

## ECJ 20 December 2017, case C-102/16 (Vaditrans), Working time

Vaditrans BVBA – v – Belgische Staat, Belgian case

### Summary

Regulation 561/2006 prohibits lorry drivers from taking their regular weekly rest periods in a vehicle.

### Legal framework

The EU regulation concerned in this case is Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport, hereafter ‘Regulation 561/2006’ or the ‘Regulation’. The Regulation requires drivers to take certain rest periods. It distinguishes between:

- A regular daily rest period of at least 11 hours: *‘the regular daily rest period’*
  - Under subject to certain conditions, this daily rest period may be reduced to nine hours: *‘the reduced daily rest period’*
- A regular weekly rest period of 45 hours: *‘the regular weekly rest period’*
  - Under subject to certain conditions, this weekly rest period may be reduced to 24 hours: *‘the reduced weekly rest period’*.

Article 8(8) of the Regulation states that ‘if a driver chooses to do so, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary’. The regulation does not explicitly state the conditions under which a lorry driver can take his or her ‘regular weekly rest period’.

### Facts

In August 2014, Vaditrans, a transport company established in Belgium, brought an action before the *Raad van State* (Council of State, Belgium) seeking the annulment of a Belgian Royal Decree under which a fine of €1.800 may be imposed if lorry drivers take their regular

weekly rest period in their vehicle. According to Vaditrans, the Royal Decree in question is incompatible with the principle that penalties must have a proper legal basis, as it prohibits and penalises the taking of the regular weekly rest in a vehicle even though Regulation 561/2006 does not prohibit this. The Belgian State took the view that it followed from the Regulation that a driver may not take the regular weekly rest period in his or her vehicle and that the fine imposed by Belgian law reflects this.

### National proceedings

The referring court, the *Raad van State*, had its doubts about the requirements under the Regulations and asked the ECJ for clarification. In particular, it wanted to know whether the Regulation had to be regarded as containing an implied prohibition against taking a regular weekly rest in the vehicle. If that is the case, the *Raad van State* asked whether the Regulation, by not making that prohibition clear and express, infringes the principle that offences and penalties must have a proper legal basis (as enshrined in Article 49(1) of the Charter of Fundamental Rights of the European Union).

### Questions put to the ECJ

1. Must Article 8(6) and (8) of Regulation 561/2006 be interpreted as meaning that the regular weekly rest periods referred to in Article 8(6) of the regulation may not be spent inside the vehicle?
2. If the answer to the first question is in the affirmative, does Article 8(6) and (8) of Regulation No 561/2006, read in conjunction with Article 19 of that Regulation breach the principle of legality in criminal proceedings, as expressed in Article 49 of the Charter [...] in so far as those provisions of that regulation do not expressly prohibit spending the regular weekly rest periods referred to in Article 8(6) of that regulation inside the vehicle?
3. If the answer to the first question is in the negative, does that Regulation then permit Member States to lay down a prohibition in their national law on spending the regular weekly rest periods referred to in Article 8(6) of the Regulation inside a vehicle?

## ECJ's findings

Considering the first question, the ECJ recalled that it should interpret a provision of EU law (in this case Article 8 of Regulation 561/2006) based on its *wording*, the *context* in which it occurs, the *objectives* pursued by the rules of which it is part and the *history* of the legislation.

When considering the *wording*, the ECJ noted that each time the Regulation referred to the terms 'regular weekly rest period' and 'reduced weekly rest period' together, it used the general expression 'weekly rest period'. However, as regards the possibility of taking rest periods in the vehicle, the Regulation used the general expression 'daily rest period' – which covers regular and reduced daily rest periods – and the specific expression 'reduced weekly rest period'. According to the ECJ, as the EU legislature did not use the general expression 'weekly rest period' to encompass the two types of weekly rest period, it clearly follows that it intended to allow the driver to take reduced weekly rest periods in the vehicle but to prohibit him or her from doing so in respect of regular weekly rest periods. The *context* in which Article 8(8) of Regulation No 561/2006 was introduced, confirms this interpretation.

Further, the ECJ recalls the main *objective* of the regulation, which is to improve working conditions for employees in the road transport sector and road safety in general. Therefore, the ECJ assumed that the legislature intended that drivers should be able to spend their regular weekly rest periods in a place offering adequate and suitable accommodation. A lorry's cabin does not constitute a suitable resting place for rest periods longer than the daily and reduced weekly rest periods. If the ECJ were to consider that regular weekly rest periods may be taken in the vehicle, a driver could take all of his rest periods in a lorry cabin. This would clearly be contrary to the objective of improving drivers' working conditions pursued by the Regulation.

Lastly, the *history of the legislation* should be taken into account. The Court observed that, in the procedure leading to the adoption of the Regulation, the Commission proposed that drivers should be permitted to take all rest periods (i.e. both reduced and regular daily rest periods and reduced and regular weekly rest periods) in the vehicle. However, that proposal was subsequently modified, so that only a reduced weekly rest period away from base could be taken in the vehicle, not the regular weekly rest period, with the aim of protecting drivers' hygiene and well-being. According to the ECJ, that modification clearly shows that the legislature intended to exclude the possibility of taking regular weekly rest periods in the vehicle.

With regards to the first question, the ECJ concluded that the Regulation prohibits drivers from taking their regular weekly rest periods in a vehicle.

The ECJ was left with the second question referred to it (it not being necessary to answer the third question in the light of the answer given to the first question). On the principle that penalties must have a proper legal basis, EU legislation must clearly define infringements and the penalties for those infringements. Since the prohibition on taking the regular weekly rest period in a vehicle is clearly laid down in the Regulation and the Regulation imposes a requirement on Member States to penalise infringements, the principle that penalties must have a proper legal basis is not infringed. Therefore, it is for Member States to determine which penalties are appropriate for the purpose of guaranteeing the application and effectiveness of the Regulation, whilst ensuring that those penalties are imposed under substantive and procedural conditions which are analogous to those applicable to infringements of national law of a similar nature and importance.

## Ruling

Article 8(6) and (8) of Regulation 561/2006 must be interpreted as meaning that a driver may not take the regular weekly rest periods referred to in Article 8(6) in his vehicle. Consideration of the second question referred has disclosed nothing to affect the validity of Regulation 561/2006, having regard to the principle of legality in criminal proceedings, enshrined in Article 49(1) of the Charter of Fundamental Rights of the European Union.

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## Commentary from jurisdictions

*The Netherlands (Amber Zwanenburg, Erasmus University)*: This case was followed with great interest in the Netherlands, as we were one of the countries that has not enforced the prohibition against taking regular weekly rest periods in a vehicle. The Minister of Infrastructure has explained that the Ministry would wait until it was clear whether the Regulation implied a prohibition before taking any particular stand. As a result, the Netherlands has been tolerating having truck drivers spending their regular weekly rest periods in their cabins.

But it has been controversial. The media has reported that road transport companies would send their lorry drivers to the Netherlands especially just so that they could take their weekly rest periods here without risking a fine like they would in, for example, Belgium. TV documentaries and newspapers showed, typically, Eastern European truck drivers, spending their weekends in miserable conditions in parking lots in the Netherlands. This was used in debates on 'social dumping', and the situation has caused serious misunderstanding. Do we want to create a situation in the Netherlands in which road transport companies can save money on accommo-

dition at the expense of their drivers' comfort, when they would risk a fine if they did the same thing in Belgium?

Given the different approaches by Member States, this clarification by the ECJ is very welcome. Immediately after the judgment, the Dutch Inspectorate took a clear stand: from 2018, the Inspectorate will enforce the prohibition against taking regular weekly rest periods in vehicles. Any violation of this is now subject to a fine of €1.500. The Inspectorate informed lorry drivers of this in January and started putting its words into action in February, when it fined 47 lorry drivers whom it caught spending weekends in their vehicles.

*Romania (Andreea Suciú and Teodora Manaila, Noerr):* The ECJ decision has not been well received by Romanian road transport workers. They have continued to claim discriminatory treatment against East European road transport workers, and that this hinders the objectives of the single market. They also complain about the lack of suitable accommodation, which is safe for drivers, goods and vehicles at EU level.

The Romanian authorities have not yet commented on the ECJ's ruling, as the national law in force does not provide a similar prohibition. Given the obligations under Regulation 561/2006 that Member States must adopt appropriate penalties for infringements of the Regulation, the legislative gap may expose truck drivers to abuse from their employers under threat of termination of the employment contract or other repercussions.

Although the Regulation enables other Member States to sanction infringements committed in a different Member State, it will be difficult to prove such infringement unless there is effective monitoring during the normal weekly rest period of the driver.

As the main challenge of the Regulation is to improve working conditions for employees in the road transport sector, the absence of a reaction from the Romanian State may even lead to an infringement procedure against it for failure to implement EU law.

## ECJ 6 February 2018, C-359/16 (Altun), Free movement, Social insurance

Altun and others – v – Openbaar Ministerie,  
Belgian case

### Summary

A Member State to which workers have been posted may, in the case of fraud and under certain conditions, ask the courts to disregard an A1 certificate and apply its own social security legislation, including the recovery of contributions.

### Legal framework

This request for a preliminary ruling concerns the interpretation of EU social security legislation. Until 1 May 2010, the social coordination system was regulated by Regulation (EC) 1408/71. This Regulation was repealed and replaced by Regulation (EC) 883/2004. Even though the case concerns the old Regulation, it is also relevant to the legal instruments that are currently in place.

In order to determine which Member State legislation a migrant person is subject to, Title II of both Regulation provides a system of conflict rules. The basis of these rules of conflict is the territorial application of the social security law of the Member State where the work is carried out: the State-of-employment principle (Article 13 Regulation 1408/71 and Article 11 Regulation 883/2004). Thus, a person employed in the territory of one Member State shall be subject to the social security legislation of that State, even if he resides in the territory of another Member State or his employer is registered in another Member State.

However, there are a number of exceptions and special rules. There are, for example, special rules applicable to posted workers. When a worker is posted by his employer to pursue activities temporarily on behalf of his employer in another Member State he or she remains, pursuant to Article 14 Regulation 1408/71 and Article 12 Regulation 883/2004, subject to the social security legislation of the Member State in which they normally pursue their activities. The anticipated duration of that work should not exceed 12 months, and the posted worker should not be sent to replace another person who has completed his or her term of posting.