

Case Study: "fordítás ferdítés"¹



Source:KartePlan.com

The Hungarian company “Know waste” Kft has a special knowledge in the transport of waste.

On 19 October 2019 one of the company’s big trucks was carrying 12 tonnes of waste from Romania to Hungary. The carried waste qualified for the “amber” list in Annex IV to Regulation No 1013/2006. This meant the waste was subject to the notification and prior written consent procedures.

The driver of the truck, Mr. Bartok, had all the papers one could think of (“notification document for transboundary movements / shipments of waste”).

However, the notification documents and the consents indicated the city of **Ártánd** as the point of entry from Romania to Hungary. Mr. Bartok preferred to cross the Hungarian border with his truck at the small Hungarian village of **Nagylak**, which is about 180 kilometers south of Ártánd. Mr. Bartok explained that Nagylak was closer to his home. Hungarian border control inspected the truck of Mr. Bartok in Nagylak.

By its decision of 4 February 2020 the Hungarian inspection authority ordered “Know Waste” to pay

a fine of HUF 8.000.000 (approximately 25.000 Euro).

The decision was reasoned as follows: The actual point of entry into Hungary was Nagylak, whereas the documents showed Ártánd as point of entry. Therefore “Know waste Ltd.” was responsible of an “illegal waste shipment” under EU/Hungarian Law.

Mr. Urban, CEO of “Know waste”, was out of his mind and hired the “best lawyer”, Prof. Dr. Nagy. The latter brought an action of annulment to the competent Court in Budapest and contends:

- *Serious error in the application of law: The transport of waste by his client was not at all an ‘illegal shipment’ within EU/Hungarian Law which makes the fine manifestly illegal.*
- *The decisive definition of ‘illegal shipment’ is to be found in Article 2 (35) (d) of the Regulation 1013/2006. Accordingly, a shipment of waste is illegal, if it is carried out “in a **way** (highlighted by Prof. Nagy) which is not specified materially in the notification or movement documents.” In the present case the mode of transport, namely “by road”, did not change, only the routing had been changed. The Hungarian version of the EU-Regulation makes it crystal clear: There, “**way**” is translated with “**módon**” which covers only “**means of transport**” (szállítás módjai) meaning road, train/rail, sea, air, inland waterway.*
- *Conclusion: In the present case the mode of transport, namely “by road”, **did not (!)** change, only the routing had been changed which leaves no room for any punishment whatsoever.*

Judge Kertész has prepared the case for an audience tomorrow morning. She would be more than happy if her EU colleagues could at least give her a clue how to solve the case. She explains that under Hungarian law it is an offence if a natural or legal person conducts an illegal waste shipment. As to the meaning of “illegal waste shipment” the national law makes a reference to EU waste law. Therefore, Judge Kertész looked up the relevant Regulation 1013/2006 in the Hungarian, English and French version. Apart from Article 2 (35) (d) of the Regulation 1013/2006 which seems to be the most important provision here, she found another interesting provision in Article 17 of Regulation No 1013/2006:

“Changes in the shipment after consent

1. If any essential change is made to the details and/or conditions of the consented shipment, including changes in the intended quantity, route, routing, date of shipment or carrier, the notifier shall inform the competent authorities concerned and the consignee immediately and, where possible, before the shipment starts.
2. In such cases a new notification shall be submitted, unless all the competent authorities concerned consider that the proposed changes do not require a new notification.
3. Where such changes involve competent authorities other than those concerned in the original notification, a new notification shall be submitted.”

I am looking forward to our discussion!

¹ Means roughly: „translation is distortion“, cf. the Italian „traduttore, traditore“.