



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

13 March 2014\*

(Road transport — Regulation (EC) No 561/2006 — Obligation to use a tachograph — Derogation for vehicles used in connection with road maintenance — Vehicle transporting gravel from the loading site to the road maintenance works site)

In Case C-222/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tartu ringkonnakohtus (Estonia), made by decision of 4 May 2012, received at the Court on 11 May 2012, in the proceedings

**A. Karuse AS**

v

**Politsei- ja Piirivalveamet,**

THE COURT (Sixth Chamber),

composed of A. Borg Barthet, President of the Chamber, E. Levits and M. Berger (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Estonian Government, by M. Linntam, acting as Agent,
- the Greek Government, by I. Bakopoulos and O. Souropani, acting as Agents,
- the Swedish Government, by U. Persson, acting as Agent,
- the European Commission, by J. Hottiaux, acting as Agent, and by C. Ginter, advokaat,

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

gives the following

\* Language of the case: Estonian.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 13(1)(h) 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 A. Karuse AS ('Karuse') and the Politsei- ja Piirivalveamet (Lõuna Politseiprefektuur) (public order department, Southern Prefecture of Police) concerning the decision of a public official to subject a vehicle owned by that company and not equipped with a tachograph in accordance with the law to an extraordinary technical inspection.

### Legal context

#### *European Union law*

- 3 Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8), as amended by Regulation No 561/2006 ('Regulation No 3821/85'), provides in Article 3(1) and (2):

'1. Recording equipment shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, except the vehicles referred to in Article 3 of Regulation (EC) No 561/2006. ...

2. Member States may exempt vehicles mentioned in Articles 13(1) and (3) of Regulation (EC) No 561/2006 from application of this Regulation.'

- 4 Recital 17 in the preamble to Regulation No 561/2006 reads:

'This Regulation aims to improve social conditions for employees who are covered by it, as well as to improve general road safety. ...'

- 5 Article 1 of Regulation No 561/2006 provides:

'This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This Regulation also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry.'

- 6 Articles 5 to 9 of that regulation set out the rules applicable to the crew of a transport vehicle, the driving time, the breaks and the rest periods.

7 Article 13(1) of that regulation states:

‘Provided the objectives set out in Article 1 are not prejudiced, each Member State may grant exceptions from Articles 5 to 9 and make such exceptions subject to individual conditions on its own territory or, with the agreement of the States concerned, on the territory of another Member State, applicable to carriage by the following:

...

(h) vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers;

...’

*Estonian law*

8 The Law on traffic (Liiklusseadus) of 14 December 2000 (RT I 2001, 3, 6), in the version applicable to the main proceedings (‘the LS’), provides in Paragraph 20<sup>3</sup>:

‘Special rules for the driver’s work and rest periods

(1) The length of the driving and rest periods of the driver of a vehicle or vehicle and trailer with more than nine seats (including the driver’s seat) intended for the carriage of passengers or with a maximum permitted laden weight of over 3 500 kilograms intended for the carriage of goods, the list of transports by motor vehicle exempted from complying with requirements, and the obligations of the driver and his employer are laid down by Regulation [No 561/2006].

(1<sup>1</sup>) The persons listed in Article 10(4) of Regulation (EC) No 561/2006 of the European Parliament and of the Council must comply with the requirements laid down by legal acts for the driver’s driving and rest periods. A term in a contract covered by the law of obligations which disregards the requirements of that regulation is void.

...

(7) The requirements of this paragraph must be complied with, in addition to drivers working on the basis of an employment contract, also by drivers working on the basis of other contracts covered by the law of obligations.

...

(8) The requirements laid down by the regulation mentioned in subparagraph 1 of this paragraph exceptionally do not apply to drivers driving a motor vehicle within national territory, if:

...

(8) the vehicle is used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers

...’

9 Paragraph 20<sup>4</sup> of the LS provides:

‘Use of the tachograph

(1) Calculation of the driving and rest periods of the driver of a motor vehicle takes place by means of the data recorded on the record sheets of mechanical recording equipment in accordance with Annex I or in the memory of recording equipment with digital data recording (‘digital tachograph’) in accordance with Annex IB to [Regulation No 3821/85].

...

(1<sup>1</sup>) If use of a tachograph is compulsory, the driver must record the data of driving and rest periods with the tachograph in accordance with Article 15 of Regulation ... No 3821/85.

(2) A tachograph is not compulsory in a vehicle:

(1) which was manufactured before 1 January 1985, if the vehicle is not used for providing a goods or passenger transport service for consideration;

(2) which is used for transports exempted from complying with requirements under Article 3 of [Regulation No 561/2006] and Paragraph 20<sup>3</sup>(8) of the present law.’

10 Under Paragraph 71 of the LS, entitled ‘Special service vehicle’:

‘(1) A special service vehicle is:

...

(2) a vehicle carrying out road management tasks and necessary works on the road (“maintenance vehicle”);

...

(4) The driver of a maintenance vehicle on whose vehicle a flashing yellow light is switched on may when carrying out tasks ignore the requirement in Paragraph 3(1) of the present law.’

11 Paragraph 10 of the Law on highways (Teeseadus) of 17 February 1999 (RT I 1999, 26, 377; ‘the TeeS’), entitled ‘Condition of the roads’, states:

‘(1) It must be possible to travel in complete safety on the roads and the roads must meet the requirements as regards the condition of the highways.

(2) The Minister for the Economy and Communications shall lay down the requirements applicable as regards road safety installations, traffic signs, traffic lights, railings, bollards and road signs and as regards the condition of main roads, minor roads and winter roads.

(3) The Minister for the Environment shall lay down the requirements applicable as regards the condition of forest roads.

(4) The owner of a public road or the person regarded as responsible for road management tasks shall be required to maintain the highways in a condition which meets the requirements of the present law or of legal acts adopted by virtue thereof.’

- 12 Paragraph 14 of the TeeS, which concerns road management tasks, provides:
- ‘(1) Road management tasks include the carrying out of work on the highways, planning, management of road use, maintenance of the safety area, development of road projects and any other activities connected with management of the highways.
  - (2) Work on the highways means the construction, repair and maintenance of the highways within the meaning of Paragraph 17 of the present law. The classification of construction and repair works and their technical description are governed by the standards applicable to the road projects referred to in Paragraph 19(2) of the present law.’
- 13 Paragraph 17(3) of the TeeS, concerning the planning, construction, repair and maintenance of the highways, provides:
- ‘(3<sup>1</sup>) The objective of the maintenance of the highways is to ensure that the condition of the roads meets the requirements set out in Paragraph 10(2) of the present law.’

### **The main proceedings and the question referred**

- 14 On 19 August 2009, during a road-side inspection, an official of the Lõuna Prefektuur stopped a lorry owned by Karuse, which was carrying a load of gravel to a road maintenance works site. The vehicle was stopped at approximately 42 kilometres from the company’s head office and at approximately 10 kilometres from the road maintenance works site.
- 15 On the one hand, that official imposed a fine of 900 Estonian Crowns (EEK) on the driver of the lorry, inter alia for having driven a vehicle not equipped with a tachograph to monitor the driving time and breaks of the drivers in accordance with the requirements of the LS. On the other, for the same reason, he required the vehicle to undergo an extraordinary technical inspection.
- 16 It is apparent from the vehicle’s registration certificate that it is a three-axle tipping lorry with a maximum laden weight of 25.5 tonnes. In the remarks column of that certificate is the entry ‘maintenance vehicle’.
- 17 Karuse brought an action in the Tartu Halduskohus (Administrative Court, Tartu) seeking the annulment of the decision of the official ordering an extraordinary technical inspection. It submitted in particular in that regard that the vehicle in question was a maintenance vehicle, as shown by its registration certificate and that, at the time of the inspection, it was making for a road maintenance works site with a load of gravel intended for road maintenance works. Accordingly, that vehicle was covered by the derogation from the obligation to use a tachograph laid down in Paragraph 20<sup>3</sup>(8)(8) of the LS.
- 18 That action was dismissed by a decision of 9 December 2009 on the ground that the mere entry ‘maintenance vehicle’ in the registration certificate is not sufficient automatically to confer that status on the vehicle in question and therefore does not exempt it, on that basis alone, from the obligation to use a tachograph. The Tartu Halduskohus (District Court, Tartu) also considered that the works in question could not be regarded as road maintenance works within the meaning of Paragraph 14 of the TeeS, under which vehicles used for such works were exempt from the use of a tachograph.
- 19 On 5 January 2010, Karuse brought an appeal before the Tartu Ringkonnakohus (Court of Appeal, Tartu).

- 20 It submitted that road maintenance requires the use of certain materials and the necessary machinery, which in many cases are brought to the site by the means of transport also used for carrying out maintenance works. In the present case, the vehicle in question was used to spread gravel on the public highway where maintenance work was being carried out, the driver of that vehicle having also been given the responsibility for carrying out that task. Consequently, it is of the opinion that the transport of materials for use in road maintenance works must be regarded as forming part of road maintenance works.
- 21 Lõuna Prefektuur, however, asks for the judgment of the Tartu Halduskohus to be upheld.
- 22 In the decision for reference, the Tartu ringkonnakohus notes in particular that the Republic of Estonia has transposed almost unchanged the derogation in Article 13(1)(h) of Regulation No 561/2006, and therefore the rules of application of European Union law must also be taken into account in assessing the concept of ‘vehicles used in connection with road maintenance’ set out in Paragraph 20<sup>3</sup>(8)(8) of the LS.
- 23 In that regard, the referring court states that, apart from the judgments in Case C-116/91 *British Gas* [1992] ECR I-4071 concerning the interpretation of the expression ‘vehicles used in connection with the gas service’ and Case C-335/94 *Mrozek and Jäger* [1996] ECR I-1573 concerning the interpretation of ‘vehicles used for refuse collection’, there is no case-law of the Court of Justice which enables the concept of ‘vehicles used in connection with road maintenance’, within the meaning of Article 13(1)(h) of Regulation No 561/2006, to be interpreted unambiguously in the circumstances of the present case.
- 24 In those circumstances, the Tartu ringkonnakohus decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must the expression “in connection with road maintenance” used in the definition of the exception permitted in Article 13(1)(h) of [Regulation No 561/2006] be interpreted as covering a tipping lorry with a laden weight of 25.5 tonnes carrying gravel along a public highway from a quarry [from which it is extracted] to a site of road improvement and maintenance works?’

### **Consideration of the question referred for a preliminary ruling**

- 25 By its question, the referring court asks, in essence, whether the concept of ‘vehicles used in connection with road maintenance’, in Article 13(1)(h) of Regulation No 561/2006, which vehicles can be exempted from the use of a tachograph, is to be interpreted as meaning that it covers a vehicle transporting gravel from its loading site to a road maintenance works site.
- 26 First of all, it is appropriate to note that the provisions of Article 13(1)(h) of Regulation No 561/2006 repeat, in essence, those of Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1)
- 27 Since Regulation No 561/2006 does not make substantial amendments as regards the conditions to which the derogations laid down in Article 4(6) of Regulation No 3820/85 were subject and the objectives pursued by those regulations are identical, it is appropriate to rely on the interpretation given by the Court in the judgments in *British Gas* and *Mrozek and Jäger* with respect to the derogations laid down in that provision.
- 28 The Court held in those judgments that, given that that provision of Regulation No 3820/85 lists certain categories of transport which are excluded from its scope and it is thus a derogation from the general scheme, it may not be interpreted in such a way as to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure. Furthermore, the scope of the

derogations which it lays down must be determined in the light of the aims pursued by the regulation (see *British Gas*, paragraph 12; *Mrozek and Jäger*, paragraph 9; and Case C-39/95 *Goupil* [1996] ECR I-1601, paragraph 8). The Court ruled in identical terms with regard to the derogations laid down in Articles 13(1)(d) and 3(h) of Regulation No 561/2006 (Case C-128/04 *Raemdonck and Raemdonck-Janssens* [2005] ECR I-2445, paragraph 19; Case C-554/09 *Seeger* [2011] ECR I-7131, paragraph 33; and Case C-317/12 *Lundberg* [2013] ECR, paragraph 20).

- 29 In that regard, it must be borne in mind that the objective of Regulation No 561/2006, as follows in particular from recital 17 in the preamble thereto and Article 1 thereof, is to harmonise the conditions of competition with regard to the road sector and to improve working conditions for the employees in that sector and road safety, those objectives meaning in particular that, in principle, road transport vehicles must be equipped with an approved tachograph enabling compliance with driving times and drivers' rest periods to be monitored (*Lundberg*, paragraph 31 and the case-law cited).
- 30 With regard to the interests which Article 13(1)(h) of Regulation No 561/2006 seeks to safeguard, it must be noted that the derogations provided for in that provision are based on the nature of the services in connection with which the vehicles are used. It is apparent from the list in that article that the services envisaged by that provision are all general services performed in the public interest (see, to that effect, with regard to Article 4(6) of Regulation No 3820/85, *British Gas*, paragraph 13; *Mrozek and Jäger*, paragraph 10; and *Goupil*, paragraph 9).
- 31 Called upon to give a more specific interpretation of the concept of 'vehicles used in connection with the gas service' in Article 4(6) of Regulation No 3820/85, the Court found that the derogation laid down in that provision covered only vehicles which were used wholly and exclusively in connection with the production, transport or distribution of gas or the maintenance of the necessary installations for that purpose, so that the derogation does not apply to vehicles wholly or partly used for the transport of domestic gas appliances (*British Gas*, paragraph 21).
- 32 Any other interpretation of that concept would undermine, in particular, the objective of eliminating disparities capable of distorting competition in the road transport sector. An undertaking which carried out its activities in the field of the production, transport and distribution of gas, but which also supplies domestic gas appliances, while exempted from the requirement to install and use a tachograph in vehicles used for the transport of such appliances would enjoy a competitive advantage over other undertakings which only supply such appliances, since it would save the cost of installing and maintaining tachographs in such vehicles which other undertakings supplying domestic gas appliances have to bear (*British Gas*, paragraph 19).
- 33 With regard to the concept of 'refuse collection', set out in Article 4(6) of Regulation No 3820/85, the Court held that that covered the collection of refuse from where it has been deposited. It found that the vehicles used for such collection travelled over a limited distance and for a short period of time, and the transport of refuse remained ancillary to the collection. It follows that the transport of refuse which did not comply with those criteria did not fall within the exemption to compulsory use of the tachograph (see *Mrozek and Jäger*, paragraph 12).
- 34 It is in the light of that case-law that the question posed by the national court must be answered.
- 35 Firstly, as regards whether the transport at issue in the main proceedings was exclusive, it is apparent from the file that, in the main proceedings, the gravel was intended solely for use in road maintenance works. It follows that that transport was carried out wholly and exclusively in connection with road maintenance, within the meaning of Article 13(1)(h) of Regulation No 561/2006 (see, to that effect, *British Gas*, paragraph 21).

- 36 Secondly, as regards whether the transport at issue was not ancillary to the road maintenance works, the view must be taken, for that to be the case, that the vehicle concerned must be used directly to spread the gravel on the damaged sections of the road (see, by analogy, *Mrozek and Jäger*, paragraph 12). However, the mere transport of gravel intended for use in road maintenance works cannot be regarded as being covered by the derogation laid down in Article 13(1)(h) of Regulation No 561/2006.
- 37 That interpretation is in conformity with the objective, set out in Article 1 of Regulation No 561/2006, of eliminating disparities capable of distorting competition in the road transport sector. The Court has held that the derogation set out in Article 13(1)(h) of Regulation No 561/2006 may benefit not only the public authorities but also private undertakings which provide a general service in the public interest under their control (*Mrozek and Jäger*, paragraph 15). Accordingly the transport of material necessary to maintenance works may, as in the main proceedings, be carried out by a private service provider and thus constitute, as such, a commercial activity subject to competition.
- 38 In those circumstances, to exempt the vehicle of such a service provider, which carries out merely the transport of the gravel to the road maintenance works site, from the obligation of using a tachograph would confer on it a competitive advantage over other service providers in the same sector, since it would save the cost of installing and maintaining tachographs in such vehicles (see, to that effect, *British Gas*, paragraph 19).
- 39 In addition, although Regulation No 561/2006 does not provide that the vehicles used for road maintenance and monitoring must be used only near to the road maintenance works site in order to benefit from the derogation laid down in Article 13(1)(h) of that regulation, that is none the less a factor which must be taken into consideration for the purposes of assessing the ancillary nature of the transport as regards those works (see, by analogy, *Mrozek and Jäger*, paragraph 12).
- 40 Vehicles which travel for a short period of time and over a limited distance may be exempted from the obligation to be equipped with a tachograph without that undermining the objectives of Regulation No 561/2006 as regards the improvement of working conditions and road safety.
- 41 However, an extension of the derogation provided for in Article 13(1)(h) of that regulation to vehicles which travel over a long distance would have the effect that the drivers of such vehicles may be induced to drive long hours without a rest, which would be likely to undermine those objectives (see, to that effect, *Seeger*, paragraph 36).
- 42 In that context, it must nevertheless be borne in mind that, as follows from the case-law cited in paragraph 28 of the present judgment, the scope of the derogation laid down in Article 13(1)(h) of Regulation No 561/2006 must be determined in the light of the aims pursued by the regulation, including that of road safety.
- 43 In that context, it is necessary to take into account the fact that road maintenance activities include a wide variety of different works, such as, in particular, the repair of damage to the roads, de-icing or clearing snow. Characteristics of those works are, inter alia, planning difficulties, which vary as a function of the events behind the damage caused to the public roads, and the need for them to be carried out rapidly. In addition, the frequency of those works depends largely on the meteorological conditions and the distances to be travelled by the vehicles used between the different road maintenance works sites, which factors can vary in different regions of the European Union. That is the case for the greater distances between the built-up areas in the Member States which have a low population density such as, in particular, the Member States in the north of the European Union, as opposed to certain regions in the Member States of central Europe.



- 44 In the present case, it is apparent from the decision for reference that the vehicle in question was stopped approximately 42 kilometres from the head office of Karuse and approximately 10 kilometres from the site of the works. However, the distance between the site of those works and the loading site has not been given.
- 45 Consequently, it is for the referring court, taking into account all the factors in the dispute before it and the abovementioned considerations concerning the geographical and climatic conditions prevailing in the region in question, to assess whether the journey of the vehicle at issue meets the requirement of limited distance and short period of time in order that the transport in question does not undermine the objectives pursued by Regulation No 561/2006.
- 46 Finally, it must be noted that Article 13(1)(h) of Regulation No 561/2006 does not provide that the vehicles used for the activities listed therein are to be subject to a restriction as regards their maximum laden weight or their technical specifications in order to benefit from the derogation in that provision. Accordingly, it is not necessary, in the context of the answer to the question referred, to take account of the maximum laden weight of 25.5 tonnes of the vehicle used in the present case, nor of the fact that it is a tipping lorry.
- 47 Moreover, it must be stated that, within the limits thus defined, the movement of vehicles when empty in connection with road maintenance and when preparing to carry out such transportation also falls within Article 13(1)(h) of Regulation No 561/2006 (see, to that effect, *Mrozek and Jäger*, paragraph 14).
- 48 Having regard to all the foregoing considerations, the answer to the question referred is that the concept of ‘vehicles used in connection with road maintenance’, in Article 13(1)(h) of Regulation No 561/2006, which vehicles can be exempted from the use of a tachograph, must be interpreted as meaning that it covers vehicles transporting material to a road maintenance works site, provided that the transport is wholly and exclusively connected with those works and constitutes an ancillary activity to them. It is for the national court to ascertain whether that is the case, taking account of all the relevant factors in the main proceedings.

### Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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:

**The concept of ‘vehicles used in connection with road maintenance’, in Article 13(1)(h) 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, which vehicles can be exempted from the use of a tachograph, must be interpreted as meaning that it covers vehicles transporting material to a road maintenance works site, provided that the transport is wholly and exclusively connected with those works and constitutes an ancillary activity to them. It is for the national court to ascertain whether that is the case, taking account of all the relevant factors in the main proceedings.**

[Signatures]