



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

19 October 2016\*

(Reference for a preliminary ruling — Road transport — Regulation (EC) No 561/2006 — Article 10(3) — Articles 18 and 19 — Fine imposed on the driver — Measures necessary to the execution of the penalty taken against the transport company — Immobilisation of the vehicle))

In Case C-501/14,

REQUEST for a preliminary ruling under Article 267 TFEU, brought by the Szegedi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Szeged, Hungary), by decision of 28 October 2014, received at the Court on 10 November 2014, in the proceedings

**EL-EM-2001 Ltd**

v

**Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága,**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, M. Berger (Rapporteur), A. Borg Barthet, E. Levits and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 29 October 2015,

after considering the observations submitted on behalf of:

- EL-EM-2001 Ltd, by D.M. Irinkov, ügyvéd,
- the Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága, by M. Daniné Égető and B. Gyenge, jogtanácsosok,
- the Hungarian Government, by M. Fehér and G. Szima, acting as Agents,
- the Estonian Government, by K. Kraavi-Käerdi, acting as Agent,
- Ireland, by A. Joyce and L. Williams, acting as Agents,
- the Swedish Government, by A. Falk and E. Karlsson, acting as Agents,

\* Language of the case: Hungarian.

— the European Commission, by J. Hottiaux and L. Havas, acting as Agents,  
— the Norwegian Government, by T. Skjeie and B. Stankovic, acting as Agents,  
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 19(1) 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 EL-EM-2001 Ltd and the Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága (Regional Directorate General of Customs and Finance, Dél-Alföld, Hungary) concerning the immobilisation of a heavy goods vehicle owned and operated by EL-EM-2001 in order to guarantee payment of a fine imposed on the driver of that vehicle who was then employed by that company.

### **Legal context**

#### *EU law*

#### Regulation No 3821/85

- 3 Article 15(7)(a) of 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:

'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.

...'

Regulation No 561/2006

4 Recitals 17, 26 and 27 of Regulation No 561/2006 state:

(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.

...

(26) The Member States should lay down rules on penalties applicable to infringements of this regulation and ensure that they are implemented. Those penalties must be effective, proportionate, dissuasive and non-discriminatory. The possibility of immobilising the vehicle where serious infringements are detected should also be included within the common range of measures open to Member States. The provisions contained in this regulation pertaining to penalties or proceedings should not affect national rules concerning the burden of proof.

(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.'

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 Article 10(1) to (3) of that regulation 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.'

7 Article 18 of Regulation No 561/2006 states:

'Member States shall adopt such measures as may be necessary for the implementation of this regulation.'

8 Article 19 of that regulation provides:

'1. Member States shall lay down rules on penalties applicable to infringements of this regulation and Regulation (EEC) 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 the 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.

3. Whenever a Member State initiates proceedings or imposes a penalty for a particular infringement, it shall provide the driver with due evidence of this in writing.

4. Member States shall ensure that a system of proportionate penalties, which may include financial penalties, is in force for infringements of this regulation or Regulation ... No 3821/85 on the part of undertakings, or associated consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies.'

9 Article 21 of Regulation No 561/2006 states:

'To address cases where a Member State considers that there has been an infringement of this regulation which is of a kind that is clearly liable to endanger road safety, it shall empower the relevant competent authority to proceed with immobilisation of the vehicle concerned until such time as the cause of the infringement has been rectified. Member States may compel the driver to take a daily rest period. Member States shall, where appropriate also withdraw, suspend or restrict an undertaking's licence, if the undertaking is established in that Member State, or withdraw, suspend or

restrict a driver's driving licence. The Commission, acting in accordance with the procedure in Article 24(2) shall develop guidelines with a view to promoting a harmonised application of this article.'

*Hungarian law*

- 10 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,

...

7. In the case of an inspection of transport on the public highway, it is possible to detain the vehicle — while complying with the provisions concerning transportation of dangerous goods, highly perishable food products and live animals — in the course of the administrative procedure until the fine has been paid or a guarantee of the claim secured, without a specific decision being issued on the subject, in accordance with the conditions concerning precautionary measures laid down in the law on the general rules on authorities' administrative procedures and services. In particular, the vehicle cannot be immobilised in cases where

(a) the seat, domicile or place of usual residence of the debtor (or debtors) of the fine is located in Hungary and where the debtor holds a tax number or a tax identification code issued by the State tax administration, or

(b) a financial body provides a guarantee for compliance with the obligation to pay the fine or that obligation is taken over by an undertaking holding a tax number and registered within the national territory, provided that the debtor of the fine satisfactorily proves that fact during the proceedings.

7a. Insofar as a check shows that one of the rules set out in paragraph 1(c), (e) and (h) has been infringed and that infringement represents a risk to road safety, the competent authority may immobilise the vehicle until the road safety risk has been removed, in accordance with the conditions concerning precautionary measures laid down in the law on the general rules on authorities' administrative procedures and services without it being necessary to deliver a specific decision to that effect.'

- 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) 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 Pursuant to Paragraph 143 of the közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény (Law No CXL of 2004 on the general rules concerning administrative authorities’ procedures and services), entitled ‘Precautionary measures’:

‘1. If subsequent compliance with the obligation to which the procedure pertains is at risk, then before the due settlement date, as a precautionary measure, a guarantee of a claim on money or attachment of a specified item of property may be ordered within five days of the occurrence of the event which has given rise to the obligation.

2. The precautionary measure shall be drawn up by the first-tier authority and implemented by the executive body.

3. The precautionary measure shall be withdrawn if

- (a) it was taken to guarantee a payment obligation and if the amount corresponding to that obligation has been lodged with the executive body,
- (b) it was taken to guarantee the performance of an act and it is proven beyond all doubt that all the required preparatory acts have been performed with a view to the voluntary performance of that act which continues to be prevented only by the precautionary measure, or if
- (c) the original ground for the adoption of the precautionary measure no longer exists for any other reason.’

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

- 13 EL-EM-2001 is a transport undertaking registered in Bulgaria. During a transport carried out in Hungary, one of the employees of that undertaking, who was driving a heavy goods vehicle owned and operated by the undertaking, was the subject of a traffic control. On that occasion, the competent authorities found that there was an infringement of the provisions of Paragraph 15(7)(a) of Regulation No 3821/85.

- 14 On 25 February 2014, the Nemzeti Adó- és Vámhivatal Csongrád Megyei Vám- és Pénzügyőri Igazgatósága (Csongrád District Customs and Excise Inspectorate of the National Tax and Customs Administration of Hungary) (‘the authority of first instance’) accordingly imposed an administrative fine in the amount of HUF 400 000 (approximately EUR 1 270) on the driver of that vehicle. In

addition, that authority decided to take a precautionary measure, in order to guarantee the obligation to pay that fine and, on that basis, ordered the immobilisation of that vehicle until that fine had been paid.

- 15 In proceedings brought by EL-EM-2001, the second-tier administrative authority confirmed the decision ordering that precautionary measure.
- 16 EL-EM-2001 brought an action seeking the annulment of that decision before the Szegedi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Szeged, Hungary).
- 17 EL-EM-2001 argued, in that regard, that it was not the subject of the administrative procedure which led to the contested decision and that it was not a party to the proceedings. It based its arguments on the fact that, since the infringement was committed by the driver of the vehicle concerned and that he alone was ordered to pay a fine by the first-tier administrative authority, the undertaking itself, as the employer of that driver, could not be subject to a precautionary measure such as the immobilisation of the vehicle which it operated. It pointed out that there is no rule of law authorising such an immobilisation of an asset belonging to a third party who is not party to the administrative procedure and who has not committed the infringement.
- 18 The administration contended that the action brought by EL-EM-2001 should be dismissed, alleging inter alia that that undertaking had the status of a party to the administrative procedure and that, furthermore, it had exercised its right of appeal against the decision ordering the immobilisation of the vehicle concerned. Since a fine was imposed, whoever was liable to pay that fine, Hungarian law permits the administrative authority, where the driver or operator of the vehicle has been ordered to pay an administrative fine, to order the immobilisation of the vehicle used when the infringement was found.
- 19 Against that background, the Szegedi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Szeged) stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

‘(1) Should Article 19(1) of Regulation No 561/2006/EC be interpreted as meaning that, in the event of an infringement, the measure necessary in order to implement a penalty stipulated and applied by the Member State may only be applied to the person who has committed the infringement?’

To put it in different terms: in the light of Article 18 of Regulation No 561/2006, is it a breach of the obligation upon Member States pursuant to the first sentence of Article 19(1) of Regulation No 561/2006 if national legislation provides that a measure which is necessary in order to implement a penalty stipulated and applied by the Member State may be applied to a (natural or legal) person who has not been found by means of an administrative procedure to have committed an infringement?

- (2) If the answer to Question 1 is negative, should Article 19(1) of Regulation No 561/2006 be taken to mean that, where a measure is taken against a third (natural or legal) person on account of an infringement by a different person, despite the fact that it has not been established that the third person committed the infringement, the measure constitutes a penalty applied to him irrespective of the name given to it?
- (3) If the answer to Question 2 is affirmative, is the prohibition on subjecting an infringement to more than one assessment, as laid down in Article 19(1) of Regulation No 561/2006, breached by national legislation which makes it possible, in order to implement a penalty applied because of an infringement of rules by the driver of a vehicle, to impose on a different (natural or legal) person something described as a measure which, however, in terms of its content, is a penalty?’

## Consideration of the questions referred

### *The first question*

- 20 By its first question, the referring court asks, in essence, whether Regulation No 561/2006 precludes national rules authorising, as a precautionary measure, the immobilisation of a vehicle owned by a transport undertaking in a situation where, firstly, the driver, employed by that undertaking, drove that vehicle in breach of the provisions of Regulation No 3821/85 and, secondly, the national authority has not found the undertaking liable.
- 21 In that regard, it must be borne in mind that, in accordance with recital 17 and Article 1 of Regulation No 561/2006, that regulation seeks, inter alia, to improve the working conditions of drivers to whom those regulations apply and to improve road safety in general.
- 22 In accordance with recital 27 of Regulation No 561/2006, it is desirable in the interests of clear and effective enforcement of the rules on driving time and rest periods 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 in the Member States.
- 23 In that regard, Article 18 of Regulation No 561/2006 provides that Member States are to adopt such measures as may be necessary for the implementation of that regulation.
- 24 Consequently, Article 19(1) of Regulation No 561/2006 requires Member State to lay down ‘rules on penalties applicable to infringements of this regulation and Regulation ... No 3821/85’ and to take ‘all measures necessary to ensure that they are implemented’.
- 25 It follows from those provisions that the aim pursued by Regulation No 561/2006 is not harmonisation of the penalties, since, on the contrary, that regulation leaves the Member States free to choose the measures to adopt and the penalties necessary to their application (see, to that effect, judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 22).
- 26 In that context, it must be noted that Article 10(3) of Regulation No 561/2006 expressly authorised the Member States to hold transport undertakings ‘fully liable’ for infringements committed by the drivers which they employ.
- 27 Similarly, Article 19(2) of Regulation No 561/2006 provides that all Member States are to enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of that regulation detected on its territory and for which a penalty has not already been imposed.
- 28 It is clear from 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 (judgment of 9 June 2016, *Eurospeed*, C-287/14, EU:C:2016:420, paragraph 32).
- 29 It is also clear unequivocally from the wording of recital 27 of that regulation 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 (judgment of 9 June 2016, *Eurospeed*, C-287/14, EU:C:2016:420, paragraph 34).
- 30 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 (judgment of 9 June 2016, *Eurospeed*, C-287/14, EU:C:2016:420, paragraph 34).

- 31 Furthermore, the Court has held that a system of strict liability may prompt the employer to organise the work of his employees in such a way as to ensure compliance with Regulation No 561/2006 and that road safety, which is one of the objectives of that regulation, is a matter of public interest which may justify the imposition of a fine on the employer for infringements committed by his employees and a system of strict criminal liability (judgment of 10 July 1990, *Hansen*, C-326/88, EU:C:1990:291, point 19).
- 32 Finally, it must be borne in mind that, in accordance with recital 26 of Regulation No 561/2006, the possibility of immobilising the vehicle where serious infringements are detected should also be included within the common range of measures open to Member States.
- 33 In that context, Article 21 of Regulation No 561/2006 provides that a Member State may, where there has been an infringement which is of a kind that is clearly liable to endanger road safety, empower the relevant competent authority to proceed with immobilisation of the vehicle concerned until such time as the cause of the infringement has been rectified. Member States may compel the driver to take a daily rest period or, where appropriate also withdraw, suspend or restrict an undertaking's licence, if the undertaking is established in that Member State, or withdraw, suspend or restrict a driver's driving licence.
- 34 It follows from the foregoing that, having regard to the aim pursued, which is to ensure compliance by both drivers and transport undertakings with their obligations under Regulations Nos 3821/85 and 561/2006, the adoption of a precautionary measure such as the immobilisation of a vehicle affecting the transport undertaking following an infringement committed by its driver in order to ensure performance of a penalty issued as a result of that infringement is, in itself, compatible with EU law.
- 35 Nonetheless, it must be borne in mind that Article 19(1) of Regulation No 561/2006 requires Member States to lay down rules on penalties applicable to infringements of that regulation and Regulation No 3821/85 which are effective, proportionate, dissuasive and non-discriminatory.
- 36 However, that regulation does not contain more precise rules as regards the establishment of those national penalties and in particular does not establish any express criterion for the assessment of the proportionality of such penalties (judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 22).
- 37 According to settled case-law, in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by arrangements under that legislation are not complied with, Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with EU law and its general principles, and, consequently, in accordance with the principle of proportionality (judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 23 and the case-law cited).
- 38 Other measures closely linked to the penalties which, such as the immobilisation of a vehicle, ensure their effectiveness, must also meet those requirements.
- 39 Thus, in the present case, the precautionary measures permitted under national legislation at issue in the main proceedings must not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice

between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraphs 24 and 53 and the case-law cited).

- 40 In that context, the Court has held that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely deterrent effect, while respecting the general principle of proportionality (judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 45).
- 41 Furthermore, the Court has held that Member States are required to comply with the principle of proportionality not only as regards the determination of factors constituting an infringement and the determination of the rules concerning the severity of fines, but also as regards the assessment of the factors which may be taken into account in the fixing of a fine (judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 54).
- 42 In that context, it is established that the precautionary measure of immobilisation at issue in the main proceedings was imposed in administrative proceedings brought solely against the driver, who was found to be liable. The Hungarian legislation provides, in that regard, in Paragraph 20(7) of the Road Traffic Law, read in conjunction with Paragraph 143 of Law No CXL of 2004 on the general rules concerning administrative authorities' procedures and services, that in the case of an inspection of transport on the public highway, it is possible to detain the vehicle — while complying with the provisions concerning transportation of dangerous goods, highly perishable food products and live animals — in the course of the administrative procedure until the fine has been paid or a guarantee of the claim secured, if the competent authority considers that subsequent compliance with the obligation to which the procedure pertains is at risk, without it being necessary to deliver a specific decision to that effect.
- 43 Furthermore, it must be stated that, by virtue of Paragraph 20(7) of the Road Traffic Law, the vehicle cannot be immobilised, in particular, in cases where the seat, domicile or place of usual residence of the debtor of the fine is located in Hungary and where the debtor holds a tax number or a tax identification code issued by the State tax administration, or a financial body provides a guarantee for compliance with the obligation to pay the fine or that obligation is taken over by an undertaking holding a tax number and registered within the national territory, provided that the debtor of the fine satisfactorily proves that fact during the proceedings.
- 44 It follows that the sole aim pursued by the immobilisation of a vehicle is to guarantee the rapid payment of the fine imposed as a penalty.
- 45 Although it is true that such a precautionary measure is, in principle, appropriate and effective to achieve the objectives of improving the working conditions of drivers and road safety, referred to in Regulation No 561/2006, the immobilisation of a vehicle belonging to a transport undertaking which has not been found liable in administrative proceedings goes beyond what is necessary to achieve those objectives.
- 46 As the Commission notes in paragraph 43 of its observations, there are measures which are just as effective but less restrictive and less disproportionate, in the light of the right to property, which include, in particular, the withdrawal, suspension or restriction of the driver's driving licence until the fine has been paid. That measure would enable the transport undertaking to designate another driver able to drive the vehicle concerned, independent of the payment of the fine.
- 47 With regard to the requirement of effectiveness and deterrence of the measure at issue, which follow from Article 19(1) of Regulation No 561/2006, read in conjunction with Article 18 of that regulation, it must be noted that a measure meets those criteria when it encourages the parties involved in road transport to avoid penalties and, if a fine has been imposed, to pay it as quickly as possible. The

deterrent effect is greater when the person owing the fine is also the owner of the immobilised vehicle. That is the case, in particular, when the person committing the infringement is both the driver and owner of the vehicle or when both the driver and the undertaking are penalised for an infringement.

- 48 In the main proceedings, a fine was imposed solely on the driver, given that the liability of the undertaking, which was not a party to the administrative proceedings, was neither established nor even at issue. However, the precautionary measure affected only that undertaking, even though it had not committed any infringement. In those circumstances, the precautionary measure constituted by the immobilisation of the vehicle is not truly deterrent or effective as regards the driver. A measure such as, inter alia, the withdrawal, suspension or restriction of that driver's driving licence until payment of the fine would, however, be deterrent and effective and would meet the requirements of the principle of proportionality.
- 49 Having regard to all the foregoing considerations, the answer to the first question is that Regulation No 561/2006 must be interpreted as precluding national legislation which authorises, as a precautionary measure, the immobilisation of a vehicle owned by a transport undertaking in a situation where, firstly, the driver of that vehicle, employed by that undertaking, drove it in breach of the provisions of Regulation No 3821/85 and, secondly, the national competent authority did not establish that that undertaking was liable, since such a precautionary measure does not meet the requirements of the principle of proportionality.

*The second and third questions*

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

**Costs**

- 51 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 (Fifth 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 precluding national legislation which authorises, as a precautionary measure, the immobilisation of a vehicle owned by a transport undertaking in a situation where, firstly, the driver of that vehicle, employed by the undertaking, drove it in breach of the provisions of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport and, secondly, the competent national authority did not establish the liability of that undertaking, since such a precautionary measure does not meet the requirements of the principle of proportionality.**

[Signatures]