RULING OF THE SUPREME COURT OF JUSTICE NO. 10/2024

Uniformisation of Jurisprudence on a car insurer's right of recourse

On 15 July 2024, the Supreme Court of Justice (SCJ) published Ruling no. 10/2024, for the Uniformisation of Jurisprudence.

This ruling deals with the recognition of a car insurance company's right of recourse in the event of a road accident caused by a driver who was driving under the influence of psychotropic substances.

The rule on which the discussion is based is Article 27(1)(c) of Decree-Law 291/2007 of 21 August (hereinafter the Decree-Law).

STARTING POINT

The purpose of motor vehicle liability insurance is to safeguard, in particular, the interests of those injured in motor vehicle accidents, taking the interest of insurance companies the "back seat", who end up being responsible and assuming greater risks for the insured, taking a back seat.

Rules such as Article 27(1)(c) of the Decree-Law exist precisely to try to restore in some way the contractual balance agreed by the parties.

By recognising the right of insurance companies to recover from the driver in cases where the driver "*has caused the accident and is driving with a blood alcohol level higher than that legally permitted, or has consumed narcotics or other drugs or toxic products*", the aim is

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precisely to ensure that there is a balanced proportion between the risk assumed and what goes beyond this "normality", which does not fit within the cases insured.

The Unifying Ruling (UR) concludes that the "*right of recourse thus results from the compromise between the principle of the primacy of the interests of the injured party and the necessary safeguarding of the contractual balance underlying the insurance contract*".

APPEALED RULING VS. FOUNDING RULING

There was a need to appeal to the SCJ to establish case law, since a decision was handed down by the SCJ - which we refer to as the Appealed Ruling - that was contrary to a previous decision also handed down by the SCJ - which we refer to as the Founding Ruling.

Appealed Ruling, 13.09.2022

The STJ, in the case that led to the AUJ under analysis here, decided, in general terms, that regardless of the quantities in question, if we are faced with the situation of a driver driving under the influence of narcotics, drugs or other toxic products, there is a right of recourse for the insurer against the driver who caused the road accident.

As stated in the UR in question, which quotes the appealed ruling against, "*No «threshold of relevance» is thus established for the driver's liability in relation to the quantity of narcotics consumed, nor is proof required that the quantity presented by the driver is likely to effectively influence his ability to drive*".

Founding Ruling, 25.03.2021

To the contrary, the SCJ had previously ruled that, in such cases, it must always be verified whether the amount of drugs consumed by the driver was sufficient to prevent safe driving.

In order to do this, it is necessary to submit the driver to medical examinations that determine the state of influence, and not simply the presence of drugs in the system, and it is essential to set "*a threshold of relevance of the result of the test for drug consumption,* (and) *it is necessary to conclude that the state of influence has been established*".

It is also added in this ruling that "*proof that drugs* ***have been consumed to an extent sufficient to prevent safe driving*** *must be provided either by a medical examination that* ***has sought to establish a state of influence and not simply the presence of drugs***" (emphasis added).

Only in this way can we conclude that there is a causal link between the driver's driving under the influence of drugs and the result of the road accident.

DECISION OF UR

Ruling 10/2024 thus comes down on the "side" of the Founding Ruling, concluding that "*the mere detection of narcotic*

substances in a blood test is not sufficient to conclude that there has been an actual impairment of physical or mental capacity and fitness, which can only be done by means of a medical and/or expert report".

Case law has thus been established to the effect that there must be proof of the consumption of narcotics with characteristics, properties or in quantities likely to influence the physical or mental capacity and aptitude of the driver in question, and that it is not enough for the insured driver to have been driving under the influence of these substances for there to be a right of recourse for the insurer.

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