer pay on their behalf *"the recourse reimbursement owed to an institution of another Member State which, in accordance with the legislation governing the social-security system,*

[17] See Article 93(1) of Council Regulation (EEC) No. 1408/71 of 14 June 1971 on the Application of Social Security Schemes to Employed Persons and Their Families Moving Within the Community.

has provided the injured party with a benefit under that system and which, under that legislation, has the right to reimbursement of that benefit against the insured person".

This situation – unsatisfactory both legally and socially – was thus remedied in my point of view by the relatively simple addition of an explicit item to the list of claims to which the insurance in question applies.

3.2 A development in case law may be observed in relation to the **CJEU's judgment of 24 October 2013 in Case C-22/12 (*Katarína Haasová*)**. The subject of the dispute and of the question referred in that case was, in simplified terms, the assessment of the duality between a claim for compensation for the death of a close person under Section 444 of original Civil Code (to which the insurance in question applied), and a claim for reasonable satisfaction under Sections 11 and 13 of the same Act. The claim for the letter satisfaction, according to settled case law of the higher Czech courts, was not covered by that insurance.

Here, the CJEU concluded that the relevant provisions of the directives had to be interpreted as meaning that *"compulsory insurance against civil liability in respect of the use of motor vehicles must cover compensation for non-material damage suffered by the next of kin of the deceased victims of a road traffic accident, in so far as such compensation is provided for as part of the civil liability of the insured party under the national law applicable to the dispute in the main proceedings"*. The decisive factor is therefore not the label given to the claim, or its systematic placement within the statute, but rather its nature.

The turning point in the interpretation within Czech case law (even though the question referred above was raised in proceedings conducted in Slovakia) came with the Supreme Court's judgment in File No. 31 Cdo 1704/2016 of 18 October 2017. The dispute between the perpetrator, as the insured person, and the insurer was a claim to insurance benefits in respect of compensation for intangible (i.e., non-material) damage under Sections 11 and 13 (an action for the protection of personality) of original Civil Code, which the perpetrator had been ordered to provide in the final judgment. The previous case law (for example, Supreme Court's decisions in File No. 30 Cdo 1051/2005 of 27 September 2005, File No. 30 Cdo 4083/2010 of 31 August 2012 and File No. 30 Cdo 3906/2011 of 12 December 2012, and the Constitutional Court's order in File No. III. ÚS 8/06 of 16 March 2006) had consistently held that the insurance in question did not apply to this type of claim (in particular, because it does not constitute compensation for damage, but rather reasonable satisfaction). That interpretation, however, shifted in judgment File No. 31 Cdo 1704/2016 of 18 October 2017, where the Supreme Court – drawing both on the first three motor vehicle directives and on the CJEU's ruling in *Haasová* – proceeded, among other things, from the premise that *"Member States are required to ensure that the civil liability resulting from the use of motor vehicles arising under their domestic law is covered by insurance"* in accordance with the directives. The CJEU further proceeded, that *"the freedom enjoyed by the Member States to determine the damage covered and the terms and conditions of compulsory insurance"* had been restricted in such a way that coverage of certain heads of damage was mandatory, those heads including especially harm to health. The latter

concept encompassing *"any type of damage, in so far as compensation for such damage is provided for, as part of the civil liability of the insured, under the national law applicable in the dispute, resulting from an injury to physical integrity, which includes both physical and psychological suffering"*. On the Supreme Court's interpretation, *"the directives do not require that particular specific types of liability be introduced, but rather that all civil liability arising from the use of motor vehicles be covered by insurance, regardless of whether the liability is fault-based or strict liability for a harmful consequence"*.

It then inferred that *"*[…] *the interpretation of Section 6 of the Motor Vehicle Liability Insurance Act adopted hitherto – restricting the compulsory insurance cover of the insured person's civil liability for damage even where that civil liability is established – is contrary to the directives in question, that is, to EU law. Given that Section 6 (2)(a) of the Motor Vehicle Liability Insurance Act constitutes national law harmonised by EU legislation, it is necessary to interpret that provision – in its application – in accordance with the fundamental principles flowing from case law of the Court of Justice of the European Union"*.

Accordingly, even though a directive has no direct effect in relations between individuals, *"the general obligation of the national courts of the Member States to interpret national law in conformity with a directive arises upon the expiry of the period prescribed for its transposition* […] *The duty of conforming interpretation arises where a directive has not been correctly implemented, as well as in cases where the implementing legislation may, in itself, be consistent with the directive yet several interpretations are possible, and the national court is to choose the one required by the directive* […]*"*. The Grand Chamber of the Supreme Court's Civil and Commercial Division therefore departed from its earlier conclusions and held that *"it is possible to conclude, by way of interpretation, that compensation for intangible damage in money under Sections 11 and 13 of the Civil Code can also be subsumed under compensation for damage to health or for death within the meaning of Section 6 (2)(a) of the Motor Vehicle Liability Insurance Act"*. This inconsistency with EU law was thus likewise removed by way of judicial interpretation, without any need for a legislative intervention.

For the sake of completeness, and having regard to the date of that decision (18 October 2017), it should be noted that the matter had already become marginal by that time. The new Civil Code adopted a different approach to compensation for damage and intangible damage in this respect. Although it retained a general claim for the redress of harm to a person's natural rights,[18] the claim to compensation for intangible harm to health, or consisting in the loss of a close person, was incorporated into the *standard* compensation for bodily injury and for death,[19] which is covered by the insurance in question (this change was also reflected in an amendment to the original Act);[20] the scope of cover is regulated in a similar manner by the new Act.[21]

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[18] See Section 2956 et seq. of new Civil Code.

[19] See Sections 2858 and 2859 of new Civil Code.

[20] By Act No. 303/2013 Sb., amending certain legislative acts in connection with the adoption of the recodification of private law.

[21] See Section 17(2)(a) of the new Act.

EU case law on compensation for intangible damage comprises a further analogous CJEU's judgment, specifically **C-277/12, *Vitālijs Drozdovs v. Baltikums AAS***, in which the core of the dispute was a claim for compensation for intangible damage suffered by V. Drozdovs as a result of the death of his parents in a road traffic accident. The preliminary question in that case was referred by a Latvian court and it likewise concerned the distinction between property damage and intangible damage – here, moreover, in relation to the minimum limits of insurance cover and the limitation by a member state's legislation of the maximum amount of compensation for intangible (moral) damage to a substantially lower figure.

The CJEU held that the provisions of the directives in question had to be interpreted as meaning that *"compulsory insurance against civil liability in respect of the use of motor vehicles must cover compensation for non-material damage suffered by the next of kin of the deceased victims of a road traffic accident, in so far as such compensation is provided for as part of the civil liability of the insured party under the national law applicable to the dispute in the main proceedings"*.

Thus, where liability for intangible damage caused to family members of the victims of a road traffic accident is established by national law, that liability is to be covered by insurance. In the directives examined in that case (the first three motor vehicle directives), the legislature did not intend to limit protection solely to persons directly affected by the harmful event.

As to the limitation of the amount of compensation, the CJEU found that the limitation in question was not such as to *"determine the right of the victim to compensation arising from the civil liability of the insured person any more than the possible extent of that right. Rather, it seeks to limit the compulsory insurance cover of the insured person against civil liability"*. Under Latvian law, therefore, the insured person's civil liability for the intangible damage in question could exceed the amounts covered, under the national framework, by motor vehicle liability insurance. In this regard, the CJEU held that EU law precludes *"national provisions, pursuant to which compulsory insurance against civil liability in respect of the use of motor vehicles covers compensation under national civil law for non-material damage resulting from the death of a person's next of kin in a road traffic accident – payable in accordance with national civil liability law – only to a maximum amount which is lower than the minimum amounts laid down in Article 1(2) of the Second Directive"*.

III. CONCLUSION

In my view, the analysis above of part of EU case law – justifying, among other things, the adoption of the new Act – warrants the conclusion that the Czech rules on motor vehicle liability insurance have been, for the most part, consistent with the existing EU case law even before the transposition of the MID Directive, whether by virtue of the explicit terms of statutory law or of higher courts' case law.

Apart from a few isolated matters capable of being remedied through case law or by a minor amendment, neither EU case law nor European experience necessitated the new

Act. A legislative intervention in the form of an amendment to the original Act would have been sufficient, in my view. Such an amendment would have eliminated, at least in part, the uncertainty surrounding the interpretation of this insurance – uncertainty that is logically bound up with an entirely new piece of legislation – and that, moreover, in a field of law which is of fundamental importance to such a wide circle of affected persons and which concerns an exceptionally sensitive area (particularly as regards damage to health or the loss of a close person).

Beyond the analysis of the decisions to which the explanatory memorandum to the new Act refers, I believe that this conclusion is also supported by the fact that the questions raised by most of the cited CJEU's judgments were incorporated into the new legal framework by way of a relatively general definition of the "use of a vehicle",[22] which, moreover, need not in itself bring about certainty as to its interpretation. Not least, that definition unsystematically established a definition applicable solely to the field of motor vehicle liability insurance.

It may be assumed that the new definitions and delimitations laid down by the new Act – coupled with the developments that the use of conventional motor vehicles is undergoing (for example, in relation to autonomous vehicles), the emergence of specific means of transport (such as e-bikes and e-scooters), and, not least, the continual development of new working machines (combining multiple functions, both transport-related and operational) – will give rise to further questions, both as to the identification of the vehicles whose operation entails an obligation to take out insurance and as to the delimitation of the "use of a vehicle" within the meaning of the new Act according to the specific circumstances of the case. The fact that this is a highly dynamic area is borne out by the fact that the approach to these means of transport and to their compulsory insurance is undergoing ongoing development, with further changes to the rules governing their functioning being made in other member states as well (for example, Spain).

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[22] Section 2(4) of the new Act.