Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

26 September 2019*

(Reference for a preliminary ruling — Road transport — Articles 91 and 92 TFEU — Regulation (EU) No 165/2014 — Article 32(3), Article 33(1) and Article 41(1) — Infringement of the rules on the use of tachographs — Duty of Member States to make provision for effective, dissuasive and non-discriminatory penalties — Resident and non-resident small and medium-sized enterprises — Differential treatment)

In Case C-600/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary), made by decision of 14 September 2018, received at the Court on 24 September 2018, in the proceedings

UTEP 2006. SRL

v

Vas Megyei Kormányhivatal Hatósági Főosztály, Hatósági, Építésügyi és Oktatási Osztály,

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, J. Malenovský and L.S. Rossi (Rapporteur), Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– UTEP 2006. SRL, by Z. Szároz, jogtanácsos,

– the Hungarian Government, by M.Z. Fehér, acting as Agent,

– the European Commission, by W. Mölls, 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 Article 92 TFEU.

2 The request has been made in proceedings between UTEP 2006. SRL ('UTEP') and the Vas Megyei Kormányhivatal Hatósági Főosztály, Hatósági, Építésügyi és Oktatási Osztály (Office of the Government Delegation in the Province of Vas, Inspection, Construction and Education Department, Hungary) concerning the imposition by the latter of an administrative fine payable by UTEP for an infringement of the legislation relating to the use of tachographs.

Legal context

European Union law

3 Article 32 of Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ 2014 L 60, p. 1), provides:

'1. Transport undertakings and drivers shall ensure the correct functioning and proper use of digital tachographs and driver cards. Transport undertakings and drivers using analogue tachographs shall ensure their correct functioning and the proper use of record sheets.

…

3. It shall be forbidden to falsify, conceal, suppress or destroy data recorded on the record sheet or stored in the tachograph or on the driver card, or print-outs from the tachograph. Any manipulation of the tachograph, record sheet or driver card which could result in data and/or printed information being falsified, suppressed or destroyed shall also be prohibited. …

…'

4 Article 33 of that regulation provides:

'1. Transport undertakings shall be responsible for ensuring that their drivers are properly trained and instructed as regards the correct functioning of tachographs, whether digital or analogue, shall make regular checks to ensure that their drivers make correct use thereof, and shall not give to their drivers any direct or indirect incentives that could encourage the misuse of tachographs.

…

3. Transport undertakings shall be liable for infringements of this Regulation committed by their drivers or by drivers at their disposal. …'

5 Article 41(1) of that regulation provides:

'Member States shall, in accordance with national constitutional arrangements, lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory, and shall be in compliance with the categories of infringements set out in Directive 2006/22/EC [of the European Parliament and of the Council of 15 March 2006 on minimum

conditions for the implementation of Council Regulations (EEC) No 3820/85 and No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ 2006 L 102, p. 35)].'

6 In accordance with Article 9 of Directive 2006/22, as amended by Commission Regulation (EU) 2016/403 of 18 March 2016 (OJ 2016 L 74, p. 8) ('Directive 2006/22'), Annex III to Directive 2006/22 consists of a list of infringements of, inter alia, Regulation No 165/2014, divided into different categories according to their gravity ('most serious infringements', 'very serious infringements', 'serious infringements' and 'minor infringements'). Section 2 of that annex, which covers infringements of the latter regulation, classifies, under section H — which concerns infringements relating to the 'use of tachograph, driver card or record sheet' — infringements of Articles 32 and 33 of Regulation No 165/2014 among the 'most serious' or 'very serious' infringements.

Hungarian law

7 Article 12/A of the a kis- és középvállalkozásokról, fejlődisük támogatásáról szóló 2004. évi XXXIV. törvény (Law No XXXIV of 2004 on small and medium-sized enterprises and aid for their development), in the version applicable to the dispute in the main proceedings ('the Law on SMEs'), provides:

'1. When bodies carrying out official inspections of small and medium-sized enterprises — except for tax and customs procedures and inspection procedures involving institutions that carry out adult education activities — are required to impose a penalty in respect of the first offence committed, instead of imposing a fine, they shall issue a warning to the enterprises concerned and shall examine whether the procedure laid down in Article 94(1)(a) of the a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény (Law No CXL of 2004 laying down general provisions on administrative procedures and services) can be applied.

2. The fine cannot be replaced where:

(a) the offence harms or threatens the life, physical integrity or health of persons;

…'

8 Article 20(7) of the Law on SMEs is worded as follows:

'This Law transposes the contents of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises into national law [(OJ 2003 L 124, P. 36)].'

The dispute in the main proceedings and the question referred for a preliminary ruling

9 UTEP is a company established in Romania which carries out, inter alia, transport activities. It is accepted that the company meets the criteria for classification as a small and medium-sized enterprise (SME) within the meaning of the Law on SMEs.

10 On 15 May 2017, during a roadside inspection operation, the Hungarian authorities found that the driver of a vehicle owned by UTEP had, between 12 and 14 May 2017, removed the driver recording disc and, in various respects, interfered with the equipment and its electrical connection. Although that period of approximately 48 hours had been designated by the driver as a rest period, the Hungarian authorities found that it had in fact been used to carry out loading and refuelling operations.

11 In the administrative procedure, concluded by decision of 28 July 2017, the Hungarian authorities found that UTEP had infringed Article 32(3) and Article 33(1) and (3) of Regulation No 165/2014 and imposed on it an administrative fine of 800 000 Hungarian forints (HUF) (approximately EUR 2 600), rejecting the company's argument that Article 12/A(1) of the Law on SMEs allowed the fine to be substituted by a written warning. According to those authorities, that article only applies to SMEs established in Hungary.

12 UTEP brought before the referring court, the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary), as its principal claim, an action for annulment of the decision of 28 July 2017 and, in the alternative, a claim seeking a reduction in the amount of the fine, maintaining that the Hungarian authorities' refusal to issue a written warning instead of the fine that was imposed, on the ground that the company is established in a Member State other than Hungary, is discriminatory and contrary to Article 92 TFEU.

13 In those circumstances, the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely) decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Should Article 92 TFEU be interpreted as precluding an interpretation of Article 12/A of the [Law on SMEs] and the administrative practice followed in this respect, according to which that provision cannot be applied to enterprises (legal entities) of other Member States that are not registered in Hungary, but are otherwise in line with the concept of 'SME' laid down by that law?'

Admissibility of the request for a preliminary ruling

14 In its written observations, the Hungarian Government submits that the request for a preliminary ruling is inadmissible on two grounds.

15 First, that government considers that Article 92 TFEU, the interpretation of which is sought by the referring court, is irrelevant to the resolution of the dispute in the main proceedings. The fine was imposed on UTEP on the basis of the national legislation implementing Regulation No 165/2014. That regulation was itself adopted pursuant to Article 91 TFEU, which has the effect of rendering Article 92 TFEU irrelevant.

16 Second, the Hungarian Government is doubtful whether Article 12/A(1) of the Law on SMEs is applicable to the dispute in the main proceedings in so far as, under paragraph 2 of that article, there can be no recourse to a warning where the conduct in question is liable to endanger the life or integrity of persons. As is clear from Directive 2006/22, infringements of the provisions relating to the use of tachographs are to be classified as the most serious infringements. Consequently, and irrespective of any possible difference of treatment in Hungary between resident and non-resident SMEs, it is not possible to substitute the fine for a warning. The Hungarian Government considers that the question referred is, therefore, hypothetical.

17 As to the first argument put forward by that government, it should be observed that, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 27 June 2018, *Turbogás*, C-90/17, EU:C:2018:498, paragraph 24 and the case-law cited).

18 Consequently, even if, formally speaking, the referring court has limited its question to the interpretation of a particular provision of EU law, that does not preclude the Court from providing the referring court with all the elements of interpretation of EU law which may be of assistance in

adjudicating in the case pending before it, whether or not that court has referred to them in its question. In that regard, it is for the Court to extract from all of the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the main dispute (see, to that effect, judgment of 29 September 2016, *Essent Belgium*, C-492/14, EU:C:2016:732, paragraph 43 and the case-law cited).

19 In the present case, the question referred concerns the interpretation of Article 92 TFEU, which applies to the transport sector only in the absence of any legislation at EU law level adopted on the basis of Article 91(1) TFEU (see, to that effect, judgment of 18 June 2019, *Austria* v *Germany*, C-591/17, EU:C:2019:504, paragraphs 158, 161 and 163).

20 In the field of road transport, the rules relating to the installation and use of tachographs, and infringements of those rules, are the subject, in particular, of Regulation No 165/2014, the legal basis of which is, inter alia, Article 91 TFEU.

21 In that regard, as the Hungarian Government has itself conceded, it is apparent from the order for reference that the fine giving rise to the dispute in the main proceedings was imposed, under the national legislation transposing Regulation No 165/2014, for an infringement of Article 32(3) and Article 33(1) and (3) of that regulation. Moreover, Article 41(1) of that regulation provides that penalties, the rules on which are to be laid down by the Member States and which are applicable to infringements of that regulation, must be, inter alia, effective, proportionate, dissuasive and non-discriminatory.

22 Therefore, in accordance with the case-law cited in paragraphs 17 and 18 above, it is necessary to reformulate the question referred in so far as it concerns the interpretation, not of Article 92 TFEU, but of Article 41(1) of Regulation No 165/2014.

23 As regards the second argument put forward by the Hungarian Government, concerning the allegedly hypothetical nature of the question referred, that argument, in effect, challenges the referring court's interpretation of the provisions of Article 12/A of the Law on SMEs. In accordance with the Court's settled case-law, it is for the referring court alone to interpret national legislation, and the Court must abide by the interpretation of national law as set out by that court (see, to that effect, judgment of 26 June 2019, *Kuhar*, C-407/18, EU:C:2019:537, paragraph 52 and the case-law cited).

24 It follows that the reference for a preliminary ruling is admissible.

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether Article 41(1) of Regulation No 165/2014 is to be interpreted as precluding the administrative practice of a Member State according to which, unlike non-resident road transport SMEs, those that are established in the territory of that Member State are liable to receive a lesser penalty, in the form of a warning rather than an administrative fine, where such SMEs commit, for the first time, an infringement of Regulation No 165/2014 of the same degree of gravity.

26 As stated in paragraph 21 above, under Article 41(1) of Regulation No 165/2014, the penalties, the rules on which are to be laid down by Member States and which are applicable to infringements of that regulation, must be, inter alia, effective, dissuasive and non-discriminatory.

27 The requirement that penalties be non-discriminatory undoubtedly relates to the situation in which an infringement of Regulation No 165/2014, of the same degree of gravity, entails different penalties depending on whether or not the road transport enterprise concerned is established in the Member

State in whose territory the infringement was committed. That regulation proceeds from the assumption that those enterprises, irrespective of where they are established, are in a comparable situation when they commit an infringement of Regulation No 165/2014 in the territory of the same Member State. Consequently, a Member State must ensure that the system of penalties imposed within its territory, in accordance with Article 41(1) of that regulation, apply without distinction based on the place of establishment of the road transport enterprise which has infringed the regulation.

28 It follows that an administrative practice according to which a non-resident road transport SME is liable to be penalised more severely than a resident SME in respect of an infringement of Regulation No 165/2014 of the same degree of gravity is contrary to Article 41(1) of that regulation in so far as that article provides that penalties must be non-discriminatory.

29 In the light of the foregoing considerations, the answer to the question referred is that Article 41(1) of Regulation No 165/2014 must be interpreted as precluding an administrative practice of a Member State according to which, unlike non-resident road transport SMEs, those that are established in the territory of that Member State are liable to receive a lesser penalty, in the form of a warning rather than an administrative fine, where such SMEs commit, for the first time, an infringement of Regulation No 165/2014 of the same degree of gravity.

Costs

30 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 (Eighth Chamber) hereby rules:

Article 41(1) of Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport, must be interpreted as precluding an administrative practice of a Member State according to which, unlike non-resident small and medium-sized road transport enterprises, those that are established in the territory of that Member State are liable to receive a lesser penalty, in the form of a warning rather than an administrative fine, where such enterprises commit, for the first time, an infringement of Regulation No 165/2014 of the same degree of gravity.

[Signatures]