Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

1 August 2025 *

(Reference for a preliminary ruling – Regulations (EEC) No 3821/85 and (EU) No 165/2014 – Obligation periodically to inspect tachographs – Exemption – Last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union and Article 51(1) thereof – Principle *lex posterior mitius* – Administrative penalties of a criminal nature – Appeal in cassation – New law having entered into force after the ruling which is the subject of that appeal – Concept of 'final conviction')

In Case C-544/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic), made by decision of 16 August 2023, received at the Court on 28 August 2023, in the proceedings

T.T.,

BAJI Trans s.r.o.

v

Národný inšpektorát práce,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, F. Biltgen, K. Jürimäe, C. Lycourgos (Rapporteur), I. Jarukaitis, M.L. Arastey Sahún, S. Rodin, N. Jääskinen, D. Gratsias and M. Gavalec, Presidents of Chambers, E. Regan, J. Passer, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: J. Richard de la Tour,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 24 September 2024,

after considering the observations submitted on behalf of:

– T.T. and BAJI Trans s.r.o., by M. Mandzák and M. Pohovej, advokáti, and by P. Rumanová, advokátka,

* Language of the case: Slovak.

– the Národný inšpektorát práce, by M. Mitterpák, generálny riaditel, and by L. Štofová, právnička,

– the Slovak Government, by A. Lukáčik, E.V. Larišová and S. Ondrášiková, acting as Agents,

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

– the European Commission, by P.J.O. Van Nuffel and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 February 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), as well as Article 51(1) thereof.

2 The request has been made in proceedings between T.T. and BAJI Trans s.r.o., on the one hand, and the Národný inšpektorát práce (National Labour Inspectorate, Slovakia), on the other, concerning an administrative fine imposed on T.T. by that inspectorate.

Legal context

European Union law

The Charter

3 Article 49(1) of the Charter provides:

'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that shall be applicable.'

4 Article 51(1) of the Charter provides:

'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers …'

Regulation No 3821/85

5 Article 3(1) and (2) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 1), 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'), in the version of those provisions applicable on the date when the offence at issue in the main proceedings was committed, provided:

'1. 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 (EC) No 561/2006. …

2. Member States may exempt vehicles mentioned in Article 13(1) and (3) of Regulation (EC) No 561/2006 from application of this Regulation.'

6 Article 19(1) of that regulation, in the version of that provision applicable on that date, 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.'

7 At the date of the offence at issue in the main proceedings, point 3, entitled 'Periodic inspections', of Chapter VI of Annex I to that regulation provided, in subpoint (a) thereof:

'Periodic inspections of the equipment fitted to vehicles shall take place at least every two years and may be carried out in conjunction with roadworthiness tests of vehicles.

…'

8 Regulation No 3821/85 was repealed, with effect from 2 March 2016, by Article 47 of Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ 2014 L 60, p. 1).

Regulation No 165/2014

9 Article 3(1) and (2) of Regulation No 165/2014 provides:

'1. Tachographs shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road and to which Regulation (EC) No 561/2006 applies.

2. Member States may exempt from the application of this Regulation the vehicles mentioned in Article 13(1) and (3) of Regulation (EC) No 561/2006.'

10 Article 23(1) of that regulation provides:

‘Tachographs shall be subject to regular inspection by approved workshops. Regular inspections shall be carried out at least every two years.’

11 Article 41(1) of Regulation No 165/2014 states:

‘Member States shall, in accordance with national constitutional arrangements, lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory, and shall be in compliance with the categories of infringements set out in 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 (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ 2006 L 102, p. 35)].’

12 Under the second paragraph of Article 48 of that regulation:

‘[This Regulation] shall, subject to the transitional measures in Article 46, apply with effect from 2 March 2016. …’

Regulation No 561/2006

13 Article 1 of Regulation No 561/2006 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.’

14 Article 3 of that regulation lists the categories of vehicles undertaking carriage by road to which the regulation does not apply. Vehicles used for the delivery of ready-mixed concrete are not included in that list.

15 Article 13(1) of Regulation No 561/2006 lists the categories of vehicles undertaking carriage in respect of which, provided the objectives set out in Article 1 of that regulation are not prejudiced, Member States may grant exceptions from Articles 5 to 9 thereof.

16 Article 13(1) of that regulation, in the version of that provision applicable on the date of the offence at issue in the main proceedings, did not refer to vehicles used for the delivery of ready-mixed concrete.

17 That provision has, however, been amended by Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).

18 Following that amendment, which is applicable from 20 August 2020, Article 13(1) of Regulation No 561/2006 now lists, under point (r) thereof, 'vehicles used for the delivery of ready-mixed concrete' among vehicles which may be exempted from Articles 5 to 9 of that regulation.

Regulation (EC, Euratom) No 2988/95

19 Article 1 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1) provides:

'1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. "Irregularity" shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.'

20 Article 2(2) of that regulation provides:

'No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.'

Slovak law

21 Article 50(6) of the Ústava Slovenskej republiky (Constitution of the Slovak Republic) provides:

'The criminal nature of any act shall be determined and the penalty for that act shall be imposed under the law effective at the time of the commission of the act. A more recent law shall apply if it is more favourable to the perpetrator of the offence.'

22 Paragraph 2 of Zákon č. 461/2007 Z. z. o používaní záznamového zariadenia v cestnej doprave (Law No 461/2007 on the use of recording equipment in road transport) of 13 September 2007 provides:

'(1) Unless otherwise provided by this Law, a transport undertaking which provides bus or road freight transport services shall ensure that recording equipment is installed in each vehicle used for the carriage of passengers or goods and that record sheets and [driver's] cards are used for its operation.

(2) The obligation incumbent on the transport undertaking under subparagraph 1 shall not apply to vehicles used for carriage referred to by a specific provision [(reference to Article 3 and Article 13(1) of Regulation No 561/2006)]'.

23 Paragraph 38(1)(a)(1) of Zákon č. 462/2007 Z. z. o organizácii pracovného času v doprave a o zmene a doplnení Zákona č. 125/2006 Z. z. o inšpekcii práce a o zmene a doplnení Zákona č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov v znení Zákona č. 309/2007 Z. z. z 13. septembra 2007 (Law No 462/2007 of 13 September 2007 on the organisation of working time in transport and amending and supplementing Law No 125/2006 on labour inspection and amending and supplementing Law No 82/2005 on illegal work and illegal employment and amending and supplementing certain laws, as amended by Law No 309/2007), provides:

'An offence is committed by a driver who drives a vehicle without recording equipment or with recording equipment which has not undergone a valid periodic inspection or uses recording equipment incorrectly.'

24 Zákon č. 162/2015 Správny súdny poriadok (Law No 162/2015 establishing the Code of Administrative Court Procedure) of 21 May 2015 ('the CACP') entered into force on 1 July 2016.

25 Paragraph 145 of the CACP provides:

'(1) Unless otherwise provided below, a judgment that has been served shall be final.

(2) A judgment of an administrative court shall become final after the expiry of a period of one month from the service of that judgment or through the lodging of an appeal in cassation against that judgment within the same period, if the decision concerned

…

(c) an administrative action in a case regarding administrative penalties,

…'

26 Paragraph 438(1) of that code provides:

'An appeal in cassation may be lodged against a final decision of an administrative court …'

27 Under Paragraph 440(1) of the CACP:

'An appeal in cassation may be based only on the fact that, in the course of the proceedings or through the decision, the administrative court infringed the law inasmuch as:

(a) the administrative court did not have jurisdiction to rule on the dispute,

(b) a party to the dispute did not have standing to bring proceedings,

(c) a party to the dispute did not have full capacity to act independently before the administrative court and was not represented by a legal representative or legal guardian acting on his or her behalf,

(d) the same matter has already been finally decided or proceedings have already been initiated in the same matter,

(e) the matter was settled by a disqualified judge or by an incorrectly constituted administrative court,

(f) by an inappropriate procedure, the administrative court prevented a party from exercising his or her procedural rights such that the right to a fair trial was breached,

(g) the administrative court ruled on the basis of an error in law,

(h) the administrative court decided to depart from the settled case-law of [the Supreme Administrative Court],

(i) the administrative court did not comply with the binding legal opinion given in the annulment decision taken on the appeal in cassation, or

(j) the action was unlawfully dismissed.'

28 Paragraph 454 of that code states:

'The situation existing at the time when the decision of the administrative court under appeal was delivered or made is decisive for the purposes of the decision of the court hearing the appeal in cassation.'

29 Paragraph 462 of the CACP provides:

'(1) If the court hearing the appeal in cassation, after examination, finds that the appeal in cassation is well founded, it shall decide that the decision under appeal is to be set aside and, depending on the nature of the case, shall refer the case back to the administrative court so that the proceedings may continue or shall close the proceedings; where appropriate it shall transfer the case to the competent authority.

(2) If the court hearing the appeal in cassation concludes that the contested decision of the administrative authority or the contested measure of the administrative authority is not in accordance with the law, and the administrative court has dismissed the action against that contested decision or contested measure, the court hearing the appeal in cassation may modify the decision of the administrative court by annulling the contested decision of the administrative authority or the contested measure of the administrative authority and by referring the case back to it so that the proceedings may continue.

…'

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

30 By an administrative decision of 8 December 2016, T.T. was found guilty of an offence under Paragraph 38(1)(a)(1) of Law No 462/2007 for having carried, on 4 November 2015, concrete on board a vehicle owned by BAJI Trans and with a tachograph which had not undergone a valid periodic inspection. On that basis, T.T. was ordered to pay a fine of EUR 200.

31 By a decision of 3 April 2017, the National Labour Inspectorate dismissed the administrative appeal brought by T.T. against the decision of 8 December 2016.

32 T.T. and BAJI Trans brought an action against those administrative decisions before the Krajský súd v Bratislave (Regional Court, Bratislava, Slovakia).

33 By a decision of 27 March 2019, the Krajský súd v Bratislave (Regional Court, Bratislava) dismissed BAJI Trans' action as inadmissible and T.T.'s action as unfounded. That court held, inter alia, that the obligation to use tachographs in road transport vehicles was laid down in Article 3 of Regulation No 3821/85 and in Paragraph 2(1) of Law No 461/2007, without prejudice to the exceptions listed in Articles 3 and 13 of Regulation No 561/2006. However, those exceptions did not include vehicles intended for the carriage of concrete.

34 On 15 July 2019, T.T. and BAJI Trans brought an appeal in cassation against that decision before the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic).

35 On 24 August 2020, those parties submitted a pleading whereby they emphasised that Regulation No 561/2006 had been amended by Regulation 2020/1054. They argued that that amendment, made after the lodging of their appeal in cassation, meant that the acts committed on 4 November 2015 had ceased to be unlawful. Accordingly, such an amendment had to be taken into account, in accordance with Article 50(6) of the Constitution of the Slovak Republic.

36 On 1 August 2021, the Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic), which is the referring court, began its examination of all the cases which had been brought before the Administrative Chamber of the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) up to 31 July 2021, including T.T. and BAJI Trans' appeal.

37 In the first place, the referring court notes that the principle *lex mitior* is enshrined in Article 49 of the Charter, while emphasising that that article can be applied only if the dispute in the main proceedings concerns a situation in which a Member State is applying Union law for the purposes of Article 51(1) of the Charter.

38 As the national laws at issue in the main proceedings were adopted in order to implement Regulations No 3821/85 and No 165/2014, including the obligation, derived from those regulations, to establish a system of penalties, the referring court is inclined to consider, first, that the National Labour Inspectorate was implementing Union law, for the purposes of Article 51(1) of the Charter, when it decided on the guilt of T.T. and imposed a penalty on him and, second, that it itself will be implementing that law when it gives a ruling on the appeal pending before it. Nevertheless, that court wishes for the Court of Justice to confirm that interpretation.

39 In the second place, the referring court considers that, in order to meet the requirements laid down by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR'), both the administrative authorities, called upon to impose criminal penalties on an individual, and the courts hearing and determining actions, in respect of which they have unlimited jurisdiction, against those administrative decisions must be required to apply the principle *lex posterior mitius*. That court is inclined to think that the same reasoning applies with regard to Article 49(1) of the Charter. However, it wishes to make sure that that provision applies in the context both of the procedure leading to the imposition of the administrative penalty and of the judicial procedure intended to review whether the imposing of that penalty was lawful.

40 In the third place, the referring court questions whether it is for it, as the court hearing the appeal in cassation, to take into account a more lenient criminal law which was adopted after the delivery of the judicial decision considered to be final under national law and against which BAJI Trans and T.T. have lodged an appeal.

41 In that regard, that court notes that the Court of Justice has previously held that the principle *lex posterior mitius* applies to criminal proceedings pending a final decision, but that it has never given a ruling on the way in which the final nature of such a decision is to be assessed.

42 The referring court considers that it must take into account, even in the absence of a request to that effect, the fundamental principles for determining the penalty, including the principle *lex posterior mitius*.

43 However, that court notes, first, that, under Slovak law, an appeal in cassation is regarded, theoretically speaking, as an extraordinary remedy, precisely because it is brought against a final judicial decision, and, second, that it is bound by the legal situation which existed on the date that decision was delivered.

44 That being so, it also notes that the grounds for cassation provided for by Slovak law are set out in broad terms and cover, in principle, all legal and procedural defects. In addition, an appellant is, in principle, entitled to have the appeal decided and to have the proceedings relating to the appeal in cassation follow, regularly and directly, the proceedings before the lower administrative court.

45 In those circumstances, the Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 51(1) of [the Charter] to be interpreted as meaning that a Member State is implementing Union law when it imposes, under national law, an administrative penalty for failure to fulfil an obligation where that obligation arises from EU law and the Member States are required to penalise failure to fulfil it, as in the case of Article 19(1) of Regulation No 3821/85 and Article 41(1) of Regulation No 165/2014?

(2) If the answer to the first question is in the affirmative, are Article 49(1) of [the Charter] and the [principle *lex posterior mitius*] laid down therein to be interpreted as also applying to the imposition of penalties for administrative offences in cases where the guilt and the penalty are first decided not by a judicial body but by an administrative body, and does this principle then also apply to the review of the decisions of that administrative body by an administrative court?

(3) If the answer to the second question is in the affirmative, are Article 49 of [the Charter] and the [principle *lex posterior mitius*] laid down therein to be interpreted as applying to national administrative or judicial proceedings, regardless of the current stage of those proceedings?

(4) If the answer to the third question is in the negative, by what criteria should that stage be determined? More specifically, are Article 49 of [the Charter] and the [principle *lex posterior mitius*] laid down therein to be interpreted as applying in the context of contentious administrative proceedings concerning an appeal in cassation, and must a court such as [the Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic)] before which that appeal in cassation has been brought at second and final

instance therefore take into account a legislative amendment in favour of the perpetrator of the administrative offence which was the subject of the proceedings before an administrative body, rather than a court, that amendment having been introduced only after the decision of the lower administrative court, that is subject to review by [the court hearing the appeal in cassation], was delivered and became final?'

Consideration of the questions referred

The first question

46 By its first question, the referring court asks, in essence, whether Article 51(1) of the Charter is to be interpreted as meaning that a Member State is implementing Union law for the purposes of that provision when, in accordance with Article 19(1) of Regulation No 3821/85 and Article 41(1) of Regulation No 165/2014, it imposes an administrative penalty on the driver of a vehicle because of a failure, by that driver, to fulfil obligations laid down by those regulations.

47 As a preliminary point, the Slovak Government argues that the answer to that question is so obvious that there is no need to respond to it. In so far as that observation must be regarded as seeking to call into question the admissibility of the first question referred, it is sufficient to recall that, even if the answer to a question referred for a preliminary ruling leaves no scope for any reasonable doubt, that question does not thereby become inadmissible (see, to that effect, judgments of 1 December 2011, *Painer*, C-145/10, EU:C:2011:798, paragraph 65, and of 11 May 2023, *MOMTRADE RUSE*, C-620/21, EU:C:2023:395, paragraph 38).

48 Having clarified that aspect, it follows from Article 51(1) of the Charter that the provisions of the Charter are addressed to the Member States only when they are implementing Union law.

49 The fundamental rights guaranteed in the legal order of the European Union are thus applicable in all situations governed by European Union law, but not outside such situations (judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 19).

50 Furthermore, it can be seen from the settled case-law of the Court that a Member State is implementing Union law for the purposes of Article 51(1) of the Charter where it is discharging the obligation, set out in an act of EU law, to provide for penalties with regard to the offences referred to by that act (see, to that effect, judgments of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 27, and of 19 October 2023, *G. ST. T. (Proportionality of the penalty for trade mark infringement)*, C-655/21, EU:C:2023:791, paragraph 43).

51 In this instance, before the entry into force of Regulation 2020/1054, both Regulation No 3821/85 – applicable on the date of the offence committed by T.T. – and Regulation No 165/2014 required, without the possibility of exemption, the presence of tachographs in vehicles such as the vehicle at issue in the main proceedings, as well as the periodic inspection of those tachographs. Furthermore, it is apparent from Article 19(1) of Regulation No 3821/85 and Article 41(1) of Regulation No 165/2014 that those provisions impose an obligation on Member States to penalise infringements of those regulations.

52 It follows that, by adopting Paragraph 38(1)(a)(1) of Law No 462/2007 and by imposing an administrative fine on T.T. for having, on 4 November 2015, driven a vehicle transporting ready-mixed concrete without complying with the obligations periodically to inspect the tachograph with which that vehicle had to be equipped, the Slovak authorities were implementing Union law for the purposes of Article 51(1) of the Charter.

53 That being said, the dispute in the main proceedings concerns, more specifically, the possibility of imposing a penalty on T.T. for having committed such an offence, before the entry into force of Regulation 2020/1054, even though, as a result of the combined effect of that regulation and Paragraph 2(2) of Law No 461/2007, vehicles transporting ready-mixed concrete are now exempt, under Slovak law, from the obligation to be equipped with tachographs.

54 Therefore, in order to provide the referring court with a full answer, it is also necessary to note that, by making such an amendment to the relevant national legislation, the Slovak legislature was also implementing Union law for the purposes of Article 51(1) of the Charter.

55 In so doing, the Slovak legislature availed itself of the possibility, which it was recognised as having under Article 3(2) of Regulation No 165/2014, of exempting the categories of vehicles referred to in Article 13(1) of Regulation No 561/2006, as supplemented by Regulation 2020/1054, from the obligation to be equipped with tachographs.

56 According to the settled case-law of the Court, where a Member State adopts measures in connection with a margin of discretion which is an integral part of the regime established by an act of EU law, it must be regarded as implementing that law for the purposes of Article 51(1) of the Charter (see, in that regard, judgments of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 48, and of 29 July 2024, *protectus*, C-185/23, EU:C:2024:657, paragraph 59).

57 The dispute at issue in the main proceedings thus concerns national legislation which is implementing Union law for the purposes of Article 51(1) of the Charter, with the result that the requirements stemming from the fundamental rights enshrined in the Charter must be complied with in the context of that dispute (see, to that effect, judgment of 4 October 2024, *Real Madrid Club de Fútbol*, C-633/22, EU:C:2024:843, paragraph 41 and the case-law cited).

58 It follows from all the foregoing considerations that Article 51(1) of the Charter must be interpreted as meaning that a Member State is implementing Union law for the purposes of that provision when (i) in accordance with Article 19(1) of Regulation No 3821/85 and Article 41(1) of Regulation No 165/2014, it imposes an administrative penalty on the driver of a vehicle because of a failure, by that driver, to fulfil obligations laid down by those regulations and (ii) it subsequently avails itself of the possibility which it is recognised as having under Article 3(2) of Regulation No 165/2014 of exempting certain road transport vehicles from having to comply with such obligations.

The second question

59 By its second question, the referring court asks, in essence, whether the last sentence of Article 49(1) of the Charter is to be interpreted as meaning that it is capable of being applied to an administrative penalty which has been imposed on the basis of a rule which, after the imposition of the penalty, has been amended in a way which is more favourable to the person concerned by that penalty.

60 As a preliminary point, it should be emphasised that the last sentence of Article 49(1) of the Charter provides that, if, subsequent to the date on which the offence was committed, the law provides for a lighter penalty, that lighter penalty must be applied.

61 That provision thus enshrines the principle *lex posterior mitius*, which is also guaranteed in Article 7 ECHR (see, to that effect, judgment of the European Court of Human Rights (ECtHR), 17 September 2009, *Scoppola v. Italy (no. 2)*, CE:ECHR:2009:0917JUD001024903, § 109).

The scope of the last sentence of Article 49(1) of the Charter

62 It is apparent from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) relating to Article 49 of the Charter that that provision applies to the field of criminal law.

63 As the Advocate General noted in point 52 of his Opinion, it can be seen from the settled case-law of the Court that three criteria are relevant for assessing the criminal nature of a penalty for the purposes of, inter alia, applying Article 49 of the Charter. The first is the legal classification of the offence under national law, the second is the intrinsic nature of the offence, and the third is the degree of severity of the penalty which the person concerned is liable to incur (see, to that effect, judgments of 5 June 2012, *Bonda*, C-489/10, EU:C:2012:319, paragraph 37, and of 4 May 2023, *Agenția Națională de Integritate*, C-40/21, EU:C:2023:367, paragraph 34).

64 Although it is for the referring court to assess, in the light of those criteria, whether the fine imposed on T.T. is of a criminal nature for the purposes of Article 49(1) of the Charter, the Court, when giving a preliminary ruling, may nevertheless provide clarification designed to give the national court guidance in its assessment (see, to that effect, judgment of 4 May 2023, *Agenția Națională de Integritate*, C-40/21, EU:C:2023:367, paragraph 36).

65 In this respect, regarding, first of all, the first criterion relating to the legal classification of the offence under national law, it is apparent from the information provided by the referring court that the offence at issue in the main proceedings is regarded as an administrative offence under Slovak law.

66 However, the application of Article 49 of the Charter extends, even in the case of offences which are not classified as 'criminal' under domestic law, to proceedings and to penalties which must be considered to have a criminal nature on the basis of the other two criteria referred to in paragraph 63 of the present judgment (see, to that effect, judgments of 22 June 2021, *Latvijas Republikas Saeima (Penalty points)*, C-439/19, EU:C:2021:504, paragraph 88, and of 14 September 2023, *Vinal*, C-820/21, EU:C:2023:667, paragraph 49).

67 Regarding, next, the second criterion based on the intrinsic nature of the offence, that criterion involves ascertaining whether the measure at issue has, inter alia, a punitive purpose, which is the distinctive feature of a penalty of a criminal nature for the purposes of Article 49 of the Charter, and the mere fact that it also pursues a deterrent purpose does not mean that it cannot be characterised as a criminal penalty. It is of the very nature of criminal penalties that they seek both to punish and to deter unlawful conduct. By contrast, a measure which merely repairs the damage caused by the offence at issue is not criminal in nature (judgments of 22 June 2021, *Latvijas Republikas Saeima (Penalty points)*, C-439/19, EU:C:2021:504, paragraph 89, and of 14 September 2023, *Vinal*, C-820/21, EU:C:2023:667, paragraph 50).

68 In this instance, the administrative fines entailed by a failure to fulfil the obligations relating to the presence of tachographs on board certain types of vehicles and the periodic inspection of those tachographs appear to pursue objectives both of deterring and of punishing those offences, without being intended to repair the damage caused thereby.

69 In addition, the Court has already held that the fact that the measure at issue is aimed not at the general public, but at a particular category of addressees who, because they pursue an activity specifically regulated by EU law, must satisfy the conditions required by EU law, may tend to indicate that that measure does not have a punitive purpose and thus help to establish that that measure is not of a criminal nature, provided that the measure confines itself to depriving its addressee of certain specific prerogatives which have been conferred on that addressee by EU law, on the ground that the competent administrative authority has found that the conditions for granting those prerogatives were no longer satisfied (see, to that effect, judgment of 14 September 2023, *Vinal*, C-820/21, EU:C:2023:667, paragraph 53 and the case-law cited). The fine at issue in the main proceedings manifestly does not have such a purpose.

70 Regarding, lastly, the third criterion relating to the degree of severity of the penalty incurred, it is important to note that that degree of severity must be determined by reference to the maximum potential penalty for which the relevant provisions provide (judgment of 14 September 2023, *Vinal*, C-820/21, EU:C:2023:667, paragraph 55 and the case-law cited).

71 In this instance, it was emphasised, during the hearing, that an offence such as the offence committed by T.T. was punishable by an administrative fine in a maximum amount of EUR 1 699. Moreover, as was emphasised by the Slovak Government at that hearing, it appears that that fine may be accompanied by a two-year driving disqualification. It is for the referring court to verify whether such penalties, taken together, could be sufficiently severe to be classified as punitive and, accordingly, as being of a criminal nature.

72 Account must also be taken of the fact that the use of a tachograph that has not been inspected by an approved workshop constitutes a very serious offence under point H.1 of Annex III to Directive 2006/22, as amended by Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 (OJ 2020 L 249, p. 49). Article 41(1) of Regulation No 165/2014 requires Member States to provide for penalties that are not only effective, proportionate, dissuasive and non-discriminatory, but also in compliance with the categories of infringements set out in Directive 2006/22.

73 If, however, following an examination of all the relevant circumstances, that court were to find that that fine is not of a criminal nature and that, accordingly, the last sentence of Article 49(1) of the Charter does not apply to the dispute in the main proceedings, no rule of EU law would require, in this instance, observance of the principle *lex mitior*.

74 More specifically, the referring court cannot rely on the general principle of EU law enshrining the retroactive application of the lighter penalty.

75 It is true that the Court has established the existence of such a principle, even before the entry into force of the Charter, relying on the constitutional traditions common to the Member States (judgment of 3 May 2005, *Berlusconi and Others*, C-387/02, C-391/02 and C-403/02, EU:C:2005:270, paragraphs 68 and 69). However, as was noted by the Advocate General, in essence, in point 67 of his Opinion, there is no common constitutional tradition which is capable of supporting extending the principle *lex mitior* to penalties which are not of a criminal nature.

76 That finding is borne out by the choice, on the part of the authors of the Charter, to limit the scope of the principle of the more lenient criminal law, as guaranteed in the last sentence of Article 49(1) thereof, only to measures falling within the field of criminal law, as well as by the fact that the scope of Article 7 ECHR is also limited to those measures alone.

77 In addition, the fact that the scope of the general principle enshrining the retroactive application of the lighter penalty is confined to the field of criminal law is not called into question by the second sentence of Article 2(2) of Regulation No 2988/95, pursuant to which it is for the competent authorities to apply retroactively to conduct constituting an irregularity likely to prejudice the financial interests of the Union within the meaning of Article 1(1) of that regulation subsequent amendments introduced by provisions contained in sector-specific Union rules establishing less severe administrative penalties.

78 It is true that that provision provides for the retroactive application of provisions of EU law reducing the severity of the system of administrative penalties, without its scope being limited to penalties of a criminal nature alone.

79 That being said, as was emphasised by the Advocate General in point 70 of his Opinion, the fact that the EU legislature considered it necessary, in Article 2(2) of Regulation No 2988/95, to extend the general EU-law principle of the retroactive application of the lighter penalty to all administrative penalties concerning irregularities likely to prejudice the financial interests of the Union within the meaning of Article 1 of that regulation, whether or not they are of a criminal nature, specifically indicates that that principle is not intended to be applied, as such, to penalties which are not of such a nature.

The conditions for applying the last sentence of Article 49(1) of the Charter

80 The obligation to apply, pursuant to the last sentence of Article 49(1) of the Charter, a law post-dating the commission of the offence is subject to the condition that that law 'provides for a lighter penalty'.

81 The application of that provision thus presupposes a succession of legal regimes over time and is based on the conclusion that that succession reflects, in the legal system concerned, a change of position favourable to the perpetrator of the offence, either as regards the criminal classification of the act or acts liable to constitute an offence or as regards the penalty to be applied to such an offence (see, to that effect, judgment of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 107 and the case-law cited).

82 Furthermore, the European Court of Human Rights has already held that Article 7 ECHR does not guarantee the retroactive application of an amendment which has been made to the legislation and which is favourable to the perpetrator of the offence where that amendment is due only to a change in factual circumstances which has taken place since the commission of that offence and where that amendment is, accordingly, unrelated to the assessment of the offence as such (ECtHR, 18 October 2022, *Mørck Jensen v. Denmark*, CE:ECHR:2022:1018JUD006078519, § 52).

83 In this instance, as has been emphasised in paragraph 52 of the present judgment, T.T. was penalised for having driven, on 4 November 2015, a vehicle for the delivery of ready-mixed concrete with a tachograph that had not undergone a valid periodic inspection.

84 In that regard, it should be noted that, before it was repealed by Regulation No 165/2014, Article 3(2) of Regulation No 3821/85, applicable at the time of the offence at issue in the main proceedings, permitted the Member States to exempt the vehicles referred to in Article 13(1) and (3) of Regulation No 561/2006 from the scope of Regulation No 3821/85. The Member States continue to be recognised as having the same possibility under Article 3(2) of Regulation No 165/2014, applicable from 2 March 2016.

85 In addition, Regulation 2020/1054 added the category of vehicles used for the delivery of ready-mixed concrete to the categories of vehicles referred to in Article 13(1) of Regulation No 561/2006, namely those in respect of which the Member States may grant exemptions, with that amendment being applicable from 20 August 2020.

86 As was noted by the Advocate General in point 78 of his Opinion, by adding those vehicles to those already referred to in Article 13(1) of Regulation No 561/2006, Regulation 2020/1054 indicates a change of position on the part of the EU legislature with regard to the need to require the presence of tachographs on board those vehicles, which, in principle, travel relatively short distances.

87 Such an amendment can thus be distinguished from the cases in which the Court has had occasion to hold, in essence, that an amendment of the applicable legislation, although favourable to the accused or convicted person, could not fall within the scope of the principle *lex mitior*, on the ground that such an amendment was not such as to alter the constituent elements of the offence but constituted, with regard to that offence, a mere change of factual situation, or was based exclusively on a new, purely economic and technical assessment by the EU legislature which did not call into question the irregularity of the earlier conduct of the person on whom penalties were to be imposed (see, to that effect, judgments of 6 October 2016, *Paoletti and Others*, C-218/15, EU:C:2016:748, paragraphs 32 to 36, and of 7 August 2018, *Clergeau and Others*, C-115/17, EU:C:2018:651, paragraphs 34 to 40).

88 It follows that the rules of EU law relating to the obligation to equip certain vehicles with tachographs and to ensure that those tachographs are periodically inspected were amended, after the offence committed by T.T., in a way that could have been favourable to him if the Slovak authorities had decided, in accordance with Article 3(2) of Regulation No 165/2014, to exempt that type of vehicle from the obligation to be equipped with a tachograph.

89 Paragraph 2(2) of Law No 461/2007 provides that vehicles in all the categories referred to in Article 13(1) of Regulation No 561/2006 are exempt from the obligation to be equipped with tachographs.

90 Accordingly, it appears that, as has been noted in paragraph 55 of the present judgment, the Slovak legislature decided to implement the possibility provided for in Article 3(2) of Regulation No 165/2014 by exempting, by operation of law, all the categories of vehicles that are listed in Article 13(1) of Regulation No 561/2006 from the obligation to be equipped with tachographs for reasons identical to those relied on by the EU legislature.

91 As was emphasised by the Slovak Government in its written observations and at the hearing, it therefore appears to follow from the documents before the Court that the removal, under Slovak law, of the obligation, for vehicles intended for the carriage of ready-mixed concrete, to be

equipped with tachographs, reflects a change of position on the part of the Slovak legislature with regard to the wish to punish acts such as those of which T.T. is accused, which it is however for the referring court to verify.

92 Lastly, it should be borne in mind that Article 49 of the Charter contains, at the very least, the same guarantees as those provided for in Article 7 ECHR, which must be taken into account by virtue of Article 52(3) of the Charter as a minimum threshold of protection (judgment of 29 July 2024, *Alchaster*, C-202/24, EU:C:2024:649, paragraph 92 and the case-law cited). The Court must, accordingly, ensure that its interpretation in the present case ensures a level of protection which does not disregard that guaranteed in Article 7 ECHR, as interpreted by the European Court of Human Rights (judgment of 10 November 2022, *DELTA STROY 2003*, C-203/21, EU:C:2022:865, paragraph 44 and the case-law cited).

93 In that regard, it should be noted that the requirements, set out in paragraph 81 of the present judgment, to which a possible application of the principle *lex posterior mitius* is subject under Article 49(1) of the Charter ensure, in view of the case-law of the European Court of Human Rights referred to in paragraph 82 of the present judgment, a level of protection of that principle which does not disregard the level of protection guaranteed in Article 7 ECHR, as interpreted by that court.

94 It follows from all the foregoing considerations that the last sentence of Article 49(1) of the Charter must be interpreted as meaning that it is capable of being applied to an administrative penalty of a criminal nature which has been imposed on the basis of a rule which, after the imposition of the penalty, has been amended in a way which is more favourable to the person concerned by that penalty, provided that that amendment reflects a change of position regarding the criminal classification of the acts committed by that person or regarding the penalty to be applied.

The third and fourth questions

95 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether the last sentence of Article 49(1) of the Charter is to be interpreted as meaning that a court hearing an appeal in cassation against a judicial decision dismissing the action brought against an administrative fine of a criminal nature and falling within the scope of EU law is required to apply a piece of legislation which is more favourable to the convicted person and which entered into force after the delivery of that judicial decision, irrespective of whether that decision is regarded as final under national law.

96 In the first place, it should be borne in mind that the Court has already held that the rule *lex posterior mitius*, contained in the last sentence of Article 49(1) of the Charter, applies so long as no final conviction has been handed down (see, to that effect, judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraph 56).

97 This rule means that, with effect from the date on which it was considered, in the legal system concerned, that it was no longer necessary either to punish a specific type of conduct at all or to punish that conduct as severely, such a change in assessment must be applied immediately to all criminal proceedings which have not yet been closed by means of a final conviction.

98 It should be noted that that interpretation of the last sentence of Article 49(1) of the Charter does not disregard the threshold of protection provided by Article 7 ECHR. According to the case-law of the European Court of Human Rights, the principle *lex posterior mitius*, as guaranteed in Article 7(1) ECHR, means that, where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final ruling is delivered, the courts must apply the law whose provisions are most favourable to the defendant (see, to that effect, ECtHR, 17 September 2009, *Scoppola v. Italy (no. 2)*, CE:ECHR:2009:0917JUD001024903, § 109).

99 In the second place, although the rules of criminal procedure fall within the competence of the Member States in so far as the European Union has not legislated in that field, the Member States are nonetheless required, in exercising that competence, to comply with their obligations under EU law, including the fundamental rights enshrined in the Charter (see, to that effect, judgment of 30 April 2024, *Procura della Repubblica presso il Tribunale di Bolzano*, C-178/22, EU:C:2024:371, paragraph 44).

100 Accordingly, while the assessment of the 'final' nature of the conviction must be carried out on the basis of the law of the Member State in which that conviction was handed down (see, by analogy, judgment of 5 June 2014, *M*, C-398/12, EU:C:2014:1057, paragraph 36), the fact remains that, for the purpose of applying the last sentence of Article 49(1) of the Charter, that concept must be given an autonomous and uniform interpretation throughout the European Union, in so far as it determines the extent of the right guaranteed by that provision and, consequently, the extent of the obligations derived therefrom for the Member States.

101 It follows, as was emphasised by the Advocate General, in essence, in point 99 of his Opinion, that the fact that a conviction is regarded as final under national law is not decisive for the purposes of the application, by the court hearing an appeal against the decision handing down that conviction, of the last sentence of Article 49(1) of the Charter.

102 Indeed, a conviction cannot be regarded as final for the purposes of the last sentence of Article 49(1) of the Charter where it may be the subject of an ordinary appeal, that is to say, any appeal which forms part of the normal course of an action and which, as such, constitutes a procedural development which any party must reasonably expect (see, by analogy, judgment of 22 November 1977, *Industrial Diamond Supplies*, 43/77, EU:C:1977:188, paragraph 37).

103 That is the case where the convicted person or the public prosecuting authority may bring, within a time limit determined by law and without having to rely on exceptional circumstances (such as the need to ensure, in the interests of the law, the consistency of case-law), proceedings before a court in order to obtain annulment or variation of the conviction or the penalty imposed, notwithstanding the fact that such proceedings are regarded, under national law, as an extraordinary remedy which, according to the information provided by the referring court as referred to in paragraph 43 of the present judgment, would, in this instance, be the case under Slovak law. As long as the time limit for bringing such proceedings has not expired or a ruling has not been given thereon, the decision relating to that conviction and that penalty cannot be regarded as having definitively barred further prosecution for the purpose of applying the last sentence of Article 49(1) of the Charter.

104 Furthermore, without being decisive, the suspensive effect of the bringing of proceedings against a conviction is an indication that those proceedings concern a decision which cannot be classified as final for the purposes of the application of that provision.

105 It follows that, where an appeal in cassation is launched, under the conditions referred to in paragraph 103 of the present judgment, against a judicial decision, that decision cannot become final for the purposes of the application of the last sentence of Article 49(1) of the Charter until the parties have exhausted that legal remedy or have allowed the time limit for bringing such an appeal to have elapsed without having lodged such an appeal.

106 Accordingly, the last sentence of Article 49(1) of the Charter means that a court hearing an appeal in cassation is, in principle, obliged to ensure that the perpetrator of an offence the penalising of which constitutes the implementation of Union law benefits from a piece of criminal legislation that is favourable to that perpetrator, even if that piece of legislation entered into force after the delivery of the judicial decision that is the subject of that appeal in cassation.

107 The fact that, under national law, the decision which is the subject of the appeal may be set aside only in so far as it is vitiated by a defect of legality or in so far as the court hearing the appeal in cassation is required to give a ruling in the light of the situation existing on the date that decision was delivered is not capable of altering that conclusion. As can be seen from paragraph 97 of the present judgment, it is for every court to ensure that the perpetrator of an offence benefits from the criminal law which is more favourable to that perpetrator, so long as his or her conviction is not final.

108 In this instance, it is apparent from the order for reference, first, that T.T. brought an appeal in cassation before the referring court within the time limit set by the relevant national legislation, without having to rely on exceptional circumstances, and, second, that that court has, at the very least, the possibility of setting aside the decision of the Krajský súd v Bratislave (Regional Court, Bratislava) of 27 March 2019.

109 Subject to verification by the referring court, the decision of the Krajský súd v Bratislave (Regional Court, Bratislava) of 27 March 2019 therefore cannot be regarded as a 'final conviction' for the purpose of applying the last sentence of Article 49(1) of the Charter.

110 It follows that, if the referring court were to consider that the administrative fine which has been imposed on T.T. is of a criminal nature, that court would be required to apply the piece of legislation which is more favourable to him for the purposes of the last sentence of Article 49(1) of the Charter, which is Paragraph 2(2) of Law No 461/2007, read in conjunction with Regulation 2020/1054, irrespective of the fact that that piece of legislation entered into force after the decision, classified as final under national law, of the Krajský súd v Bratislave (Regional Court, Bratislava). That obligation is not affected by the fact that the referring court is required, under that law, to give a ruling in light of the situation existing on the date that decision was handed down.

111 In that last regard, it should be added that, where it is not possible to interpret a provision of national law in a way which is consistent with the requirements of EU law, the principle of the primacy of EU law requires that the national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is to disapply any provision of national law which is contrary to provisions of EU law having direct effect (judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 58 and 61, and of 20 February 2024, *X (Lack of reasons for termination)*, C-715/20, EU:C:2024:139, paragraph 72).

112 The last sentence of Article 49(1) of the Charter is worded in a way that is clear and precise and is not subject to any conditions, meaning that it has direct effect.

113 Accordingly, if the referring court were to find that its domestic law does not permit it to apply the guarantees derived from the last sentence of Article 49(1) of the Charter to the dispute pending before it and if it is not possible to envisage interpreting that law in conformity with EU law, that court would be required to ensure, within the framework of its competences, the protection derived, for litigants, from the last sentence of Article 49(1) of the Charter and to guarantee the full effect of that provision by disapplying, if necessary, any provision of national legislation that is contrary thereto.

114 It follows from all the foregoing considerations that the last sentence of Article 49(1) of the Charter must be interpreted as meaning that a court hearing an appeal in cassation against a judicial decision dismissing the action brought against an administrative fine of a criminal nature and falling within the scope of EU law is, in principle, required to apply a piece of national legislation which is more favourable to the convicted person and which entered into force after the delivery of that judicial decision, irrespective of whether that decision is regarded as final under national law.

Costs

115 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 (Grand Chamber) hereby rules:

1. **Article 51(1) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a Member State is implementing Union law for the purposes of that provision when (i) in accordance with Article 19(1) 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 41(1) of Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport, it imposes an administrative penalty on the driver of a vehicle because of a failure, by that driver, to fulfil obligations laid down by those regulations and (ii) it subsequently avails itself of the possibility which it is recognised as having under Article 3(2) of Regulation No 165/2014 of exempting certain road transport vehicles from having to comply with such obligations.**

2. **The last sentence of Article 49(1) of the Charter of Fundamental Rights must be interpreted as meaning that it is capable of being applied to an administrative penalty of a criminal nature which has been imposed on the basis of a rule which, after the imposition of the penalty, has been amended in a way which is more favourable to the person concerned by that penalty, provided that that amendment reflects a change of position regarding the criminal classification of the acts committed by that person or regarding the penalty to be applied.**

3. The last sentence of Article 49(1) of the Charter of Fundamental Rights must be interpreted as meaning that a court hearing an appeal in cassation against a judicial decision dismissing the action brought against an administrative fine of a criminal nature and falling within the scope of EU law is, in principle, required to apply a piece of national legislation which is more favourable to the convicted person and which entered into force after the delivery of that judicial decision, irrespective of whether that decision is regarded as final under national law.

[Signatures]