Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

9 November 2023 *

(Reference for a preliminary ruling – Road transport – Harmonisation of certain social legislation – Regulation (EC) No 561/2006 – Article 3(a) – Concept of 'route covered by the service in question [not exceeding] 50 km' – Carriage by road by vehicles used for the carriage of passengers on regular services – Route covered by the service in question not exceeding 50 km – Non-application of Regulation No 561/2006 – Mixed-use vehicles – Article 4(e) and (j) – Concepts of 'other work' and 'driving time' – Article 6(3) and (5) – Total driving time over two consecutive weeks – Time spent driving a vehicle excluded from the scope of that regulation)

In Case C-477/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 12 May 2022, received at the Court on 15 July 2022, in the proceedings

ARST SpA – Azienda regionale sarda trasporti

v

TR,

OS,

EK,

UN,

RC,

RS,

OA,

ZB,

HP,

WS,

* Language of the case: Italian.

IO,

TK,

ME,

SK,

TF,

TC,

ND,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Piçarra (Rapporteur), M. Safjan, N. Jääskinen and M. Gavalec, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– ARST SpA – Azienda regionale sarda trasporti, by S. Manso, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and by P. Garofoli, avvocato dello Stato,

– the European Commission, by L. Malferrari, P. Messina and G. Wilms, 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 3(a), Article 4(j) and Article 6(3) and (5) 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), as amended by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 (OJ 2014 L 60, p. 1) ('Regulation No 561/2006').

2 The request has been made in proceedings between ARST SpA – Azienda regionale sarda trasporti ('Arst'), a local public transport undertaking in the Sardinia region (Italy), and several employees of that company regarding the payment, by Arst, of compensation and/or remuneration determined on the basis of the hours of rest not taken and the hours worked in excess of the total accumulated driving time during two consecutive weeks, sought by those employees.

Legal context

Directive 2002/15/EC

3 Article 3(a)(1) of Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ 2002 L 80, p. 35) defines the concept of 'working time' as follows:

'in the case of mobile workers: the time from the beginning to the end of work, during which the mobile worker is at his [or her] workstation, at the disposal of the employer and exercising his [or her] functions or activities, that is to say:

– the time devoted to all road transport activities. These activities are, in particular, the following:

  (i) driving;
  (ii) loading and unloading;
  (iii) assisting passengers boarding and disembarking from the vehicle;
  (iv) cleaning and technical maintenance;
  (v) all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operation under way, including monitoring of loading and unloading, administrative formalities with police, customs, immigration officers etc.,

– the times during which he [or she] cannot dispose freely of his [or her] time and is required to be at his [or her] workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance…'

Regulation No 561/2006

4 Recitals 17 and 24 of Regulation No 561/2006 state as follows:

'(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. …

…

(24) The Member States should lay down rules for vehicles used for the carriage of passengers on regular services where the route covered does not exceed 50 km. Those rules should provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods.'

5 Article 1 of that regulation provides that it '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' and 'also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry'.

6 Article 2(1) of that regulation provides as follows:

'This Regulation shall apply to the carriage by road:

…

(b) of passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.'

7 Article 3 of that regulation provides:

'This Regulation shall not apply to carriage by road by:

(a) vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;

…'

8 Article 4 of Regulation No 561/2006 is worded as follows:

'For the purposes of this Regulation, the following definitions shall apply:

…

(e) "other work" means all activities which are defined as working time in Article 3(a) of Directive [2002/15] except "driving", including any work for the same or another employer, within or outside of the transport sector;

…

(h) "weekly rest period" means the weekly period during which a driver may freely dispose of his time and covers a "regular weekly rest period" and a "reduced weekly rest period":

– "regular weekly rest period" means any period of rest of at least 45 hours,

…

(j) "driving time" means the duration of driving activity recorded:

– automatically or semi-automatically by the recording equipment [referred to in Regulation No 165/2014, on tacographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport], or

– manually as required by [Regulation No 165/2014];

(k) "daily driving time" means the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period;

…

(n) "regular passenger services" means national and international services as defined in [Article 2(2) of Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ 2009 L 300, p. 88)];

…

(q) "driving period" means the accumulated driving time from when a driver commences driving following a rest period or a break until he takes a rest period or a break. The driving period may be continuous or broken.

…'

9 Article 6(3) and (5) of Regulation No 561/2006 states:

'3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.

…

5. A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation …'

10 As set out in Article 15 of that regulation, 'Member States shall ensure that drivers of vehicles referred to in Article 3(a) are governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods'.

Regulation No 1073/2009

11 Article 2(2) of Regulation No 1073/2009 defines the concept of 'regular services' as 'services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points'.

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

12 On 5 September 2011, several drivers of road passenger transport vehicles, employed by Arst, brought an action before the Tribunale di Oristano (District Court of Oristano, Italy) asking that court to order that undertaking to reimburse them and/or pay compensation on the basis of hours of rest not taken and hours worked in excess of the total accumulated driving time during two consecutive weeks, in breach of Regulation No 561/2006. The drivers claimed that, due to the working hours imposed by Arst during the period between 11 April 2007, the date of the entry into force of that regulation, and 6 December 2010, none of them benefited from a 'regular weekly rest period', within the meaning of Article 4(h) of that regulation, and that they all exceeded the maximum total accumulated driving time during any two consecutive weeks, referred to in Article 6(3) of that same regulation.

13 Arst, for its part, claimed that Regulation No 561/2006 did not apply to these drivers in accordance with Article 3(a), since they only carried out journeys beyond the limit laid down in Article 6 on one or two occasions and only for certain shifts.

14 That court upheld the claim in its entirety, but reduced the amount of compensation sought by UN and TF by 50% since their period of work as drivers was shorter.

15 Arst lodged an appeal against that decision before the Corte d'appello di Cagliari (Court of Appeal, Cagliari, Italy). By a judgment dated 10 March 2016, that court reduced the amount that Arst had been ordered by the court of first instance to pay to those drivers and rejected the remainder of the appeal.

16 The Corte d'appello di Cagliari (Court of Appeal, Cagliari) found, first, that the concept of 'route' within the meaning of Article 3(a) of Regulation No 561/2006, refers to, in non-urban transport, the total journey made by the driver during a working day, so that the distance in kilometres of all the journeys made by the driver during that working day should be taken into account in order to determine whether the 50 km limit, laid down in that provision, has been exceeded. Second, that court considered, with regard to Article 4(j) and (k) of that regulation, that the 'daily driving time' coincides with the working day and therefore rejected Arst's argument to the effect that, in order to verify whether the total accumulated driving time during any two consecutive weeks, provided for in Article 6(3) of that regulation has been respected, only the driving time must be taken into account.

17 Arst brought an appeal before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), the referring court, in which it disputes the interpretation made by the Corte d'appello di Cagliari (Court of Appeal, Cagliari) in its judgment of 10 March 2016 of both the concept of 'route', within the meaning of Article 3(a) of Regulation No 561/2006, and the concept of 'total accumulated driving time during any two consecutive weeks', referred to in Article 6(3) of that regulation.

18 The referring court observes, on the one hand, that Arst ensures the carriage by road of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points. On the other hand, since Regulation No 561/2006, by virtue of Article 3(a), does not apply to carriage by road by vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 km, that court asks whether the term 'route' refers to the journey set by the undertaking concerned for the purposes of payment of the ticket, as would seem possible to infer, according to that court, from

the wording of that provision, which refers to the route 'covered by the service in question'. At the same time it asks whether that expression refers to the kilometres travelled by a driver on board the vehicle during a working day, even if that covers several journeys, as it seems possible to infer from the purpose of that regulation, that is to say, according to recital 17, to 'improve social conditions for employees who are covered by it, as well as to improve general road safety'.

19 The referring court states that the first question arises from the fact that Arst operates a regular passenger transport service on several different routes and its drivers cover several routes during the same working day and using the same vehicle. That court also observes that vehicles used for that service are used for journeys of both less than and more than 50 km and states that, in accordance with the judgment of 9 September 2021, *Ministère public (Extraterritorial penalties)* (C-906/19, EU:C:2021:715), Regulation No 561/2006 applies to vehicles used in this way. It is, however, of the view that a mixed use does not mean that the entirety of Arst's transport service falls within the scope of that regulation.

20 Further, as regards Article 6(3) of Regulation No 561/2006, the referring court asks whether, in order to verify compliance with the total accumulated driving time during any two consecutive weeks, it is necessary to take into account only the 'driving time' recorded for the purposes of Article 4(j) of that regulation, during those two weeks, or also any 'other work' carried out by the driver concerned, within the meaning of Article 6(5) of that regulation. That court considers that it is not possible to determine clearly whether this 'other work' is relevant or not in order to calculate the total accumulated driving time during any two consecutive weeks, set out in Article 6(3). It also observes that the Corte d'appello di Cagliari (Court of Appeal, Cagliari) rejected Arst's argument, to the effect that, for that purpose, only the time spent by the driver behind the wheel should be taken into account.

21 In those circumstances the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 3(a) of Regulation [No 561/2006] be interpreted as meaning that the term "route" not exceeding 50 kilometres refers to the kilometres covered by the journey (line) identified by the transport undertaking for payment of the ticket, or to the total number of kilometres covered by the driver in the daily work shift, or to the maximum distance on the road reached by the vehicle in relation to the starting point (radius); or, in any event, by means of what other criterion should the kilometres of the route be calculated?

In any event, may the undertaking organising the transport be exempt from application of the regulation [No 561/2006] in respect of those vehicles it uses exclusively to cover journeys of less than 50 km, or is the undertaking's entire transport service subject to application of the regulation, by reason of the fact that it uses other vehicles to cover journeys exceeding 50 km?

(2) Must Article 6(3) of Regulation [No 561/2006] be interpreted as meaning that "the total accumulated driving time during any two consecutive weeks" consists of the sum of the "driving times" for the two weeks – according to the definition in Article 4(j) [of that Regulation] – or does it also include other activities and, in particular, the entire working shift worked by the driver during the two weeks, or all the "other work" referred to in Article 6(5) [of that regulation]?'

Consideration of the questions referred

The first question

22 The first question referred for a preliminary ruling is divided into two parts, which should be examined in turn.

The first part of the first question

23 By its first question, the referring court asks, in essence, whether Article 3(a) of Regulation No 561/2006 must be interpreted as meaning that the concept of 'route covered by the service in question [not exceeding] 50 kilometres' refers to the distance covered by the journey set by the transport undertaking for regular passenger services that it provides.

24 The concept of 'route covered by the service in question' is not defined by Regulation No 561/2006 and Article 3(a) makes no express reference to the law of the Member States for the purpose of defining such a concept. For the purposes of interpreting that provision, reference should therefore be made to the usual meaning of these terms in everyday language and to the context and objective pursued by the regulation in question (see, to that effect, judgment of 7 July 2022, *Pricoforest*, C-13/21, EU:C:2022:531, paragraph 22 and the case-law cited).

25 In everyday language, the term 'route' designates a fixed route or journey, followed or to be followed, in particular by road, from a point of departure to a point of arrival. The expression 'covered by the service in question' refers to a continuous distance, which connects those points.

26 The wording of Article 3(a) of Regulation No 561/2006 refers therefore to a concrete distance, travelled or to be travelled by road following a journey from a point of departure to a point of arrival in order to ensure the transport of passengers by regular services to which the vehicle concerned is assigned (see, to that effect, judgment of 7 July 2022, *Pricoforest*, C-13/21, EU:C:2022:531, paragraph 24). This wording contains no reference to the distance travelled, by road, by a driver during a given working period, or to the maximum distance travelled by the vehicle concerned from its point of departure.

27 Article 2(2) of Regulation No 1073/2009, to which Article 4(n) of Regulation No 561/2006 refers, defines the concept of 'regular services' as 'services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points'. The concept of 'specified routes' excludes the taking into consideration of any distance effectively travelled, by road, by a driver during a given working period, or the maximum distance travelled by the vehicle concerned from its point of departure, which goes beyond that route.

28 Accordingly, the concept of 'route covered by the service in question [not exceeding] 50 kilometres' within the meaning of Article 3(a) of Regulation No 561/2006 must be understood as referring to a specified route, not exceeding that distance, which links a point of departure to a point of arrival and serves, where appropriate, predetermined intermediary stops to pick up and set down passengers. Such carriage by road of passengers is therefore, pursuant to that provision, excluded from the scope of that regulation, irrespective of whether the drivers concerned cover several of these journeys in the course of the same working day and with the same vehicle.

29 In any case, as the Commission notes in its written observations, under Article 3(a), the drivers of vehicles to which Regulation No 561/2006 does not apply, must, in accordance with Article 15 of that regulation, read in light of recital 24, be subject to national rules seeking to provide adequate protection in terms of permitted driving time, and mandatory breaks and rest periods. The applicable national legislation must, in any case, comply with the rules laid down in Directive 2002/15, concerning, in particular, working time, breaks and rest periods.

30 In the light of the reasons set out above, the answer to the first part of the first question is that Article 3(a) of Regulation No 561/2006 must be interpreted as meaning that the concept of 'route covered by the service in question [not exceeding] 50 kilometres' corresponds to the route set by the transport undertaking, not exceeding that distance, that the vehicle concerned must travel by road in order to link a point of departure to a point of arrival and serve, where appropriate, predetermined intermediary stops, in order to ensure the carriage of passengers on the regular services to which it is assigned.

The second part of the first question

31 By the second part of its first question, the referring court asks, in essence, whether Article 2(1)(b), read in conjunction with Article 3(a), of Regulation No 561/2006 must be interpreted as meaning that that regulation applies to all road transport carried out by the undertaking concerned, when the vehicles used for the carriage of passengers on regular services are used, principally, for routes covered by the service in question not exceeding 50 km and, occasionally, for routes covered exceeding 50 km.

32 It is important to point out at the outset that, concerning the carriage by road of passengers on regular services, the scope of Regulation No 561/2006 is determined, first, by Article 2(1)(b), according to which that regulation applies to the carriage by road of passengers by vehicles constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.

33 Secondly, according to Article 3(a) of Regulation No 561/2006, the latter does not apply to the carriage by road by 'vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres'. In so far as that provision introduces an exception to the scope of that regulation, it must be interpreted strictly in such a way as not to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure (see, to that effect, judgment of 9 September 2021, *Ministère public (Extraterritorial penalties)*, C-906/19, EU:C:2021:715, paragraph 33).

34 In those circumstances, when, as in the present case, an undertaking provides regular passenger transport services where the route covered by the service exceeds 50 km, by vehicles which are normally used for regular passenger transport services where the route covered by the service in question does not exceed 50 km, such a mixed-use would not make Regulation No 561/2006 applicable to all regular passenger transport services provided by that undertaking. The carriage of passengers on regular services where the route covered does not exceed 50 km is expressly excluded from the scope of that regulation pursuant to Article 3(a).

35 For the reasons set out above, the answer to the second part of the first question is that Article 2(1)(b), read in conjunction with Article 3(a), of Regulation No 561/2006 must be interpreted as meaning that that regulation does not apply to all road transport carried out by the undertaking concerned, when the vehicles used for the carriage of passengers on regular services

are used to cover, principally, routes covered by the service in question not exceeding 50 km and, occasionally, routes covered by the service in question exceeding 50 km. That regulation only applies when the routes exceed 50 km.

The second question

36 By its second question, the referring court asks, in essence, whether Article 6(3) of Regulation No 561/2006 must be interpreted as meaning that the concept of 'total accumulated driving time during any two consecutive weeks', set out in that provision, covers, other than 'driving time', within the meaning of Article 4(j) of that regulation, any 'other work', within the meaning of Article 6(5) of that regulation, carried out by the driver during those two weeks.

37 As set out in Article 6(3) of Regulation No 561/2006 'the total accumulated driving time during any two consecutive weeks shall not exceed 90 hours'.

38 The language versions of that provision in, inter alia, Spanish. German, English, French, Hungarian and Portuguese refer to the concept of 'driving time', defined in Article 4(j) of that regulation as 'the duration of driving activity recorded', in accordance with the provisions of Regulation No 165/2014. On the other hand, the expression '*periodo di guida*', in the Italian language version of Article 6(3) of Regulation No 561/2006 corresponds to the concept of 'driving period', defined in Article 4(q), as 'the accumulated driving time from when a driver commences driving following a rest period or a break until he takes a rest period or a break'; it is specified that 'the driving period may be continuous or broken'.

39 In those circumstances, it must be noted that the concept of 'driving time' within the meaning of Article 4(j) and (q) of Regulation No 561/2006 refers to the period of time that the driver spends driving, even though the first concept refers only to the period of time recorded.

40 On the other hand, the concept of 'other work' is defined in Article 4(e) of Regulation No 561/2006 as 'all activities which are defined as working time' within the meaning of Article 3(a)(1) of Directive 2002/15. In accordance with that latter provision, 'working time' is to mean, inter alia, 'the time devoted to all road transport activities', in particular, 'driving', 'loading and unloading', 'assisting passengers boarding and disembarking from the vehicle', 'cleaning and technical maintenance', and 'all other work intended to ensure the safety of the vehicle, its cargo, and passengers or to fulfil the legal and regulatory obligations directly linked to the specific transport operation under way'.

41 It follows that the concept of 'driving time' and 'driving period', within the meaning of Article 4(j) and (q) of Regulation No 561/2006, only cover driving activity and not the entirety of the activities carried out by the driver during his or her working time.

42 Furthermore, Article 6(5) of Regulation No 561/2006 requires a driver to register as 'other work', not only 'any time spent as described in Article 4(e) [of that regulation]', namely all activity, with the exception of driving, defined as 'working time', but also 'any time spent driving a vehicle used for commercial operations not falling within the scope of [that] regulation'.

43 It follows that, in order to calculate the total accumulated driving time during any two consecutive weeks, which shall not exceed 90 hours, in accordance with Article 6(3) of Regulation No 561/2006, only periods of time that the driver spends driving and which fall within the scope of that regulation must be taken into account. Thus, including in such a calculation, the time that

the driver spends driving a vehicle to which that regulation does not apply, in accordance with Article 3(a), would mean that road transport expressly excluded from the scope of application of that regulation would fall within Article 6(3) of that regulation.

44 For the reasons set out above, the answer to the second question is that Article 6(3) of Regulation No 561/2006 must be interpreted as meaning that the concept of 'total accumulated driving time during any two consecutive weeks', as set out in that provision, only covers 'driving time' within the meaning of Article 4(j) of that regulation, to the exclusion of any 'other work', for the purposes of Article 6(5) of that regulation, carried out by the driver during those two weeks.

Costs

45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 3(a) 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, as amended by Regulation (EU) No 165/2014 of the European Parliament of the Council of 4 February 2014,**

   must be interpreted as meaning that the concept of 'route covered by the service in question [not exceeding] 50 km' corresponds to the route set by the transport undertaking, not exceeding that distance, that the vehicle concerned must travel by road in order to link a point of departure to a point of arrival and serve, where appropriate, predetermined intermediary stops, in order to ensure the carriage of passengers on the regular service to which it is assigned.

2. **Article 2(1)(b), read in conjunction with Article 3(a), of Regulation No 561/2006, as amended by Regulation No 165/2014,**

   must be interpreted as meaning that that regulation does not apply to all road transport carried out by the undertaking concerned, when the vehicles used for the carriage of passengers on regular services are used to cover, principally, routes covered by the service in question not exceeding 50 km and, occasionally, routes covered by the service in question exceeding 50 km. That regulation only applies when the routes exceed 50 km.

3. **Article 6(3) of Regulation No 561/2006, as amended by Regulation No 165/2014,**

   must be interpreted as meaning that the concept of 'total accumulated driving time during any two consecutive weeks', as set out in that provision, only covers 'driving time' within the meaning of Article 4(j) of that regulation, to the exclusion of any 'other work', for the purposes of Article 6(5) of that regulation, carried out by the driver during those two weeks.

[Signatures]