

Anonymised version

Translation

C-870/19 - 1

Case C-870/19

Request for a preliminary ruling:

Date lodged:

26 November 2019

Referring court:

Corte suprema di cassazione (Italy)

Date of the decision to refer:

19 September 2019

Appellant:

Prefettura Ufficio territoriale del governo di Firenze

Cross-appellant:

MI

**THE CORTE SUPREMA DI CASSAZIONE (SUPREME COURT OF
CASSATION)**

[...]

SECONDA SEZIONE CIVILE (SECOND CIVIL DIVISION)

[...]

makes the following

INTERLOCUTORY ORDER

in the appeal [...] brought by

PREFETTURA UFFICIO TERRITORIALE del GOVERNO di FIRENZE, in persona del Prefetto pro tempore, (Prefecture of Florence, in the person of the prefect for the time being), [...]

- *appellant* -

v

MI, [...]

[...]

- *cross-appellant* -

against the judgment [...] of the TRIBUNALE di FIRENZE (District Court, Florence), [...];

[...] [OR.2] [...]

[OR.3]

Whereas:

the Florence Prefecture has brought an appeal against the judgment [...] of the Florence District Court ('the judgment or decision under appeal'), relying on a single ground of appeal, and MI has brought a related cross-appeal.

In order to achieve a better understanding of the present case, the following points must be briefly summarised.

The judgment under appeal upheld the appeal brought by MI, who had been accused of 24 infringements of Article 19 of Legge n. 727/1978 (Law No 727/1978), with multiple police reports having been drawn up, included in the file, regarding the failure to produce record sheets in respect of various different days.

The decision under appeal today before this Supreme Court of Cassation by the appellant administration [...] (*details not relevant for the purposes of the question referred for a preliminary ruling*) therefore varied the decision of the first-instance court — which was appealed against — which had dismissed the challenge to the above-mentioned reports establishing infringements of the *Codice della strada* (Italian Highway Code), reducing – in essence – to a single penalty the effect of establishing the infringements at issue.

MI contended that the proceedings brought against him should be dismissed and filed submissions.

[...] [OR.4] [...]

[...] (*references to the national proceedings*)

And whereas:

- 1.- By the ground of appeal, the appellant alleges infringement and misapplication of Article 19 of Law No 727/1978 and [of Articles] 14(1) and 15(2) and (7) of Regulation (EEC) 3821/1985 in connection with Article 360(1)(3) of the Codice di Procedura Civile (Code of Civil Procedure).

In short, it is submitted that the decision under appeal is erroneus; in that decision — concerning the infringement of the abovementioned legislation on record sheets for the tachograph installed in a vehicle — it was held that the failure to produce the record sheets could be penalised only within the limit laid down in the legislation ('the record sheets for the current week and those used by the driver in the previous 15 days [or] after 1 January 2008, [for] the current day and the previous 28 days', Article 15 of Regulation 3821/1985) by a single penalty relating to a single infringement and not also – as had occurred in the present case — by multiple penalties in respect of the individual shorter periods within the overall timeframe laid down by the legislation.

The appellant administration, in particular, has expressly stated that 'the present dispute is identical to **[OR.5]** thousands of disputes currently pending before the trial courts throughout the whole of Italy'; it has also requested — the highly conflicting guidelines in the matter having been indicated — that the dispute be decided by way of clarificatory ruling.

- 2.- Having duly set out the ground of appeal, this court must make the following observations.

MI infringed Article 15(7) of Regulation (EEC) No 3821/1985, as amended by Article 26 of Regulation (EC) No 561/2006.

That provision states that '... the driver must be able to produce, whenever an inspecting officer so requests: (i) the record sheets for the current week and those used by the driver in the previous 15 days; (ii) the driver card if he holds one, and (iii) any manual record and printout made during the current week and the previous 15 days ... However, after 1 January 2008, the time periods referred to under (i) and (iii) shall cover the current day and the previous 28 days'.

The relevant legal framework having been thus set out, this court notes that the interpretation of the above-cited provision which must be provided is essential to the outcome of the present dispute.

[OR.6]

If such a provision must indeed be interpreted as meaning that a driver is required to comply with a single form of conduct which consists in producing the record sheets relating to a certain number of days' work together with the obligation to

produce the sheets in their entirety to the inspecting officers, the infringement of that provision can only be a single infringement precisely because the conduct itself is a single form of conduct.

It follows from the foregoing that the single form of conduct can give rise to the commission of only a single infringement and the imposition of a single fine, without the cumulation of penalties for each act of omission, regardless of the number of individual discs which a driver is unable to produce.

If, on the other hand, the provision must be interpreted as referring to divisible conduct, it will then be possible to draw up as many police reports as the number of days (or, in the case at issue, groups of days) in relation to which the duty to produce record sheets has not been complied with.

This Supreme Court of Cassation has already addressed from a different perspective — in Cass. civ., Sez. Lav. Sent. 3 agosto 2007, n. 17073 (judgment No 17073 of 3 August 2007 of the Court of Cassation (Civil), Labour Division) — the issue of the conduct required of a trader, who, on the basis of Article 14(2) of Regulation (EEC) No 3821/1985, must keep record sheets for at least a year after their use.

[OR.7]

However, the distinct function and rationale of that provision cannot mean per se that the unified nature of the conduct and penalty applies to the different situation in the present case; this is despite the fact that the literal wording of Article 14 of that regulation, which provides for a penalty for each individual missing sheet for the driving days, might lead to the finding, *a contrario* and in the absence of an express statement in that regard, that, as regards the infringement governed by Article 15 of that regulation, the overall infringement and the penalty are unified in nature.

That interpretation may, however, be countered by a different interpretation which is more responsive to the possible evasion or fragmentation of the legislative provision [...] (*details relating to the national proceedings*) or more closely aligned with a more stringent criterion.

Indeed, the *dictum* in the judgment of the Court of Justice of the European Union of 9 February 2012 [in Case C-210/10], delivered in the case concerning the request for a preliminary ruling [...] from the Hungarian [court] is well-known.

In examining that case concerning the proportionality of the penalty specifically as regards infringements regarding the use of a tachograph, the Court of Justice stated ‘... In that regard, Article 19(1) of that regulation requires Member States to lay down “rules on penalties applicable to **[OR.8]** infringements ... [which] shall be effective, proportionate, dissuasive and non-discriminatory”.’

Evidently, this should result in the imposition — by each individual State — of appropriate penalties or penalties adapted to the entire timeframe (28 days) and not to a single daily infringement which may be cumulated; this has the further consequence — which, incidentally, is an important and significant one — that the effective deterrence of the penalty could clearly not be pursued through the practice of issuing multiple penalties that may not be proportionate, by default, to the overall act of omission.

Since — in this court’s view and in the light of all of the foregoing — there is objective uncertainty regarding interpretation, a request for a preliminary ruling must, therefore, be made to the Court of Justice of the European Union for the interpretation, in particular, of the following question:

‘May Article 15 [(7) of Regulation No 3821/85] be interpreted, in the specific case of the driver of the motor vehicle, as a rule which prescribes a single, overall form of conduct and, therefore, entails the commission of a single infringement and the imposition of a single penalty, or may it result, through the cumulation of penalties for each act of omission, in as many infringements and penalties as the number of days in relation to which the record sheets for the tachograph have not been produced [OR.9] in the context of the timeframe laid down (“current day and the previous 28 days”)?’.

ONE THOSE GROUNDS

The Supreme Court of Cassation

[...] (*reference to EU law*) directs that the file be forwarded to the Court of Justice of the European Union, seeking a preliminary ruling on the question set out above;

[...] (*references to the stay of the national proceedings*)

So decided [...] on 19 September 2019.

[...]