Reports of Cases

ORDER OF THE COURT (Tenth Chamber)

18 February 2016*

(Reference for a preliminary ruling — Articles 53(2) and 99 of the Rules of Procedure of the Court of Justice — Road transport — Driver's rest periods — Rules of a Member State depriving an employee on a business trip of the right to flat-rate allowances for accommodation in the event that the accommodation is guaranteed by the employer at his own expense — Whether the accommodation of a lorry driver on board his vehicle is included)

In Case C-325/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Wrocławia-Śródmieścia we Wrocławiu (District Court, Wrocław-Śródmieście, Wrocław, Poland), made by decision of 6 May 2015, received at the Court on 1 July 2015, in the proceedings

**Z. Ś.,**

**Z. M.,**

**M. P.**

v

**X,**

THE COURT (Tenth Chamber),

composed of F. Biltgen, President of the Chamber, E. Levits and M. Berger (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Articles 53(2) and 99 of the Rules of Procedure of the Court of Justice,

makes the following

* Language of the case: Polish.

## Order

1 This request for a preliminary ruling concerns the interpretation of Article 8(8) 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 Ś, M. and P., who are drivers of motor vehicles engaged in international transport and X, their former employer, concerning X's refusal to pay certain allowances as consideration for nights spent in their vehicle.

### Legal context

*EU law*

3 Article 4 of Regulation No 561/2006 provides:

'For the purposes of this Regulation:

…

(c) "driver" means any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary;

…

(f) "rest" means any uninterrupted period during which a driver may freely dispose of his time;

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

— "regular daily rest period" means any period of rest of at least 11 hours. Alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least nine hours,

— "reduced daily rest period" means any period of rest of at least nine hours but less than 11 hours;

(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,

— "reduced weekly rest period" means any period of rest of less than 45 hours, which may, subject to the conditions laid down in Article 8(6), be shortened to a minimum of 24 consecutive hours;

(i) "a week" means the period of time between 00.00 on Monday and 24.00 on Sunday;

…'

4 Article 8(8) of Regulation No 561/006 states:

‘Where a driver chooses to do this, 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.’

*Polish law*

5 Article 9(1) of the Regulation of the Ministry of Labour and Social Policy on the amount and conditions for determining the rights enjoyed by workers employed in a State or local authority for business trips abroad (rozporządzenie Ministra Pracy i Polityki Społecznej r. w sprawie wysokości oraz warunków ustalania należności przysługujących pracownikowi zatrudnionemu w państwowej lub samorządowej jednostce sfery budżetowej z tytułu podróży służbowej poza granicami kraju – Dz. U. 2002 No 236, heading 1991) of 19 December 2002 (‘the Regulation of 19 December 2002’) and Article 16(1) of the Regulation of the Ministry of Labour and Social Policy on the rights enjoyed by workers employed in a State or local authority for a business trip abroad (rozporządzenie Ministra Pracy i Polityki Społecznej w sprawie należności przysługujących pracownikowi zatrudnionemu w państwowej lub samorządowej jednostce sfery budżetowej z tytułu podróży służbowej, Dz. U. 2013, heading 167) of 29 January 2013 (‘the Regulation of 29 January 2013’) provide that an employee on a business trip abroad may claim the reimbursement of the costs of accommodation incurred of an amount equivalent to the amount mentioned on the bill, up to the maximum amount provided for in the annex to the rules in force during the relevant period.

6 In paragraph 2 of those articles, if the invoice has not been submitted by the employee, he may claim a flat-rate allowance of 25% of the maximum amount mentioned in paragraph 1 of those provisions.

7 Under paragraph 4 of each of those articles, paragraphs 1 and 2 thereof are not applicable in the case of accommodation guaranteed by the employer at its own expense.

8 The Law on the working time of drivers (ustawie o czasie pracy kierowców, Dz. U. 2012, heading 1155) of 16 April 2004 (‘the Law on the working time of drivers’) provides that drivers having an established employment relationship are covered, in addition to the legal provisions on working time, by rules on mandatory breaks and rest periods, laid down by Regulation No 561/2006, which regulates the driving time for a vehicle.

9 Article 14(1) of the Law on working time for drivers provides that drivers have the right to a minimum rest period of 11 hours uninterrupted per day. The daily rest period, except for drivers mentioned in Chapter 4a of that law, that is to say those who make regular journeys not exceeding 50 kilometres, may be taken on board the vehicle if it is stationary and is equipped with sleeping facilities.

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

10 It is apparent from the order for reference that from 2011 to 2013 the applicants in the main proceedings were employed by X as drivers of lorries over 12 tonnes in an international haulage business. As consideration for nights spent abroad in the cabin of their vehicles, which was designed for sleeping in, they asked X to pay certain lump sums.

11 Pursuant to their respective employment contracts, the applicants were entitled to basic pay, a flat-rate allowance for night work, and a flat-rate allowance for overtime work.

12 Throughout the entire term of those contracts, the employer refused to pay the applicants flat-rate allowances for nights spent on board their vehicles, on the ground that he had guaranteed them free accommodation in the cabin of the vehicle concerned.

13 It is apparent from the order for reference that the subject-matter of the dispute in the main proceedings solely concerns the rights of those drivers vis-à-vis their employer as regards the reimbursement of accommodation costs under the conditions laid down by national law.

14 It is in those circumstances that the Sąd Rejonowy dla Wrocławia-Śródmieścia we Wrocławiu (District Court, Labour and Social insurance division of the Wrocław-Śródmieście in Wrocław) decided to stay the proceedings before it and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 8(8) of Regulation No 561/2006, which provides that, where a driver chooses to do this, 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, be interpreted as meaning that where the employer (the transporter) makes available to the employee (the driver) at no charge sleeping facilities in the cabin of the vehicle, it precludes the national rules laid down in Article 9(4) of the Regulation of 19 December 2002, as amended, applicable until 28 February 2013, and Article 16(4) of the Regulation … of 29 January 2013, applicable from 1 March 2013, with the effect that the employee is therefore entitled to the reimbursement of accommodation costs under the conditions laid down by Article 9(1) to (3) of the Regulation of 19 December 2002 and Article 16(1) to (3) of the Regulation of 29 January 2013, or to the more favourable conditions and amounts laid down by the contract of employment, a collective labour agreement or by other rules of employment law?

(2) Must Article 8 of Regulation No 561/2006 be interpreted as meaning that, if a driver chooses to do so, rest periods away from base, as defined in Article 4(f) to (i) thereof, may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary?’

## Consideration of the questions referred for a preliminary ruling

### *The first question*

15 Pursuant to Article 99 of its Rules of Procedure, where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

16 It is appropriate to apply that provision in the present proceedings in respect of the first question.

17 By that question, the referring court asks essentially whether Article 8(8) of Regulation No 561/2006 must be interpreted as meaning that it precludes national legislation which lays down the conditions under which the driver of a vehicle may claim the reimbursement of accommodation costs incurred in the course of his employment.

18 In that connection, it must be recalled that Article 8(8) of Regulation No 561/2006 provides that, if a driver chooses to do so, the daily rest periods and reduced weekly rest periods taken away from base may be taken aboard a vehicle, provided that it has suitable sleeping facilities for each driver and that it is stationary.

19 Therefore, it follows from the wording of that provision that it concerns only the organisation of certain rest periods for drivers while they are working, not compensation for those rest periods.

20 In that connection, it must be made clear that Regulation No 561/2006 which harmonises, inter alia, the rules relating to driving time, breaks and rest periods which must be observed by drivers transporting goods and passengers by road, while allowing the national legislature the possibility to adopt provisions more favourable to drivers, does not contain any provision relating to allowances that such drivers may be entitled to in the course of their employment.

21 To that end, the answer to the first question is that Regulation No 561/2006 and, in particular, Article 8(8) thereof, does not preclude national legislation which lays down the conditions in which the driver of a vehicle may claim reimbursement of accommodation costs incurred in the course of his employment.

*The second question*

22 Under Article 53(2) of the Rules of Procedure of the Court, where it is clear that the Court has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.

23 It is also appropriate to apply that provision in the present case to answer the second question.

24 By that question, the referring court asks whether Article 8 of Regulation No 561/2006 must be interpreted as meaning that, where the driver chooses to do so, rest periods taken away from base, defined in Article 4(f) to (i) thereof, may be taken on board the vehicle, provided that it has suitable sleeping facilities for each driver and that it is stationary.

25 It must first be recalled that, in the context of the cooperation established by Article 267 TFEU, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary that the national court should define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, inter alia, order in *Striani and Others*, Case C-299/15, EU:C:2015:519, paragraph 22 and the case-law cited).

26 In fact, the Court of Justice is empowered to rule on the interpretation or validity of Union provisions only on the basis of the facts which the national court puts before it (see, inter alia, order in *Talasca*, C-19/14, EU:C:2014:2049, paragraph 18 and the case-law cited).

27 The Court also stresses that it is important for the referring court to set out the precise reasons why it is unsure as to the interpretation of Union law and why it considers it necessary to refer questions to the Court for a preliminary ruling (see, order in *Talasca*, C-19/14, EU:C:2014:2049, paragraph 19 and the case-law cited).

28 In fact, given that it is the order for reference that serves as the basis for the proceedings before the Court, it is essential that the national court should give, in the order for reference itself, the factual and regulatory context of the case in the main proceedings and at least a minimum amount of explanation of the reasons for the choice of the provisions of EU law it seeks to have interpreted and on the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (see, order in *Talasca*, C-19/14, EU:C:2014:2049, paragraph 20 and the case-law cited).

29 Those requirements concerning the content of a request for a preliminary ruling, which must enable the Court to check both the admissibility of the request for a preliminary ruling and its jurisdiction to adjudicate on the question referred, appear expressly in Article 94 of the Rules of Procedure of the Court of which the national court is supposed, in the context of the cooperation instituted by

Article 267 TFEU, to be aware and which it is bound to observe scrupulously (see judgment in *Siragusa*, C-206/13, EU:C:2014:126, paragraph 19 and order in *Talasca*, C-19/14, EU:C:2049, paragraph 21).

30 It must also be emphasised in that regard that the information provided in orders for reference serves not only to enable the Court to give useful answers but also to ensure that it is possible for the governments of the Member States and other interested parties to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is the Court's duty to ensure that that possibility is safeguarded, in the light of the fact that, under that provision, only the orders for reference are notified to the interested parties (see, in particular, order in *Talasca*, C-19/14, EU:C:2014:2049, paragraph 23).

31 In the present case, the order for reference does not satisfy those requirements.

32 Even if the reference, in the wording of the second question, 'if a driver chooses to do so' suggests that that question refers to paragraph 8 of that article, in which such a 'choice' is mentioned, it must be held that the referring court asks for the interpretation of Article 8 of Regulation No 561/2006, without specifically indicating the paragraph which is the subject of its question.

33 Moreover, the referring court does not explain how the interpretation sought by that question of a provision concerning daily rest periods and reduced weekly rest periods away from base that a driver may take aboard his vehicle is necessary in order for it to adjudicate on the dispute before it.

34 That court states that it is not clear from Article 8(8) of Regulation No 561/2006 whether that provision concerns all the types of rest period defined in Article 4 thereof, given that normal weekly rest periods are not expressly mentioned in it. By failing to mention any reason relating to the need for or usefulness of the answer to its second question in order to adjudicate on the dispute before it, that court also fails to provide any explanation as to why the answers given by the Court to the second question, which concern, in the present case, Article 8 of Regulation No 561/2006, might, in such a procedural context, be necessary for the resolution of that dispute.

35 Therefore, the request for a preliminary ruling has not satisfied the requirements laid down in paragraphs 25 to 30 of the present order, specifically a level of clarity and precision sufficient to enable the Court to give a ruling, while ensuring that the answer to the question referred is necessary for the resolution of the dispute before the referring court, and so that the governments of the Member States and the other interested parties may make effective use of the opportunity to make submissions, in accordance with Article 23 of the Statute of the Court of Justice of the European Union.

36 Since no sufficient explanation of the reasons for the question has been provided, the Court is therefore not in a position to give a useful answer to that question.

37 In those circumstances, it must be held that the second question is manifestly inadmissible.

## Costs

38 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.

On those grounds, the Court (Tenth Chamber) hereby orders:

1. **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 and, in particular, Article 8(8) thereof, must be interpreted as meaning that it does not preclude national legislation which lays down the conditions under which the driver of a vehicle may claim reimbursement of accommodation costs incurred in the course of his employment.**

2. **The second question referred by the Sąd Rejonowy dla Wrocławia-Śródmieścia we Wrocławiu (District Court, Wrocław-Śródmieście, Wrocław, Poland) is manifestly inadmissible.**

[Signatures]