Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

26 September 2024*

(Reference for a preliminary ruling – Road transport – Harmonisation of certain provisions of social legislation – Regulation (EC) No 561/2006 – Article 9(3) – Concept of 'employer's operational centre where the driver is normally based' – Place where a driver takes charge of a vehicle falling within the scope of that regulation – Concept of 'other work' – Time spent by that driver driving a vehicle falling outside the scope of that regulation to travel to or from that operational centre)

In Case C-164/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Szegedi Törvényszék (Szeged High Court, Hungary), made by decision of 14 March 2023, received at the Court on 16 March 2023, in the proceedings

VOLÁNBUSZ Zrt.

v

Bács-Kiskun Vármegyei Kormányhivatal,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Piçarra (Rapporteur), N. Jääskinen and M. Gavalec, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– VOLÁNBUSZ Zrt., by K. Mészáros and P. Varsányi, jogtanácsosok,

– the Italian Government, by G. Palmieri, acting as Agent, and by A. Lipari, procuratore dello Stato, and G. Santini, avvocato dello Stato,

– the European Commission, by C. Kovács and P.A. Messina, acting as Agents,

* Language of the case: Hungarian.

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 9(3) 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 VOLÁNBUSZ Zrt. ('Volánbusz'), a private limited public transport company in Hungary, and Bács-Kiskun Vármegyei Kormányhivatal (Bács-Kiskun County Government Offices, Hungary) concerning the legality of a warning issued to that company for breach of the obligation to record the working time of the drivers that it employs.

Legal context

European Union law

Directive 2002/15/EC

3 Article 3 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) provides:

'For the purposes of this Directive:

(a) "working time" shall mean:
   1. in the case of mobile workers: the time from the beginning to the end of work, during which the mobile worker is at his workstation, at the disposal of the employer and exercising his 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 cannot dispose freely of his time and is required to be at his 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, that is to say either before departure or just before the actual start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States;

…'

Regulation No 561/2006

4 Recitals 5 and 17 of Regulation No 561/2006 state:

'(5) Measures provided for in this Regulation regarding working conditions should not prejudice the right of the two sides of industry to lay down, by collective bargaining or otherwise, provisions more favourable to workers.

…

(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. …'

5 Article 1 of that regulation provides:

'This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This Regulation also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry.'

6 Article 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;

…'

7 Article 4(e) of the same regulation provides:

'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'.

8 Article 9(3) of Regulation No 561/2006 provides:

'Any time spent by a driver driving a vehicle which falls outside the scope of this Regulation to or from a vehicle which falls within the scope of this Regulation, which is not at the driver's home or at the employer's operational centre where the driver is normally based, shall count as other work.'

Hungarian law

9 Paragraph 86(3) of the a munka törvénykönyvéről szóló 2012. évi I. törvény (Law No I of 2012 establishing the Labour Code) (*Magyar Közlöny* 2012/2.; 'the Hungarian Labour Code') provides:

'The following shall not count as working time:

…

(b) the duration of the worker's journey from his or her home or place of residence to his or her actual place of work and from his or her place of work to his or her home or place of residence.'

10 Paragraph 134(1)(a) of that code provides:

'The employer shall keep a register:

(a) of the duration of ordinary working time and overtime.

…'

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

11 Volánbusz is a private limited public transport company whose sole shareholder is the Hungarian State. It provides regular passenger transport by bus on various routes exceeding 50 kilometres and on others not exceeding 50 kilometres. Only those buses which are assigned exclusively to the latter type of route do not fall within the scope of Regulation No 561/2006, in accordance with Article 3(a) thereof.

12 Certain drivers employed by Volánbusz take charge of and drop off buses at that company's external depots, from which they usually carry out their shift and to which they return at the end of that shift, in the normal exercise of their functions, that is to say, without specific instructions from that company. Those external depots, of which the majority are parking areas, do not have facilities available to drivers, namely sanitary facilities or social or rest areas. Those external depots are not listed in the commercial register as Volánbusz's places of establishment or branches. They are nevertheless designated as places for taking charge of its vehicles, from where the route assigned by the roadmap begins or ends, and are situated closer to the drivers' places of

residence than Volánbusz's place of establishment or branches. That proximity ensures that those drivers have a shorter journey time to take charge of those vehicles and to return to their place of residence after their shift.

13 In accordance with Paragraph 86(3)(b) of the Hungarian Labour Code, the time spent by the drivers employed by Volánbusz driving their own vehicle to get to the place for taking charge of the vehicles falling within the scope of Regulation No 561/2006 and to return at the end of their shift does not form part of their working time. They are, however, paid a travel allowance for those journeys.

14 However, following several checks, the Bács-Kiskun County Government Offices found that, for 67 drivers employed by Volánbusz, the time spent, during March 2022, travelling from their place of residence to that company's external depots and returning to them at the end of their shift should have been recorded as working time, pursuant to Paragraph 134 of the Hungarian Labour Code. By a decision of 19 October 2022, the Bács-Kiskun County Government Offices issued a warning to Volánbusz.

15 Those government offices emphasise that many of Volánbusz's external depots are merely parking areas. A parking area, however, is not a facility within the meaning of the case-law stemming from the judgments of 18 January 2001, *Skills Motor Coaches and Others* (C-297/99, EU:C:2001:37), and of 29 April 2010, *Smit Reizen* (C-124/09, EU:C:2010:238). In those circumstances, those external depots cannot be classified as the 'employer's operational centre where the driver is normally based' within the meaning of Article 9(3) of Regulation No 561/2006. Consequently, any time spent by a driver driving a vehicle not falling within the scope of that regulation to such external depots, as well as returning to them at the end of his or her shift, must be classified as 'other work' within the meaning of that provision of EU law and be recorded in accordance with Paragraph 134 of the Hungarian Labour Code. Those offices are of the opinion that the concept of 'employer's operational centre where the driver is normally based', within the meaning of the said provision of EU law, is equivalent to the term 'operating centre' which appears in those judgments.

16 Volánbusz brought before the Szegedi Törvényszék (Szeged High Court, Hungary), which is the referring court, an action for annulment against the decision of 19 October 2022 mentioned in paragraph 14 above. It argues that the permanent external bus depots that were inspected must be classified as the employer's operational centres where the drivers concerned are normally based, within the meaning of Article 9(3) of Regulation No 561/2006. In those circumstances, in accordance with that provision, any time spent by those drivers driving a vehicle not falling within the scope of that regulation to such external depots, as well as returning to them at the end of their shift, cannot be classified as 'other work' within the meaning of the said provision, meaning that there is no need to record it as such.

17 Interpreting Article 9(3) of Regulation No 561/2006 differently would result, according to Volánbusz, in a paradoxical situation. After all, while the journey time spent driving a vehicle not falling within the scope of that regulation to travel to an external depot must be recorded as working time, that is not the case for the journey time spent travelling to take charge of a vehicle not at that external depot but at that company's place of establishment or its branches, even if the external depot concerned was chosen to reduce that journey time. Transport undertakings are thus discouraged from designating such external depots as the place where the driver takes charge of a vehicle falling within the scope of the said regulation.

18 Such a practice, however, seeks to improve drivers' working conditions as well as road safety, in accordance with Article 1 of that regulation, read in the light of recital 17 thereof. In that regard, Volánbusz has clarified in that regard that the actual base of the drivers concerned was established on the basis of several criteria and takes into account, in the context of organisation of work, the personal aspirations of those drivers in order to minimise the journey time between their residence and the place where they take charge of the vehicles falling within the scope of that regulation.

19 The referring court notes, first of all, that the outcome of the dispute in the main proceedings depends on the interpretation of the concept of 'employer's operational centre where the driver is normally based', within the meaning of Article 9(3) of Regulation No 561/2006. In particular, it depends on whether that concept covers a place without any facilities and which serves only as a depot for vehicles falling within the scope of that regulation. In addition, it is appropriate to determine whether the presence of certain facilities, such as sanitary facilities or social or rest areas, is necessary for classification as 'employer's operational centre where the driver is normally based', within the meaning of that provision. The collective agreement concluded between Volánbusz and the labour representative of the sector concerned classifies as such the actual base of the driver concerned, that is to say, the place, whether it be a facility, a parking area of the undertaking or indeed any other geographical point where the route assigned by the roadmap begins, from which that driver usually carries out his or her shift and to which he or she returns at the end of that shift, in the normal exercise of his or her functions and without complying with specific instructions from his or her employer.

20 Next, that court refers to the judgment of 29 April 2010, *Smit Reizen* (C-124/09, EU:C:2010:238), in which the Court defined the expression 'undertaking's operating centre' in terms that have been restated in the definition of the concept of 'employer's operational centre where the driver is normally based' contained in the collective agreement mentioned in the previous paragraph. According to the referring court, 'the road passenger transport undertaking's facilities or [a] parking area, or [any other] geographical point defined as the starting point of the route [which is assigned to the driver by the roadmap], may also serve as the place to which the driver is actually attached'.

21 Last, the referring court considers, as Volánbusz does, that an interpretation of Article 9(3) of Regulation No 561/2006 according to which all journey time spent by a driver driving his or her own vehicle to travel to the 'employer's operational centre where the driver is normally based', to take charge of a vehicle falling within the scope of that regulation, must be classified as working time is contrary to the objectives pursued by that regulation.

22 In those circumstances, the Szegedi Törvényszék (Szeged High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can the concept of "employer's operational centre where the driver is normally based", used in Article 9(3) of [Regulation No 561/2006], be interpreted as meaning the place to which the driver is actually attached, in other words, the road passenger transport undertaking's facilities or parking area, or another geographical point defined as the starting location of the route, from which the driver usually carries out his or her [shift] and to which he or she returns at the end of that [shift], in the normal exercise of his or her functions and without complying with specific instructions from his or her employer?

(2) For the purposes of assessing whether a particular place constitutes an "employer's operational centre where the driver is normally based", within the meaning of Article 9(3) of [Regulation No 561/2006], does it matter whether or not the location has adequate facilities (for example, [sanitary facilities or social or rest areas])?

(3) For the purposes of assessing whether a particular place constitutes an "employer's operational centre where the driver is normally based", for the purposes of Article 9(3) of [Regulation No 561/2006], does it matter whether the location of places to which drivers are actually attached is favourable to workers (drivers) in that they are, in any event, situated closer to their homes than the establishments and branches of the undertaking recorded in the commercial register, with the result that the drivers' required travelling time is shorter than it would be if they were to start and finish work in those establishments or branches?

(4) If the term "employer's operational centre where the driver is normally based", used in Article 9(3) of [Regulation No 561/2006], cannot be defined as the place to which the driver is actually attached, in other words, the road passenger transport undertaking's facilities or parking area, or another geographical point defined as the starting location of the route, from which the driver usually carries out his or her [shift] and to which he or she returns at the end of that [shift], in the normal exercise of his or her functions and without complying with specific instructions from his or her employer, should the definition of that term in [Regulation No 561/2006] be treated as a measure regarding working conditions, in respect of which the two sides of industry are able to lay down, by collective bargaining or otherwise, provisions more favourable to workers, in the light of recital 5 of the regulation?'

Consideration of the questions referred

The first three questions

23 By its first three questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 9(3) of Regulation No 561/2006 must be interpreted as meaning that the concept of 'employer's operational centre where the driver is normally based' set out in that provision covers a place, such as an external depot for vehicles falling within the scope of that regulation, from which the driver concerned usually carries out his or her shift and to which he or she returns at the end of that shift, in the normal exercise of his or her functions and without specific instructions from his or her employer in that regard. That court also asks whether, on the one hand, the presence of sanitary facilities or social or rest areas and, on the other hand, the geographical proximity of that place to the place of residence of that driver are relevant for that purpose.

24 Article 9(3) of Regulation No 561/2006 provides that any time spent by a driver driving a vehicle which falls outside the scope of that regulation to or from a vehicle which falls within the scope of the same regulation, which is not at that driver's home or at the employer's operational centre where that driver is normally based, is to count as other work.

25 The concept of 'employer's operational centre where the driver is normally based' referred to in that Article 9(3) is not defined by Regulation No 561/2006, which, to that end, makes no express reference to the law of the Member States. Such a concept must therefore be classified as an autonomous concept of EU law and interpreted uniformly.

26 It is apparent from the wording of Article 9(3) of Regulation No 561/2006 that that provision does not establish any requirement concerning the presence, at the 'employer's operational centre where the driver is normally based', of certain facilities, such as sanitary facilities or social or rest areas. Nor does that provision require that that operational centre be close to that driver's place of residence. At the same time, it cannot be inferred from that wording whether the concept of 'employer's operational centre where the driver is normally based', within the meaning of the same provision, is the place from which that driver usually carries out his or her shift and to which he or she returns at the end of that shift, in the absence of specific instructions from his or her employer.

27 An examination of the origin of that concept and the provision in which it appears allows that question to be resolved.

28 As the European Commission notes, in essence, in its written observations, Article 9(3) of Regulation No 561/2006 codifies the solution adopted by the Court in the judgment of 18 January 2001, *Skills Motor Coaches and Others* (C-297/99, EU:C:2001:37), which concerned Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8). In that judgment, the Court held that a driver's obligation to record all other periods of work extends to time necessarily spent travelling to take charge of a vehicle subject to the obligation to install and use a tachograph, and which is not at that driver's home or his or her employer's operating centre (see, to that effect, judgment of 18 January 2001, *Skills Motor Coaches and Others* (C-297/99, EU:C:2001:37, paragraph 35).

29 The Court has clarified that the term 'employer's operating centre' cannot be defined solely on the basis of criteria linked to the employer, inter alia to the structure or to the organisation of the transport undertaking concerned, but must also take into account criteria relating to the person of the driver concerned. Therefore, that term cannot be equated with 'registered office' or interpreted as meaning that any depot for vehicles belonging to the transport undertaking concerned could be regarded as an operating centre of the employer. That term thus refers to the place at which the driver is actually based or the 'base' of that driver, namely the place to which the said driver travels regularly to take charge of and drive a vehicle falling within the scope of Regulation No 3821/85, or the place from which he or she usually carries out his or her shift and to which he or she returns at the end of that shift, in the normal exercise of his or her functions and without specific instructions from his or her employer in that regard (see, to that effect, judgment of 29 April 2010, *Smit Reizen*, C-124/09, EU:C:2010:238, paragraphs 24 to 28 and 31).

30 In the light of the foregoing, it must be held that the term 'employer's operating centre' thus defined corresponds, in essence, to the concept of 'employer's operational centre where the driver is normally based', which appears in Article 9(3) of Regulation No 561/2006.

31 Similarly, the concept of 'other work' appearing in that provision and defined in Article 4(e) of that regulation as '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', corresponds, in essence, to that of 'all other periods of work' contained in Article 15 of Regulation No 3821/85.

32 Accordingly, when a driver takes charge of a vehicle falling within the scope of Regulation No 561/2006 at a place which is the 'employer's operational centre where [that] driver is normally based', any time that he or she spends driving a vehicle which does not fall within the scope of that regulation to travel to or from that operational centre cannot be classified as 'other work' within the meaning of Article 4(e) of that regulation.

33 It thus appears that Article 9(3) of Regulation No 561/2006 is intended to govern one specific situation, to the exclusion of all others, namely that in which the driver takes charge of the vehicle falling within the scope of that regulation at a place other than his or her place of residence or the employer's operational centre where he or she is normally based.

34 Such an interpretation is consistent with the objectives pursued by that regulation, which seeks inter alia, as is apparent from Article 1 thereof, read in conjunction with recital 17 thereof, to improve the working conditions of the drivers concerned and road safety. Taking those objectives into account, the concept of 'employer's operational centre where the driver is normally based', within the meaning of Article 9(3) of Regulation No 561/2006, cannot be defined exclusively in the light of functional criteria linked to the internal organisation of the transport undertaking, but must also take into account criteria relating to the person of the driver concerned (see, to that effect, judgment of 29 April 2010, *Smit Reizen*, C-124/09, EU:C:2010:238, paragraph 24).

35 However, the fact that such a place is more favourable to the driver concerned, inter alia due to a geographical location closer to his or her place of residence, does not constitute a sufficient criterion to classify it as an 'employer's operational centre where the driver is normally based'. In the present case, it will be for the referring court to verify, taking into account all the circumstances which characterise the situation of the driver concerned, that the place at issue in the main proceedings is indeed the place at which that driver is actually based (see, to that effect, judgment of 29 April 2010, *Smit Reizen*, C-124/09, EU:C:2010:238, paragraph 30).

36 It is important to add, in order to answer a specific query from the referring court, that, without prejudice to the objective of improving working conditions for the drivers concerned, Regulation No 561/2006 does not require the presence of sanitary facilities or social or rest areas in order to classify a place, such as the place at issue in the main proceedings, as an 'employer's operational centre where the driver is normally based', within the meaning of Article 9(3) of Regulation No 561/2006.

37 In the light of all the foregoing considerations, the answer to the first three questions is that Article 9(3) of Regulation No 561/2006 must be interpreted as meaning that the concept of 'employer's operational centre where the driver is normally based' set out in that provision designates a place, such as an external depot for vehicles falling within the scope of that regulation, from which the driver concerned usually carries out his or her shift and to which he or she returns at the end of that shift, in the normal exercise of his or her functions and without complying with specific instructions from his or her employer in that regard. Whether sanitary facilities or social or rest areas are present at such a place is irrelevant in that regard. However, the geographical proximity of the place of residence of that driver may be taken into account, without being decisive in itself.

The fourth question

38 Having regard to the answer given to the first three questions, there is no need to answer the fourth question.

Costs

39 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 (Third Chamber) hereby rules:

Article 9(3) 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

must be interpreted as meaning that the concept of 'employer's operational centre where the driver is normally based' set out in that provision designates a place, such as an external depot for vehicles falling within the scope of that regulation, from which the driver concerned usually carries out his or her shift and to which he or she returns at the end of that shift, in the normal exercise of his or her functions and without complying with specific instructions from his or her employer in that regard. Whether sanitary facilities or social or rest areas are present at such a place is irrelevant in that regard. However, the geographical proximity of the place of residence of that driver may be taken into account, without being decisive in itself.

[Signatures]