

ECJ Clarifies Principle Lex Posterior Mitius

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News

On 1 August 2025, the European Court of Justice (ECJ) announced an important ruling in [case C-544/23 \(BAJI Trans\)](#) on the interpretation of the principle of retroactive application of the more lenient criminal law (*lex posterior mitius*). The ruling stems from a request for a preliminary ruling from the Slovak Supreme Administrative Court and concerns the interpretation of the last sentence of Art. 49(1) and Art. 51(1) of the Charter of Fundamental Rights of the European Union (CFR). The last sentence of Art. 49(1) reads as follows:

"If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that shall be applicable."

Facts of the case:

In Slovakia, the driver of a concrete mixer truck belonging to the company BAJI Trans was fined €200 because it was found in 2015 that his vehicle's tachograph had not undergone the mandatory periodic inspection. The Bratislava Regional Court, which heard the case, upheld the fine and dismissed the action. It, *inter alia*, pointed out that the obligation to use tachographs in road transport vehicles was laid down in Art. 3 of EEC Regulation No 3821/85 and in Paragraph 2(1) of the Slovak Law No 461/2007. Exceptions listed in Arts. 3 and 13 of Regulation No 561/2006 did not include vehicles intended for the carriage of concrete.

The driver and BAJI Trans then lodged an appeal against the decision of the Bratislava Regional Court. They argued that, due to a change in the relevant EU law after the verdict was handed down, in conjunction with a dynamic reference in Slovak law to this EU legislation, concrete mixers in Slovakia did not have to be equipped with a tachograph. Therefore, the EU amendments had to be taken into account, the act committed in 2015 ceased to be unlawful, and the fine be lifted.

The Slovak Supreme Administrative Court asked the ECJ about the application of the Charter of Fundamental Rights and the scope of the principle of retroactive application of the more lenient criminal law enshrined in the Charter.

ECJ ruling

In its [judgment](#), the ECJ provided the following explanations:

- First, 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.

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- Second, the principle of *lex posterior mitius*, laid down in the last sentence of Art. 49(1) CFR remains reserved for the field of criminal law. However, the national court must assess the criminal nature of a penalty for the purposes of, *inter alia*, applying Art. 49 CFR. The fact that a penalty is classified as administrative under national law does not necessarily preclude the application of that principle. As it is settled case-law and in order to guarantee a uniform application of that principle throughout the EU, two other criteria may still lead such a penalty to be classified as a criminal penalty: (1) the intrinsic nature of the offence and (2) the degree of severity of the penalty. Referring to other judgments, the ECJ indicates that these two criteria are likely to be fulfilled in the present case. Nonetheless, should the referring court conclude that the fine in question is not of a criminal nature, no EU rule would require the observance of the principle *lex mitior*. This is underpinned by Art. 2(2) of Regulation 2988/95 on the protection of the European Communities financial interests that indicated that the retroactive applicability of the less severe administrative penalty cannot be considered a general principle of EU law.
- Third, the application of the last sentence of Art. 49(1) CFR presupposes that a succession of legal systems over time reflects 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. This must be delineated from changes of factual circumstances only. 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.
- Fourth, the principle *lex posterior mitius* 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, 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.

Put in focus

The BAJI Trans ruling provides important clarification on the scope and application of the *lex posterior mitius principle* enshrined in the CFR. It ensures that individuals can benefit from more favorable laws that are enacted *after* their alleged offense, even if the penalty was classified as administrative under national law. The national courts in the EU Member States are called to examine this principle, even if seemingly only an "administrative/regulatory offence" is at stake. The ECJ continues its settled case-law of a wide interpretation of the "criminal nature" of an administrative fine at first glance. The judgment also stressed that Art. 49(1) CFR should be interpreted in line with Art. 7 ECHR as interpreted by the ECtHR and the judges in Luxembourg applied the requirements set by their colleagues in Strasbourg. Lastly, the ECJ provides important hints on the legal force of a national judgment and emphasises the primacy of EU law over the Member States national legal system: If necessary, the national court must disapply any provision of national legislation that is contrary to the EU guarantee.

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