

Anonymised version

Translation

C-283/23 – 1

Case C-283/23 [Marhon] ¹

Request for a preliminary ruling

Date lodged:

2 May 2023

Referring court:

Cour de cassation (Belgium)

Date of the decision to refer:

26 April 2023

Appellants in cassation:

FB

JL

Cour de cassation (Court of Cassation, Belgium)

Judgment

[...]

- I. **FB**, [...] residing in [...] (Belgium), accused,
 - II. **JL**, limited liability company, whose registered office is in [...] (Belgium), party liable under civil law,
- appellants in cassation,

¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

[...]

I. PROCEDURE BEFORE THE COURT

The appeals are directed against a judgment delivered on 23 March 2022 by the tribunal correctionnel d'Eupen (Eupen Criminal Court), acting as an appeal court.

[...]

II. RELEVANT FACTS AND BACKGROUND TO THE PROCEEDINGS

- 1 On 28 February 2019, in Saint-Vith, the police carried out an inspection of a vehicle for transporting timber consisting of a tractor (lorry) and a trailer belonging to the limited liability company JL.

The tractor and trailer were placed on a weighing device in the Eifel police district. The weight tickets indicate that the tractor weighs 38 240 kg and the trailer 26 740 kg, thus a total weight exceeding the maximum authorised mass of 20 856 kg.

- 2 The driver of the lorry, FB, was summoned to appear before the Saint-Vith section of the tribunal de police d'Eupen (Local Criminal Court, Eupen) for having committed the following offences:

- charge A: as a driver on the public highway, transporting goods by road using a vehicle whose gross vehicle mass exceeds the maximum authorised mass, deemed to have been carried out without a valid national or international transport licence;

- charge B: as a shipper carrying goods subject to Community legislation, the Law of 15 July 2013 (set out in full below) or the decrees implementing that law, giving instructions or taking measures which resulted in the maximum authorised masses and dimensions of vehicles or combinations of vehicles being exceeded.

The driver's employer, the company referred to above, was made a party to the proceedings as a party liable under civil law.

- 3 By a judgment delivered on 2 February 2021, the Saint-Vith section of the Local Criminal Court, Eupen, acquitted the driver of the lorry of the abovementioned charges on the ground that the weight tickets do not contain any indication as to the person who performed the weighing or the make and serial number of the weighing device used and therefore it is not possible to determine whether the tickets do indeed relate to that weighing device.

The procureur du Roi (Crown Prosecutor) appealed against that judgment.

- 4 Before the tribunal de première instance d'Eupen (Eupen Court of First Instance), Criminal Chamber sitting as an appeal court, the driver of the lorry and his employer argued that the weight of the vehicle had not been measured using a weighing instrument that complied with the requirements laid down by the applicable regulatory provision.

In their view, the weighing instrument used is governed by the arrêté royal du 12 octobre 2010 relatif à l'approbation, à la vérification et à l'installation des instruments de mesures utilisés pour surveiller l'application de la loi relative à la police de la circulation routière (Royal Decree of 12 October 2010 on the approval, verification and installation of measuring instruments used to monitor the application of the Law on the regulation of road traffic).

The Eupen court rejected that claim.

It noted that Article 1 of the Royal Decree of 12 October 2010, cited above, provides that it applies 'subject to the application of other legislation concerning specific instruments' and considered that, in the present case, the weighing instrument used is governed by the rule transposing into Belgian law Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments, namely the arrêté royal du 12 avril 2016 relatif aux instruments de pesage à fonctionnement non automatique (Royal Decree of 12 April 2016 on non-automatic weighing instruments).

After having found, *inter alia*, that the make and serial number of the weighing instrument were determined, that it was calibrated, that the apparatus had undergone periodic verification valid for four years and that both the lorry driver and his employer had acknowledged the overload mentioned in the minutes, the Eupen court, by judgment of 23 March 2022, ordered the driver of the lorry, on the basis of charges A and B, to pay a fine of [...] EUR [3 200] [...], and disqualified him from driving any motor vehicle for a period of three months.

- 5 The driver of the lorry and his employer brought an appeal on a point of law against that judgment.

III. RELEVANT LEGAL PROVISIONS

- 6 The acts of charge A are punishable pursuant to Article 21, first paragraph, point 5 and Article 35(4) of the arrêté royal du 22 mai 2014 relatif au transport de marchandises par route (Royal Decree of 22 May 2014 on road haulage) and Article 41(3) of the loi du 15 juillet 2013 relative au transport de marchandises par route et portant exécution du règlement (CE) No 1071/2009 du Parlement européen et du Conseil du 21 octobre 2009 établissant des règles communes sur les conditions à respecter pour exercer la profession de transporteur par route, et abrogeant la directive 96/26/CE du Conseil et portant exécution du règlement

(CE) No 1072/2009 du Parlement européen et du Conseil du 21 octobre 2009 établissant des règles communes pour l'accès au marché du transport international de marchandises par route (Law of 15 July 2013 on road haulage and implementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC and implementing Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market).

In accordance with the first paragraph of Article 21 of the royal decree cited above, 'national transport licences and Community transport licences shall not be valid ... 5. where they are used for a vehicle or combination of vehicles whose gross vehicle mass or whose dimensions exceed the standards authorised for that vehicle or that combination of vehicles or the standards authorised by the general rules on the technical standards which motor vehicles, their trailers, their components and safety equipment must satisfy'.

Article 35(4) of that decree provides that 'international transport licences shall not be valid ... where they are used for a vehicle or combination of vehicles whose gross vehicle mass or whose dimensions exceed the standards authorised for that vehicle or that combination of vehicles or the standards authorised by the general rules on the technical standards which motor vehicles, their trailers, their components and safety equipment must satisfy'.

Article 41(3) of the Law of 15 July 2013 provides that 'those who infringe the following provisions of Community legislation, this Law and its implementing decrees shall be liable to imprisonment of eight days to one year and a fine of five hundred to fifty thousand euros[...], or one of those penalties only: 1. the obligation to hold a valid transport licence ...'.

- 7 The acts relating to charge B are referred to in Article 43(3) of the abovementioned Law of 15 July 2013, which refers to the penalties provided for in Article 41(3).

Article 43(3) of that law provides: 'The instructing party, the consignor, the freight forwarder or the forwarding agent for the carriage of goods subject to Community legislation, this Law or its implementing decrees shall be punished in the same way as the perpetrators of the offences mentioned below if they have given instructions or taken measures which resulted in those offences: 1. exceeding the maximum authorised masses and dimensions of vehicles or combinations of vehicles'.

- 8 Article 1 of the Royal Decree of 12 April 2016 states: 'This decree transposes Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments'.

Article 2(1) of that decree provides that it ‘shall apply to all non-automatic weighing instruments’.

Article 2(2) states:

‘For the purposes of this Decree, the following categories of use of non-automatic weighing instruments shall be distinguished:

1. determination of mass for commercial transactions;
2. determination of mass for the calculation of a toll, tariff, tax, bonus, penalty, remuneration, indemnity or similar type of payment;
3. determination of mass for the application of laws or regulations or for an expert opinion given in court proceedings;
4. determination of mass in the practice of medicine for weighing patients for the purposes of monitoring, diagnosis and medical treatment;
5. determination of mass for making up medicines on prescription in a pharmacy and determination of mass in analyses carried out in medical and pharmaceutical laboratories;
6. determination of price on the basis of mass for the purposes of direct sales to the public and the making-up of prepackages;
7. all applications other than those listed in points 1 to 6’.

Under Article 32, ‘instruments used for the applications listed in Article 2(2)(1) to (6) shall be subject to the general rules concerning the periodic verification and technical inspection of measuring instruments’.

IV. DECISION OF THE COURT

A. The appeal brought by the driver of the lorry:

The second ground of appeal:

First part:

- 9 The ground of appeal alleges infringement of the Royal Decree of 12 April 2016 on non-automatic weighing instruments.

Before the criminal court, the applicants argued that the weighing device used by the police to determine that the vehicle was overloaded did not satisfy the conditions laid down in the Royal Decree of 12 October 2010 on the approval, verification and installation of measuring instruments used to monitor the application of the Law on the regulation of road traffic.

The ground of appeal criticises the judgment for considering that that weighing instrument was not subject to the criteria laid down in the abovementioned royal decree but had to meet the requirements laid down in the Royal Decree of 12 April 2016 cited above. According to the driver of the lorry, the latter royal decree, which transposes Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments, is not intended to apply in criminal proceedings. The driver of the lorry also submits that the Royal Decree of 12 October 2010 provides for the application of more specific approval standards for the inspection body than those required by the Royal Decree of 12 April 2016.

- 10 The scope of the abovementioned directive is determined by Article 1 thereof and, in accordance with the second paragraph of that provision, for the purposes of the directive, a number of categories of use of non-automatic weighing instruments are distinguished, including, in particular, under point (c), ‘determination of mass for the application of laws or regulations’ and, under point (g), ‘all applications other than those listed in [the preceding] points’.

On the one hand, Article 3(1) of the directive provides that ‘Member States shall take all steps to ensure that only instruments that meet the applicable requirements of this Directive may be made available on the market’.

Moreover, Article 2(3) defines ‘making available on the market’ as any supply of an instrument for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge.

However, on the other hand, Article 3(2) and Article 3(3) of the directive provide that ‘Member States shall take all steps to ensure that instruments may not be put into service for the uses referred to in points (a) to (f) of Article 1(2) unless they meet the requirements of this Directive [or] continue to conform to the applicable requirements of this Directive’.

The latter provisions do not refer to the concept of ‘making available on the market’ and, therefore, to the distribution or use, in the course of a commercial activity, of the instruments concerned, but refer to the use of those instruments *inter alia* with a view to determining the mass for the application of laws or regulations.

However, the title of the directive appears to be more restrictive, in that it seeks to harmonise the laws of the Member States relating to the ‘making available on the market’ of non-automatic weighing instruments.

The Royal Decree of 12 April 2016 reproduces the content of the provisions of the directive referred to above.

Therefore, the question arises as to the application of the directive and the rules transposing it into Belgian law to a situation such as that in the present case where

the weighing instrument in question has been used for the purposes of applying criminal legislation or rules, that is to say legislation or rules that are unrelated, as far as the user is concerned, to a commercial activity.

- 11 Since that question concerns the interpretation of an act of an institution of the European Union, it is necessary, in accordance with the third paragraph of Article 267 of the Treaty on the Functioning of the European Union, to request a preliminary ruling from the Court of Justice of the European Union.

B. The appeal brought by the employer:

- 12 The Court stays the proceedings pending the answer to the question referred for a preliminary ruling set out in the operative part of this judgment.

ON THOSE GROUNDS,

THE COURT

Stays the proceedings pending a preliminary ruling by the Court of Justice of the European Union on the following question:

‘Are Articles 1, 2(3) and 3 of Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments applicable to the use, by judicial or police authorities, of non-automatic weighing instruments for the purposes of determining the mass of vehicles for the application of national legislation or regulations, which are subject to criminal penalties, and which — such as (i) Articles 41(3)(1) and 43(3)(1) of the Law of 15 July 2013 on road haulage and implementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC and implementing Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market and (ii) Articles 21, first paragraph, point 5 and 35(4) of the Royal Decree of 22 May 2014 on road haulage — prohibit the use on the road of vehicles whose measured mass exceeds the maximum authorised mass?’.

[...] This judgment is delivered in Brussels by the Cour de cassation (Court of Cassation), Second Chamber, [...] at a public hearing on the twenty-sixth of April two thousand and twenty-three [...].

F. Gobert

F. Stévenart Meeûs

F. Lugentz

T. Konsek

E. de Formanoir

F. Roggen