



## PRESS RELEASE No 101/25

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Judgment of the Court in Case C-544/23 | BAJI Trans

### **The principle of *lex posterior mitius* extends to a penalty classified as administrative under national law where it is of a criminal nature for the purposes of EU law**

*That principle must be applied also at the level of an appeal in cassation where that appeal forms part of the normal course of an action, irrespective of whether the decision against which that appeal has been brought is regarded as final under national law*

Hearing questions from the Slovak Supreme Administrative Court, the Court of Justice provides important clarifications concerning the principle of *lex posterior mitius* laid down by the Charter of Fundamental Rights of the European Union ('the Charter') (which applies in all cases where Union law is being implemented by a national authority). Although that principle is reserved for the field of criminal law, the classification of a penalty as administrative under national law does not necessarily preclude the application of that principle. Indeed, it may be the case that, under EU law and with the aim of guaranteeing a uniform application of that principle, an administrative penalty must be regarded as criminal owing to the intrinsic nature of the offence and the degree of severity of the penalty. Furthermore, that principle applies so long as the conviction has not become final. What must or must not be regarded as a final ruling, in that context, is also delimited by EU law. The mere fact that a conviction decision is classified as final under national law when it may be the subject of an appeal in cassation is not sufficient reason to disapply that principle.

In Slovakia, the driver of a concrete lorry received a fine of €200 after it was found, on 4 November 2015, that his vehicle's tachograph had not undergone the mandatory periodic inspection. At the time, that obligation stemmed from Slovak law in conjunction with EU law.<sup>1</sup>

The Regional Court, Bratislava, hearing an action brought by the driver and the company BAJI Trans, the owner of the concrete lorry, confirmed that fine in 2019. The driver and BAJI Trans then brought an appeal in cassation against the decision of the Regional Court, Bratislava.

The relevant EU law was subsequently amended, with effect from 20 August 2020, meaning that Member States may now exempt vehicles transporting ready-mixed concrete from the obligation to be equipped with a tachograph.<sup>2</sup> This is what Slovakia did while the cassation proceedings were still ongoing. The driver and BAJI Trans thus argued that the acts committed in November 2015 had ceased to be unlawful and that the fine should therefore be lifted.

The Slovak Supreme Administrative Court, which is called upon to rule on the appeal, has put questions to the Court of Justice regarding the scope of the principle of *lex posterior mitius* laid down by the Charter. It emphasises that, under Slovak law, the infringement at issue is regarded as an administrative offence and that the decision of the Regional Court, Bratislava, is considered to be final, irrespective of the possibility of bringing an appeal against that

decision.

First, the Court finds that, both through its initial legislation and through the amendment made subsequently, the Slovak legislature was implementing Union law, with the result that the Charter applies in the present case.

Secondly, the Court emphasises that the principle of *lex posterior mitius*, laid down by the Charter, remains reserved for the field of criminal law. That being said, the fact that a penalty is classified as administrative under national law does not necessarily preclude the application of that principle. Indeed, in order to guarantee a uniform application of that principle throughout the European Union, two other criteria may still lead such a penalty to be classified as a criminal penalty – namely the intrinsic nature of the offence and the degree of severity of the penalty.

Thirdly, the Court specifies that the application of the principle of *lex posterior mitius*, laid down by the Charter, presupposes that the amendment of the law reflects a change of position on the part of the legislature regarding the criminal classification of the acts committed by the person concerned or regarding the penalty to be applied. In the present case, the Slovak legislature did indeed change its position with regard to the wish to punish acts such as those of which the driver concerned is accused.

Fourthly, the Court recalls that the principle of *lex posterior mitius*, laid down by the Charter, applies so long as no final conviction has been handed down. However, the fact that a conviction is regarded as final under national law does not preclude the application of that principle. Indeed, a conviction cannot be regarded as final for that purpose 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. This is the case for the appeal in cassation brought before the Slovak Supreme Administrative Court.

Accordingly, a court hearing an appeal in cassation is, in principle, required 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.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> [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.

<sup>2</sup> [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.