



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

9 June 2016\*

(Reference for a preliminary ruling — Road transport — Regulation (EC) No 561/2006 — Driver's liability for infringements of the obligation to use a tachograph)

In Case C-287/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Gyulai törvényszék (Regional Court, Gyula, Hungary), made by decision of 4 June 2014, received at the Court on 11 June 2014, in the proceedings

**Eurospeed Ltd**

v

**Szegedi törvényszék,**

THE COURT (Sixth Chamber),

composed of E. Levits, acting as President of the Sixth Chamber, M. Berger (Rapporteur) and S. Rodin, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Eurospeed Ltd, by D. Irinkov, ügyvéd,
- the Hungarian Government, by Z. Fehér, G. Szima and M. Bóra, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and G. Galluzzo, avvocato dello Stato,
- the European Commission, by L. Havas and J. Hottiaux, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Hungarian.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the principle of the liability of the Member States for damage caused to individuals by infringements of European Union law and of Article 10(3) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).
- 2 The request has been made in proceedings between Eurospeed Ltd and the Szegedi törvényszék (Regional Court, Szeged, Hungary) concerning compensation for the damage resulting from fines imposed by that court on three of Eurospeed's employees, to whose rights that company is subrogated, for infringements of obligations under Regulation No 561/2006.

### Legal context

#### *EU law*

- 3 According to recitals 17, 27 and 31 of Regulation No 561/2006:
  - (17) This Regulation aims to improve social conditions for employees who are covered by it, as well as to improve general road safety. It does so mainly by means of the provisions pertaining to maximum driving times per day, per week and per period of two consecutive weeks, the provision which obliges drivers to take a regular weekly rest period at least once per two consecutive weeks and the provisions which prescribe that under no circumstances should a daily rest period be less than an uninterrupted period of nine hours. Since those provisions guarantee adequate rest, and also taking into account experience with enforcement practices during the past years, a system of compensation for reduced daily rest periods is no longer necessary.
  - ...
  - (27) It is desirable in the interests of clear and effective enforcement to ensure uniform provisions on the liability of transport undertakings and drivers for infringements of this Regulation. This liability may result in penal, civil or administrative penalties as may be the case in the Member States.
  - ...
  - (31) [Council] Regulation (EEC) No 3821/85 [of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8)] should be amended to clarify specific obligations on transport undertakings and drivers as well as to promote legal certainty and to facilitate enforcement of driving time and rest period limits during roadside checks.'
- 4 Article 9(2) of Regulation No 561/2006 provides:

'Any time spent travelling to a location to take charge of a vehicle falling within the scope of this Regulation, or to return from that location, when the vehicle is neither at the driver's home nor at the employer's operational centre where the driver is normally based, shall not be counted as a rest or break unless the driver is on a ferry or train and has access to a bunk or couchette.'

5 Article 10(1), (2) and (3) of Regulation No 561/2006 provides:

‘1. A transport undertaking shall not give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation.

2. A transport undertaking shall organise the work of drivers referred to in paragraph 1 in such a way that the drivers are able to comply with Regulation ... No 3821/85 and Chapter II of this Regulation. The transport undertaking shall properly instruct the driver and shall make regular checks to ensure that Regulation ... No 3821/85 and Chapter II of this Regulation are complied with.

3. A transport undertaking shall be liable for infringements committed by drivers of the undertaking, even if the infringement was committed on the territory of another Member State or a third country.

Without prejudice to the right of Member States to hold transport undertakings fully liable, Member States may make this liability conditional on the undertaking’s infringement of paragraphs 1 and 2. Member States may consider any evidence that the transport undertaking cannot reasonably be held responsible for the infringement committed.’

6 In accordance with Article 19(1) and (2) of Regulation No 561/2006:

‘1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation ... No 3821/85 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. No infringement of this Regulation and Regulation ... No 3821/85 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of these measures and the rules on penalties by the date specified in the second subparagraph of Article 29. The Commission shall inform Member States accordingly.

2. A Member State shall enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country.

By way of exception, where an infringement is detected:

- which was not committed on the territory of the Member State concerned, and
- which has been committed by an undertaking which is established in, or a driver whose place of employment is, in another Member State or a third country,

a Member State may, until 1 January 2009, instead of imposing a penalty, notify the facts of the infringement to the competent authority in the Member State or the third country where the undertaking is established or where the driver has his place of employment.’

7 Under Article 22(3) of Regulation No 561/2006:

‘The Member States shall regularly send relevant information concerning the national interpretation and application of this Regulation to the Commission, which will make this information available in electronic form to other Member States.’

8 Article 15(7) of Regulation No 3821/85, as amended by Regulation No 561/2006 ('Regulation No 3821/85 as amended') provides:

- '(a) Where the driver drives a vehicle fitted with recording equipment in conformity with Annex I, the driver must be able to produce, whenever an inspecting officer so requests:
- (i) the record sheets for the current week and those used by the driver in the previous 15 days;
  - (ii) the driver card if he holds one, and
  - (iii) any manual record and printout made during the current week and the previous 15 days as required under this Regulation and Regulation ... No 561/2006.

However, after 1 January 2008, the time periods referred to under (i) and (iii) shall cover the current day and the previous 28 days.

- (b) Where the driver drives a vehicle fitted with recording equipment in conformity with Annex IB, the driver must be able to produce, whenever an inspecting officer so requests:
- (i) the driver card of which he is holder;
  - (ii) any manual record and printout made during the current week and the previous 15 days as required under this Regulation and Regulation ... No 561/2006, and
  - (iii) the record sheets corresponding to the same period as the one referred to in the previous subparagraph during which he drove a vehicle fitted with recording equipment in conformity with Annex I.

However, after 1 January 2008, the time periods referred to under (ii) shall cover the current day and the previous 28 days.

- (c) An authorised inspecting officer may check compliance with Regulation ... No 561/2006 by analysis of the record sheets, of the displayed or printed data which have been recorded by the recording equipment or by the driver card or, failing this, by analysis of any other supporting document that justifies non-compliance with a provision, such as those laid down in Article 16(2) and (3).'

#### *Hungarian law*

9 Paragraph 20 of the Közúti közlekedésről szóló 1988. évi I. törvény (Law No I of 1988 on road traffic, 'the Road Traffic Law') states:

'(1) A fine may be imposed on anyone who infringes the present law, specific legislation, or acts of Community law, relating to

...

- (d) the use of recording equipment and tachograph discs in the field of road transport, and of the cards necessary for digital tachographs,

...

(2) The following are entitled to conduct the procedure for imposing a fine (according to their supervisory powers as defined in subparagraph 11): the traffic authorities, the police, the customs authorities, the disaster protection authorities, the employment authorities and the public space supervision authorities.

(3) The provisions of the specific legislation governing the supervisory activities of the authority responsible for the procedure shall apply to the procedure for imposing a fine referred to in subparagraph 2, unless provided for otherwise in the present paragraph.

(4) A person — other than the hirer or driver of a private car hired from the operator of a vehicle fleet within the meaning of the Law on registration duties, if the vehicle registration duty has been paid and the driver of the private car proves this by producing a certificate issued by the customs authorities — who contravenes a provision of subparagraph 1, points (a) to (j) and (l), may be fined 10 000 to 800 000 [Hungarian] forints [(HUF)], and in the case referred to in point (k) 10 000 to 300 000 [HUF]. A specific provision shall lay down the maximum amount of the fines to be imposed for infringements of the various provisions, and of the fine that may be imposed in that procedure for several unlawful acts or omissions. No fine shall be imposed where two years have passed since the commission of the infringement (prescription).

(5) The person liable for an infringement of one of the above provisions shall be obliged to pay the fine. Where the liability of several persons can be established, they shall be obliged to pay the amount of the fine laid down in the specific provision in proportion to their share of liability for the infringement. If their share of liability cannot be established, the obligation to pay the fine shall rest on them in equal shares. No obligation to pay a fine can be established where there is a compelling reason, not within the control of the person involved in road traffic, which he did not foresee and could not reasonably foresee.

...'

- 10 In Paragraph 48(3)(a), point 15, of the Road Traffic Law the legislature empowered the government to determine by government decree inter alia 'the amount of the fines liable to be imposed for infringements of the provisions relating to the carriage of goods by road and carriage of bulk goods and of certain road traffic rules, and the general rules governing administrative tasks in connection with the imposition of fines'.
- 11 Paragraph 5 of the Közúti áru fuvarozáshoz, személyszállításhoz és a közúti közlekedéshez kapcsolódó egyes rendelkezések megsértése esetén kiszabható bírságok összegéről, valamint a bírsággal összefüggő hatósági feladatokról szóló 156/2009. kormányrendelet (Government Decree No 156/2009 on the amounts of the fines liable to be imposed for infringements of certain provisions relating to the carriage by road of goods and persons and to road traffic, and on the administrative tasks in connection with the imposition of fines, of 29 July 2009 ('Government Decree No 156/2009') provides as follows:

'With respect to Paragraph 20(1), point (d), of the [Road Traffic Law], the amount of the fine laid down in Annex 4 to the present decree must — unless provided otherwise by law or regulation — be paid by the person who infringes a provision relating to recording equipment and tachograph discs and their use laid down in:

...

(e) [Regulation No 3821/85].

...'

- 12 According to the referring court, points I2 and I3 in Annex 4 to Government Decree No 156/2009 read as follows:

I2: Act punishable by a fine: The driver is unable to produce the information recorded on the disc or driver card for the current day. Amount of the fine: [HUF] 400 000. Person obliged to pay the fine: The driver.

I3: Act punishable by a fine: The driver is unable to produce the information recorded on the disc for the previous 28 days. Amount of the fine: [HUF] 400 000. Person obliged to pay the fine: The driver.'

- 13 Paragraph 340(1) of the Polgári perrendtartásról szóló 1952. évi III. törvény (Law No III of 1952 establishing the Code of Civil Procedure, 'the Code of Civil Procedure') provides:

'No appeal lies against the judgment of the court, except as provided in subparagraph 2.'

- 14 Paragraph 340/A(2) of that code provides:

'No appeal on a point of law lies ...

...

(b) in cases concerning the determination of a fine ... where the obligation to pay established in administrative proceedings or in a decision determining a fine, or the amount of compensation, does not exceed [HUF] one million.'

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 15 Eurospeed is a transport undertaking registered in Bulgaria. It employs as drivers Mr Ivaylo Todorov Dishev, Mr Deyan Todorov Dishev and Mr Stoyan Dimov, who are Bulgarian nationals.
- 16 During a journey from the Czech Republic to Bulgaria, heavy goods vehicles registered in the Czech Republic and driven by the persons mentioned in paragraph 15 above were checked at the frontier between Hungary and Romania by officers of the Nemzeti Adó- és Vámhivatal Csongrád Megyei Vám- és Pénzügyőri Igazgatósága (Csongrád County Customs and Excise Inspectorate of the National Tax and Customs Administration, Hungary).
- 17 Mr Ivaylo Todorov Dishev and Mr Deyan Todorov Dishev were unable to produce, at that check, a tachograph disc or manual record of their activities during the previous 28 days.
- 18 In those circumstances the Csongrád County Customs and Excise Inspectorate considered that both drivers had infringed Article 15(7) of Regulation No 3821/85 as amended and Article 9(2) of Regulation No 561/2006, and imposed on each of them an administrative fine of HUF 400 000 (approximately EUR 1 280).
- 19 In the case of Mr Dimov, who had been unable to produce a valid document to show the nature of the work he had done before 12 April 2013, the date on which he was recruited as a driver by Eurospeed, the inspectorate considered that he had infringed Article 15(7) of Regulation No 3821/85 as amended and fined him HUF 400 000 (approximately EUR 1 280).
- 20 The Nemzeti Adó- és Vámhivatal Regionális Vám- és Pénzügyőri Főigazgatósága (Principal Regional Customs and Excise Inspectorate of the National Tax and Customs Administration, Hungary), by decisions of 30 May, 31 May and 3 June 2013, confirmed the decisions of the Csongrád County Customs and Excise Inspectorate.

- 21 The action brought against those decisions by the drivers concerned in the main proceedings was dismissed by the Szegedi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Szeged, Hungary). That court rejected in particular the argument that the fines should have been imposed on Eurospeed, not on the drivers.
- 22 By virtue of Paragraphs 340 and 340/A of the Code of Civil Procedure, no appeal or appeal on a point of law could be brought against the judgment of the Szegedi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Szeged).
- 23 Eurospeed, which paid the fines imposed on its employees, brought proceedings before the Gyulai törvényszék (Regional Court, Gyula, Hungary), seeking as compensation for the damage resulting from the breach of EU law by the Szegedi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Szeged) the sum of HUF 1 248 000 (approximately EUR 3 992), corresponding to the amount of the fines and the claim fee, together with interest on that sum.
- 24 Eurospeed submits that the Szegedi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Szeged) infringed Article 10(3) of Regulation No 561/2006 by dismissing the action brought by its employees, since the fines should have been imposed not on them but on itself. In support of that claim, it relies on several national decisions said to show that in such a factual situation the fine must be imposed not on the driver but on the transport undertaking which employs him. The fine is imposed on the driver only in cases in which the transport undertaking is not found liable.
- 25 The Szegedi törvényszék (Regional Court, Szeged), of which the Szegedi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Szeged) forms an organisational unit, claims that the action should be dismissed, arguing that in the light of the case-law of the Kúria (Supreme Court, Hungary) a fine may lawfully be imposed on the driver of a vehicle. In any event, it considers that there was no sufficiently flagrant and manifest breach of a rule of law.
- 26 The referring court observes that, if Article 10(3) of Regulation No 561/2006 were to be interpreted as precluding the penalties laid down by the Member States to punish infringements of obligations under that regulation from being imposed, exclusively or otherwise, on the driver of a vehicle, the national legislation at issue in the main proceedings could be regarded as incompatible with EU law. Consequently, the liability of the State for a breach of that law might possibly be engaged.
- 27 In those circumstances, the Gyulai törvényszék (Regional Court, Gyula) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Does the fact that a Member State is liable to make good damage resulting from a breach of European Union law preclude the application of rules on liability when ruling on a claim for damages brought on that basis against the State body actually responsible for the breach?
- (2) If the answer to the first question is in the negative, does Article 10(3) of Regulation No 561/2006 preclude the adoption of a national law by the Member State which, in the event of breach of the requirements laid down by the regulation, provides for the imposition of a penalty on the driver who actually committed the breach in addition to or instead of the transport company?
- (3) If the answer to the second question is in the affirmative, must it be considered that a decision of a national administrative court which, instead of being based on Article 10(3) of Regulation No 561/2006, is based on national law contrary to that provision is manifestly in breach of European Union law?’

## Consideration of the questions referred

### Question 2

- 28 By its second question, which should be examined first, the referring court asks essentially whether Regulation No 561/2006, in particular Article 10(3), must be interpreted as precluding national legislation which, instead of or in addition to the transport undertaking employing the driver, holds the driver liable for infringements of that regulation which he has himself committed.
- 29 According to the order for reference, Eurospeed and the referring court interpret Article 10(3) of Regulation No 561/2006 as precluding the imposition of penalties on a driver to punish infringements of that regulation committed by that driver.
- 30 That interpretation cannot be accepted.
- 31 In the first place, it must be recalled that Article 19(2) of the regulation provides that a Member State is to enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of the regulation detected on its territory for which a penalty has not already been imposed.
- 32 It is therefore clear from the wording of that provision that Regulation No 561/2006 makes both transport undertakings and drivers subject to specific obligations and holds them both liable for infringements of their respective obligations.
- 33 In this respect, contrary to the referring court's suggestion, it cannot be concluded that Article 19(2) of Regulation No 561/2006 refers solely to the case of an infringement being committed on the territory of another Member State. Since the first sentence of Article 19(2) of the regulation expressly provides that the possibility of the competent authorities of a Member State imposing a penalty on an undertaking and/or a driver for an infringement of the regulation exists 'even where that infringement has been committed on the territory of another Member State or of a third country', that implies *a contrario* that a Member State is in any event entitled to impose a penalty either on an undertaking or on a driver or on both for an infringement committed on its territory. Contrary to the interpretation adopted by the referring court, the fact that that provision extends the possibility of imposing penalties to infringements of Regulation No 561/2006 committed outside the territory of the Member State concerned cannot be interpreted as restricting the infringements capable of being penalised to those committed on the territory of another State.
- 34 That interpretation is borne out in particular by recital 27 of Regulation No 561/2006, according to which it is desirable in the interests of clear and effective enforcement to ensure uniform provisions on the liability of transport undertakings and drivers for infringements of the regulation, and this liability may result in penal, civil or administrative penalties, as the case may be, in the Member States. It is clear unequivocally from the wording of that recital that the Member States are entitled to lay down a system of liability of drivers for infringements of the regulation, and that they have a broad discretion as regards the nature of the applicable penalties.
- 35 Similarly, recital 31 of Regulation No 561/2006 stated that Regulation No 3821/85 should be amended to clarify specific obligations on transport undertakings and drivers as well as to promote legal certainty and to facilitate enforcement of driving time and rest period limits during roadside checks. The wording of that recital shows that Regulation No 561/2006, which moreover amends Regulation No 3821/85, is aimed in particular at drivers with respect to the obligations they must comply with under the latter regulation. In so far as, first, the Member States are required pursuant to Article 19(1) of Regulation No 561/2006 to lay down rules on penalties for infringements of that regulation in such a way that those penalties are effective, proportionate, dissuasive and



non-discriminatory, and, second, the regulation does not exclude the liability of drivers, it follows that the Member States can lay down provisions allowing penalties to be imposed, exclusively or otherwise, on drivers.

- 36 It should be noted, moreover, that Article 15 of Regulation No 3821/85 as amended lays down obligations to which only drivers are subject, with which they must comply in order for their liability not to be engaged.
- 37 In the second place, as regards Article 10(3) of Regulation No 561/2006, cited by the referring court, it must be stated that that provision, which lays down specific rules on the liability of transport undertakings, cannot be interpreted in isolation but must be read together with the provisions of Article 10(1) and (2) of the regulation, which impose on those undertakings obligations concerning the payment of drivers and the organisation of their work. Moreover, while in accordance with the first sentence of the second indent of Article 10(3) of the regulation the Member States are entitled to hold transport undertakings fully liable for infringements committed by their drivers, it does not appear either from that provision or from any other provision of the regulation that the Member States are obliged to attribute full liability for those infringements to those undertakings. Consequently, it does not follow from Article 10(3) that Regulation No 561/2006 precludes a Member State from allowing the competent authorities to apply penalties to drivers who commit infringements of the regulation.
- 38 In the third place, as regards recital 17 of Regulation No 561/2006, it suffices to state, first, that while one of the aims of the regulation is indeed to improve the working conditions of employees in the road transport sector (see, to that effect, judgments of 3 October 2013 in *Lundberg*, C-317/12, EU:C:2013:631, paragraph 31, and 13 March 2014 in *A. Karuse*, C-222/12, EU:C:2014:142, paragraph 29), there is no reason to suppose that the EU legislature intended to free drivers from all liability for the infringements they commit, in particular where the infringements relate exclusively to the performance of their work.
- 39 It must be noted, second, that Regulation No 561/2006 also pursues the objective of improving general road safety. The two objectives of the regulation — improving working conditions and improving road safety — are thus both reflected in the obligation in principle to fit vehicles used in road transport with approved recording equipment making it possible to monitor compliance with drivers' driving times and rest periods. An interpretation of that regulation as excluding the possibility of imposing penalties on drivers to punish infringements by them of their obligations under the regulation would obstruct the achievement of the objective of improving road safety generally.
- 40 Moreover, the Court has implicitly accepted, in its judgments of 9 February 2012 in *Urbán* (C-210/10, EU:C:2012:64), 3 October 2013 in *Lundberg* (C-317/12, EU:C:2013:631) and 13 March 2014 in *A. Karuse* (C-222/12, EU:C:2014:142), the possibility of the Member States imposing such penalties on drivers.
- 41 It follows from all the above considerations that the answer to Question 2 is that Regulation No 561/2006 must be interpreted as not precluding national legislation which, instead of or in addition to the transport undertaking employing the driver, holds the driver liable for infringements of that regulation which he has himself committed.

### *Questions 1 and 3*

- 42 In view of the answer to the second question, there is no need to reply to the first and third questions.

## Costs

- <sup>43</sup> Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

**Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 must be interpreted as not precluding national legislation which, instead of or in addition to the transport undertaking employing the driver, holds the driver liable for infringements of that regulation which he has himself committed.**

[Signatures]