

Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

24 March 2021 (*)

(Reference for a preliminary ruling – Approximation of laws – Recording equipment in road transport – Regulation (EEC) No 3821/85 – Article 15(7) – Regulation (EC) No 561/2006 – Control proceedings – Administrative penalty – Failure to produce the record sheets for the tachograph relating to the current day and the previous 28 days – Single or multiple infringement)

In Joined Cases C-870/19 and C-871/19,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decisions of 19 September 2019, received at the Court on 26 November 2019, in the proceedings

Prefettura Ufficio territoriale del governo di Firenze

v

MI (C-870/19),

TB (C-871/19),

THE COURT (Tenth Chamber),

composed of M. Ilešič, President of the Chamber, E. Juhász (Rapporteur) and C. Lycourgos, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- MI and TB, by G. Beghin, avvocato,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Greco, avvocato dello Stato,
- the Greek Government, by I. Kotsoni, S. Chala, E. Skandalou and K. Georgiadis, acting as Agents,
- the European Commission, by L. Malferrari and C. Vrignon, acting as Agents,

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

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 15(7) 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 (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 (OJ 2006 L 102, p. 1) ('Regulation No 3821/85').

2 The requests have been made in two sets of proceedings between the Prefettura Ufficio territoriale del governo di Firenze (Government representative's office at the Florence Prefecture, Italy) ('the Florence Prefecture') and MI (Case C-870/19) and TB (Case C-871/19), respectively, two road transport drivers, concerning a number of administrative penalties imposed on them for infringements of the rules on compliance with driving times and rest periods.

Legal context

EU law

Regulation No 3821/85

3 Regulation No 3821/85 repealed and replaced Regulation (EEC) No 1463/70 of the Council of 20 July 1970 on the introduction of recording equipment in road transport (OJ, English Special Edition, Series I 1970(II), p. 482). Regulation No 3821/85 was itself repealed and replaced by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Regulation No 3821/85 and amending Regulation No 561/2006 (OJ 2014 L 60, p. 1). Nevertheless, given the date of the events in the main proceedings, regard must be had to Regulation No 3821/85.

4 The third, seventh and eleventh recitals of Regulation No 3821/85 read as follows:

'Whereas the use of recording equipment that may indicate the periods of time referred to in [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)] is intended to ensure effective checking on that social legislation;

...

Whereas automatic recording of other details of a vehicle's journey, such as speed and distance covered, will contribute significantly to road safety and will encourage sensible driving of the vehicle; whereas, consequently, it appears appropriate to provide for the equipment also to record those details;

...

Whereas, in order to achieve the aims hereinbefore mentioned of keeping a check on work and rest periods, it is necessary that employers and drivers be responsible for seeing that the equipment functions correctly and that they perform with due care the operations prescribed;

...'

5 Article 3(1) of that regulation provided:

'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 ... No 561/2006 ...'

6 Article 13 of that regulation provided:

'The employer and drivers shall ensure the correct functioning and proper use of, on the one hand, the recording equipment and, on the other, the driver card where a driver is required to drive a vehicle fitted with recording equipment in conformity with Annex IB.'

7 Article 14(1) and (2) of that regulation provided as follows:

'1. The employer shall issue a sufficient number of record sheets to drivers of vehicles fitted with recording equipment in conformity with Annex I, bearing in mind the fact that these sheets are personal in character, the length of the period of service and the possible obligation to replace sheets which are damaged, or have been

taken by an authorised inspecting officer. The employer shall issue to drivers only sheets of an approved model suitable for use in the equipment installed in the vehicle.

Where the vehicle is fitted with recording equipment in conformity with Annex IB, the employer and the driver shall ensure that, taking into account the length of the period of service, the printing on request referred to in Annex IB can be carried out correctly in the event of an inspection.

2. The undertaking shall keep record sheets and printouts, whenever printouts have been made to comply with Article 15(1), in chronological order and in a legible form for at least a year after their use and shall give copies to the drivers concerned who request them. ...'

8 Article 15 of Regulation No 3821/85 provided:

'...

2. Drivers shall use record sheets or driver cards every day on which they are driving, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised. No record sheet or driver card may be used to cover a period longer than that for which it is intended.

...

7. (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 or she 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 or she is [the] 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 or she 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).

'...'

9 Article 19(1) of Regulation No 3821/85 provided:

‘Member States shall, in good time and after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this regulation.

Such measures shall cover, inter alia, the reorganisation of, procedure for, and means of carrying out, checks on compliance and the penalties to be imposed in case of breach.’

10 Point I, entitled ‘Definitions’, of Annex I to that regulation was worded as follows:

‘In this annex:

(a) Recording equipment means:

equipment intended for installation in road vehicles to show and record automatically or semi-automatically details of the movement of those vehicles and of certain working periods of their drivers;

(b) Record sheet means:

a sheet designed to accept and retain recorded data, to be placed in the recording equipment and on which the marking devices of the latter inscribe a continuous record of the information to be recorded;

...’

11 Point I, entitled ‘Definitions’, of Annex IB to that regulation was worded as follows:

‘In this annex:

...

(t) “driver card” means: a tachograph card issued by the authorities of a Member State to a particular driver;

the driver card identifies the driver and allows for storage of driver activity data;

...

(ee) “recording equipment” means: the total equipment intended for installation in road vehicles to show, record and store automatically or semi-automatically details of the movement of such vehicles and of certain work periods of their drivers;

...’

Regulation No 561/2006

12 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. ...

...

(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. ...

(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.’

13 Article 1 of that regulation is worded as follows:

‘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.’

14 Article 6 of the regulation sets the maximum driving times per day, per week and per period of two consecutive weeks, and Articles 7 and 8 thereof pertain to breaks and rest periods.

15 Article 19 of that regulation provides:

‘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.

...

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.’

Directive 2006/22/EC

16 Article 9, entitled ‘Risk rating system’, of 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 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), as amended by Commission Directive 2009/5/EC of 30 January 2009 (OJ 2009 L 29, p. 45) (‘Directive 2006/22’), provides as follows:

‘1. Member States shall introduce a risk rating system for undertakings based on the relative number and severity of any infringements of Regulations ... No 3820/85 or ... No 3821/85 that an individual undertaking has committed. The Commission shall support dialogue between Member States to encourage consistency between these risk rating systems.

2. Undertakings with a high risk rating shall be checked more closely and more often. The criteria and detailed rules for implementing such a system shall be discussed in the Committee referred to in Article 12, with a view to establishing a system for the exchange of information on best practices.

3. An initial list of infringements of Regulation ... No 3820/85 and ... No 3821/85 is set out in Annex III.

With a view to giving guidelines on the weighting of infringements of Regulations ... No 3820/85 and ... No 3821/85, the Commission may, as appropriate, in accordance with the procedure referred to in Article 12(2), adapt Annex III with a view to establishing guidelines on a common range of infringements, divided into categories according to their gravity.

...’

17 Annex III to Directive 2006/22, entitled ‘Infringements’, includes a table which ‘contains guidelines on a common range of infringements against Regulation ... No 561/2006 and Regulation ... No 3821/85, divided into categories according to their gravity’. Point 2 of that table, entitled ‘Groups of infringements against Regulation ... No 3821/85’, contains Point I, listing seven types of infringements of Article 15(7) of Regulation No 3821/85, related to the inability to produce documents, all classified as ‘very serious infringements (VSI)’. Those infringements, in points I1 to I7 of that table, are worded as follows:

‘I1

Art. 15.7

Refuse to be checked

I2

Art. 15.7

Unable to produce records of current day

I3

Unable to produce records of previous 28 days

I4

Unable to produce records of the driver card if the driver holds one

I5

Unable to produce manual records and printouts made during the current day and the previous 28 days

I6

Unable to produce driver card

I7

Unable to produce printouts made during the current day and the previous 28 days’

Italian law

18 Under Article 19 of legge n. 727 – Attuazione del regolamento ... n. 1463/70 ..., e successive modificazioni e integrazioni, relativo alla istituzione di uno speciale apparecchio di misura destinato al controllo degli impieghi temporali nel settore dei trasporti su strada (Law No 727 implementing Regulation No 1463/70, as amended and completed, relating to the introduction of a specific instrument intended to review compliance

with working hours in the road transport sector) of 13 November 1978 (GURI No 328 of 23 November 1978; ‘Law No 727/1978’), any person infringing Regulation No 1463/70, as amended and completed, or that law and its implementing regulations for which no specific penalty is provided, will receive an administrative penalty.

19 It is apparent from the case file that the maximum amount of that administrative penalty, which it was possible to apply in the main proceedings, is two times the minimum amount of the penalty and is not higher than EUR 100.

The disputes in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

20 During two roadside inspections carried out on 26 July and 8 August 2013 in Italy, the competent national authorities established that MI (Case C-870/19) and TB (Case C-871/19), respectively, as road transport drivers, were not able to produce the record sheets of the tachograph installed in their vehicle relating to the current day and several of the previous 28 days.

21 Those authorities therefore imposed several administrative penalties on MI and TB for a certain number of infringements of Law No 727/1978.

22 In each of those cases, the competent court at first instance rejected the actions of MI and TB against those decisions.

23 Following the appeal against those decisions brought by MI and TB before the Tribunale di Firenze (District Court, Florence, Italy), that court, by judgments of 26 July 2016, ruled that MI and TB had committed only a single infringement of Law No 727/1978, namely that of not having been able to produce the required documents relating to the relevant period. That court therefore reduced the order to the imposition of a single penalty.

24 The Florence Prefecture brought an appeal before the referring court, the Corte suprema di cassazione (Supreme Court of Cassation, Italy) against each of the two judgments of the Tribunale di Firenze (District Court, Florence). In support of its two appeals, it submits that, when a driver is not able to produce a certain number of the record sheets for the tachograph installed in a vehicle for the current day and the previous 28 days, a single penalty for a single infringement should not be imposed on that driver, but rather several penalties relating to the shorter periods within that overall period covering the current day and the previous 28 days for which that driver is not able to produce those documents.

25 The referring court specifies that there are, in Italy, thousands of disputes identical to the cases in the main proceedings and, having regard to the conflicting national case-law relating to such matters, the cases in the main proceedings should be decided by way of a clarificatory ruling.

26 That court states that MI and TB infringed Article 15(7) of Regulation No 3821/85 and that the interpretation of that provision is essential to the resolution of the disputes in the main proceedings.

27 If that provision must be interpreted as imposing a single obligation on drivers, consisting in being able, in the event of an inspection, to produce all of the record sheets relating to the whole of the relevant period, the breach of that provision would constitute a single infringement and could give rise only to the imposition of a single penalty.

28 By contrast, if Article 15(7) of Regulation No 3821/85 must be interpreted as providing for multiple obligations, the breach of those obligations could result in as many infringements as there are days, or groups of days, during the period made up of the day on which the inspection was carried out and the previous 28 days, in respect of which record sheets were not produced.

29 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling, worded in

identical terms in each of the two joined cases:

‘May Article 15[(7) of Regulation No 3821/85] be interpreted, in the specific case of the driver of the motor vehicle, as a rule which prescribes a single, overall form of conduct and, therefore, entails the commission of a single infringement and the imposition of a single penalty, or may it result, through the cumulation of penalties for each act of omission, in as many infringements and penalties as the number of days in relation to which the record sheets for the tachograph have not been produced in the context of the timeframe laid down (“current day and the previous 28 days”)?’

30 By decision of the President of the Court of 23 December 2019, Cases C-870/19 and C-871/19 were joined for the purposes of the written procedure and the judgment.

Consideration of the question referred

31 By its question, the referring court asks, in essence, whether Article 15(7) of Regulation No 3821/85 and Article 19 of Regulation No 561/2006 must be interpreted as meaning that, should the driver of a road transport vehicle subject to an inspection fail to produce the record sheets of the recording equipment relating to several days of activity during the period covering the day of the inspection and the previous 28 days, the competent authorities of the Member State in which the inspection was carried out must impose on that driver a single penalty, for a single infringement, or rather several separate penalties for several separate infringements, the number of which corresponds to that of the missing record sheets.

32 The objectives of Regulations No 3821/85 and No 561/2006 are, first, the improvement of working conditions of drivers to whom those regulations apply and the improvement of road safety in general and, secondly, the establishment of common rules on driving times, drivers’ breaks and rest periods and their monitoring (see, to that effect, judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 25).

33 To that end, those regulations provide for a set of measures, in particular, common rules on driving times, drivers’ breaks and rest periods and their monitoring, compliance with which must be ensured by the Member States through the application of a system of penalties for any breach of those regulations.

34 Recital 11 of Regulation No 3821/85 states that the objectives of keeping a check on work and rest periods mean that it is necessary that employers and drivers be responsible for seeing that the recording equipment functions correctly and that they perform with due care the operations prescribed by the regulation.

35 As is clear from Annexes I and IB to the regulation, the recording equipment, whether analogue or digital, installed in the road transport vehicles must be able to show and record certain details of the movement of those vehicles and of the driving periods of their drivers.

36 Where the road transport vehicle is fitted with analogue recording equipment, those details will be recorded on a record sheet inserted into the equipment. Where the vehicle is fitted with digital recording equipment, those details are recorded on the driver card.

37 Article 15(2) of the regulation provides that drivers must use the record sheets or driver cards every day on which they are driving, starting from the moment at which they take over the vehicle, and that that record sheet or driver card must not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised.

38 Article 15(7)(a) of Regulation No 3821/85 provides, in connection with that obligation, that, whenever an inspecting officer so requests, the driver of a vehicle fitted with analogue recording equipment is, in particular, required to present after 1 January 2008, the record sheets for the current day and the previous 28 days.

39 The wording of 15(7)(a) of Regulation No 3821/85 establishes, in respect of the record sheets, an obligation under which the driver must be in a position to produce the record sheets relating to the period covering the day of inspection and the previous 28 days. That provision establishes a single obligation covering

the whole of that overall period, not a number of separate obligations in respect of each of the days covered or in respect of each of the corresponding record sheets.

40 Thus, the breach of the obligation laid down in Article 15(7)(a) of Regulation No 3821/85 constitutes a single and instantaneous infringement, consisting in the fact that it is impossible, for the driver concerned, to produce, at the time of the inspection, all or some of those 29 record sheets. That infringement can give rise only to a single penalty.

41 Pursuant to Article 19(1) of Regulation No 561/2006, no infringement of Regulation No 3821/85 can give rise to more than one penalty.

42 That interpretation is not called into question by the provisions of Annex III to Directive 2006/22. In the version applicable to the disputes in the main proceedings, the purpose of Annex III was not to establish a specific and exhaustive list of infringements of Regulations No 3821/85 and No 561/2006, but merely to establish, for the Member States, guidelines on a common range of infringements of those regulations. Those guidelines cannot therefore depart from the interpretation of Article 15(7)(a) of Regulation No 3821/85 on the basis of its wording, as is clear from paragraphs 39 and 40 of the present judgment.

43 Nor are the objectives pursued by Regulations No 3821/85 and No 561/2006, recalled in paragraphs 32 and 33 of the present judgment, such as to undermine the interpretation of the wording of Article 15(7) of Regulation No 3821/85.

44 It is apparent from the foregoing considerations that when, in the event of an inspection, the driver of a road transport vehicle is unable to produce the record sheets for the tachograph relating to the current day and the previous 28 days, that conduct constitutes a single infringement that must result in a single penalty.

45 Having regard to the circumstances of the main proceedings, set out in paragraph 19 of the present judgment, it should also be borne in mind that, pursuant to Article 19 of Regulation No 561/2006, the penalties for infringement of Regulations No 3821/85 and No 561/2006 must be effective, proportionate, dissuasive and non-discriminatory. In that regard, it should be highlighted that a failure to fulfil the obligations in Article 15(7) of Regulation No 3821/85 cannot be regarded as a minor infringement (see, to that effect, judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraphs 33 and 34). As a result, the penalty laid down for that failure to fulfil obligations must be sufficiently high, having regard to the seriousness of that infringement, in order for that penalty to have a genuine deterrent effect.

46 Moreover, a failure to fulfil the obligations in Article 15(7) of Regulation No 3821/85 is all the more serious if the number of record sheets that the driver is not able to produce is high. Such a failure to fulfil obligations prevents the effective monitoring of several days of drivers' working conditions and compliance with road safety.

47 Accordingly, in order to comply with the requirement of proportionality of the penalties imposed by Article 19(1) of Regulation No 561/2006, the penalty must be sufficiently adjustable according to the seriousness of the infringement (see, to that effect, judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraphs 33 and 41).

48 Should the amount of the fine applicable to such a breach under the law of a Member State be insufficient to have a deterrent effect, the referring court is required, by virtue of the principle that national law must be interpreted in conformity with EU law, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law. The application of that principle by the national court enables that court to ensure, within the limits of its jurisdiction, the full effectiveness of EU law when it determines the dispute before it (see, to that effect, judgment of 15 October 2020, *Association française des usagers de banques*, C-778/18, EU:C:2020:831, paragraph 59 and the case-law cited).

49 However, that court must also ensure that it complies with the principle that offences and penalties must be defined by law, enshrined in the first sentence of Article 49(1) of the Charter of Fundamental Rights of the

European Union. According to the case-law of the Court, that principle requires that legislation must clearly define offences and the penalties which they attract. That requirement is satisfied where the individual concerned is in a position to ascertain from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him or her criminally liable (judgment of 22 October 2015, *AC-Treuhand v Commission*, C-194/14 P, EU:C:2015:717, paragraph 40).

50 It follows that, even if the national court were to consider that the maximum amount of the fine that can be imposed in the cases in the main proceedings is insufficiently high to have deterrent effects, that court could not impose a number of fines, each relating to one or several days included within the period covering the day of the inspection and the previous 28 days.

51 Having regard to all the foregoing considerations, the answer to the question referred is that Article 15(7) of Regulation No 3821/85 and Article 19 of Regulation No 561/2006 must be interpreted as meaning that, should the driver of a road transport vehicle subject to an inspection fail to produce the record sheets of the recording equipment relating to several days of activity during the period covering the day of the inspection and the previous 28 days, the competent authorities of the Member State where the inspection was carried out must make a finding of a single infringement by that driver and impose on him or her only a single penalty for that infringement.

Costs

52 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 (Tenth Chamber) hereby rules:

Article 15(7) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, as amended by Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 and Article 19 of Regulation No 561/2006 must be interpreted as meaning that, should the driver of a road transport vehicle subject to an inspection fail to produce the record sheets of the recording equipment relating to several days of activity during the period covering the day of the inspection and the previous 28 days, the competent authorities of the Member State where the inspection was carried out must make a finding of a single infringement by that driver and impose on him or her only a single penalty for that infringement.

[Signatures]

* Language of the case: Italian.