SUPREME COURT OF NORWAY

O R D E R

issued on 27 June 2023 by the Supreme Court composed of

Justice Bergljot Webster
Justice Henrik Bull
Justice Wenche Elizabeth Arntzen
Justice Espen Bergh
Acting Justice Hedda Remen

HR-2023-1212-A, (case no. 23-007260STR-HRET)
Appeal against Eidsivating Court of Appeal's order 21 November 2022

Hagens Transport AS	(Counsel John Christian Elden)
v.	
The State represented by the Ministry of Transport	(The Office of the Attorney General represented by David Magnus Myr)

This is a translation of the ruling given in Norwegian. The translation is provided for information purposes only.

(1) Justice **Bergh:**

Issues and background

(2) This case concerns a review of a decision to fine a transport company for violation of provisions on driving time and rest periods. In particular, it raises the question of whether a fine may be imposed on an objective basis and of whether the fine must be assessed under an amendment that entered into force after the driving.

(3) During a control at Jessheim traffic station on 23 September 2021, it was discovered that a driver employed in Hagens Transport AS had violated the provisions on driving time and rest periods. The driver was fined NOK 1,000 and Hagens Transport was fined NOK 2,000. The driver's fine was paid, but Hagens Transport disputed the grounds on which a fine was imposed on the company.

(4) The decision was appealed. The Norwegian Public Roads Administration upheld the decision, and the appeal was brought to Østre Innlandet District Court. The District Court dismissed the appeal by an order of 1 April 2022.

(5) Hagens Transport appealed to Eidsivating Court of Appeal. In the Court of Appeal, the company contended that the relevant provision does not warrant the imposition of a fine on an enterprise, and that there was no objective basis for such a sanction, regardless of whether the enterprise has demonstrated culpability. In that respect, it was also noted that section 46 of the Public Administration Act on administrative corporate sanctions contains, from 1 July 2022, a culpability requirement. Hagens Transport claimed that this new requirement must apply in the case at hand although it entered into force after the fine was imposed, and even after the District Court's hearing of the appeal.

(6) By the Court of Appeal's order of 21 November 2022, the appeal was dismissed.

(7) The company further appealed to the Supreme Court. On 27 March, the Supreme Court's Appeals Selection Committee ruled as follows:

> "The part of the appeal concerning the application of the law in the issue of fining on an objective basis and the question of whether the fine must be cancelled due the subsequent amendment, will be decided by the Supreme Court sitting as a division of five justices, see section 5 subsection 1 second sentence of the Courts of Justice Act.
>
> Apart from that, the appeal is dismissed."

(8) Also in its appeal to the Supreme Court, Hagens Transport contended that the fining lacked sufficient legal basis. This part of the appeal was dismissed by the Appeals Selection Committee.

(9) In the Supreme Court, Hagens Transport therefore principally claims that an error of law has been committed, as the Court of Appeal should have applied the legislation prevailing at the time of the order. The Court of Appeal's order must therefore be set aside. The company claims in the alternative that a subjective element must also be interpreted into the previous

wording in section 46 of the Public Administration Act, so that fining on an objective basis was not warranted under that provision, either.

(10) Hagens Transport AS asks the Supreme Court to rule as follows:

> "The Court of Appeal's order is set aside."

(11) The State represented by the Ministry of Transport claims that according to case law from the European Court of Human Rights (ECtHR/the Court) and the European Court of Justice (ECJ), such administrative sanctions may be imposed regardless of culpability. The amendment in section 46 of the Public Administration Act is of no consequence for the result in this case. The new provision is not applicable. And even if it is, the result of this case will be the same.

(12) The State represented by the Ministry of Transport asks the Supreme Court to rule as follows:

> "1. The appeal is dismissed.
>
> 2. The State represented by the Ministry of Transport is awarded costs in the Supreme Court."

My opinion

The Supreme Court's jurisdiction

(13) It follows from section 31 a subsection 4 of the Road Traffic Act that fines imposed with a basis in law may be appealed to the District Court, whose ruling is issued in the form of an appealable order. The District Court's function as an appellate instance also follows from section 4 subsection 1 of Regulations 26 March 2021 no. 963 relating to fines for certain violations of the road traffic legislation. It is set out in section 7 subsection 1 of these Regulations that "[i]n connection with the District Court's hearing, the rules of the Criminal Procedure Act apply to the extent they fit, unless otherwise regulated herein." In accordance with this, the case in the District Court and the Court of Appeal has been heard under the rules of the Criminal Procedure Act and decided by an order.

(14) The appeal to the Supreme Court is thus a second-tier appeal against an order in a case heard under the Criminal Procedure Act. This implies that the Supreme Court may only review the Court of Appeal's procedure and general interpretation of the law, see section 388 subsection 1 of the Criminal Procedure Act. As for the relevance of the Constitution and the European Convention on Human Rights (the ECHR), the Supreme Court may also review the individual application of the law, but not the Court of Appeal's findings of fact.

The rules on driving time and rest periods and on fines for violations

(15) Section 21 subsection 2 of the Road Traffic Act is a legal basis for issuing regulations on driving time and rest periods. It is established in section 1 of Regulations of 2 July 2007 no. 877, that the EU's regulations on driving time and rest periods etc. apply as Norwegian law.

(16) Section 31 subsection 1 of the Road Traffic Act prescribes punishment for violations of the provisions of the Act, while the last subsection sets out that regulations may be issued prescribing fines instead of punishment. According to the aforementioned Regulations of 2007, the Norwegian Public Roads Administration may impose fines for violations of the provisions on driving time and rest periods. Section 13 sets out that for "insufficient daily rest", the driver may be fined NOK 1,000 and the enterprise may be fined NOK 2,000. The fine in the present case concerns such a violation.

(17) The reason why both the driver and the enterprise may be fined, was described as follows in the report to the King in Council (PRE-2021-03-26-963) in connection with the adoption of the Regulations:

> "When imposing a fine for violation of the rules on driving time and rest periods, it is proposed that the driver and the transport company are fined separately. These cases concern commercial transport, and the enterprises have a responsibility to facilitate compliance with the rules. The enterprise may also have an economic interest in the rules being violated and it is natural that the enterprise is held accountable on an independent basis and imposed with a fine exceeding that of the employee. The employee, in turn, is also responsible for performing his assignment in accordance with applicable rules."

(18) General rules on administrative sanctions are provided in chapter IX of the Public Administration Act. The term "administrative sanction" is defined as follows in section 43 subsection 2:

> "By administrative sanction is meant a negative reaction that may be applied by an administrative agency in response to an actual violation of a statute, regulation or individual decision, and which is deemed to be a criminal sanction pursuant to the European Convention on Human Rights."

(19) As I will also return to, it is clear that a fine for violation of the provisions on driving time and rest periods, although such a reaction is not considered a reaction to a criminal offence under domestic rules, counts as a reaction to a criminal offence under the rules in the ECHR. The fine is therefore covered by the rules on administrative sanctions in chapter IX of the Public Administration Act.

(20) Section 46 of the Public Administration Act regulates administrative sanctions towards enterprises. From the entry into force of chapter IX on 1 July 2017 and until 1 July 2022, section 46 subsection 1 read as follows:

> "When a statute prescribes that administrative sanctions may be imposed against an enterprise, such sanction may be prescribed even if no individual person is at fault. By enterprise is meant a company, cooperative undertaking, association or other cooperation, sole proprietorship, foundation, estate or public activity."

(21) Subsection 2 of the provision lists factors to consider when determining whether an administrative sanction should be imposed, and in the individual assessment of the sanction. The provision is very much alike the rules on enterprise penalties in section 28 of the Penal Code.

(22) At the time of the fining of Hagens Transport, it followed from section 46 subsection 1 of the Public Administration Act that an administrative sanction could be imposed even if no

individual person had been at fault. The preparatory works to the provision, Proposition to the Storting 62 L (2015–2016) page 199, set out the following:

> "The wording that 'no single person meets the culpability requirement' is taken from the section on enterprise penalties in section 27 subsection 1 of the Penal Code and must be interpreted in the same way. Therefore, the requirement is, at the outset, objective criminal liability. However, this liability must be limited when the violation is the result of unforeseen accidents or force majeure."

(23) The provision gave the enterprise a chance to avoid liability by demonstrating that the violation was caused by unforeseen accidents or force majeure. Therefore, I do not find it natural to view the criminal liability as entirely objective. It may be more natural to describe it as a particularly strict culpability requirement.

(24) According to section 50 of the Public Administration Act, the courts may review "all aspects of the case" when considering the validity of an administrative sanction. The courts may thus examine both the legality of the fine and whether it should be imposed in the individual case, including whether such a sanction is warranted under the criteria in section 46 subsection 2. Nonetheless, the hearing in the Supreme Court will be subject to the limitations in section 388 subsection 1 of the Criminal Procedure Act.

(25) As this case is presented, the key question is whether section 46 subsection 1 of the Public Administration Act, as it read up until 1 July 2022, is compatible with the requirements of the ECHR. My discussion will therefore start there, before I turn to the amendment in 2022 and its significance in this case.

To which extent does the ECHR prevent sanctions on an objective basis?

General remarks on the protection under the ECHR

(26) In several contexts, the ECHR confers certain rights on a person charged with "a criminal offence". Central provisions are Article 6 on the right to a fair trial, including Article 6 (2) on the presumption of innocence, and Article 7 on no punishment without law. The content of the term "criminal offence" is determined through case law from the ECtHR, particularly through the *Engel* criteria, which were drawn up in the ECtHR judgment 8 June 1976 *Engel and Others v. The Netherlands*.

(27) The case at hand does not call for further elaboration on these criteria. It is undisputed that a "criminal offence" in many contexts also includes acts that are not considered criminal under domestic law. The parties agree, and it is clear, that the fine at issue is considered a reaction to "a criminal offence" according to the ECHR.

(28) Although the term "criminal offence", and hence the protection under the ECHR, is far-reaching, the same level of protection does not necessarily apply regardless of the act committed and what the reaction entails. This is emphasised for instance in the ECtHR's Grand Chamber judgment 23 November 2006 *Jussila v. Finland*. In paragraph 43, it is stated that that "[t]here are clearly 'criminal charges' of differing weight". The Court points out that there are criminal cases that do not carry any significant degree of "stigma". In this context, administrative penalties are mentioned as a particular group.

Judgments from the ECtHR

(29) In many judgments, the ECtHR has considered the extent to which it is compatible with the ECHR to impose a penalty on an objective basis – without it being established that one or several individual persons have demonstrated subjective culpability.

(30) A key judgment is *Salabiaku v. France* of 7 October 1988, which dealt with a French penal provision prescribing punishment for smuggling of prohibited goods, including drugs, exclusively on the basis of the possession itself. Salabiaku had taken with him an unclaimed suitcase at an airport. At a control, it was discovered that the suitcase contained drugs. The question was whether the reaction against Salabiaku was compatible with the presumption of innocence in Article 6 (2) of the ECHR.

(31) In paragraph 27, the ECtHR states:

> "As the Government and the Commission have pointed out, in principle the Contracting States remain free to apply the criminal law to an act where it is not carried out in the normal exercise of one of the rights protected under the Convention […] and, accordingly, to define the constituent elements of the resulting offence. In particular, and again in principle, the Contracting States may, under certain conditions, penalise a simple or objective fact as such, irrespective of whether it results from criminal intent or from negligence. Examples of such offences may be found in the laws of the Contracting States."

(32) In other words, the ECtHR stresses that it is possible to penalise on an objective basis, without evidence of criminal intent or negligence. It is also noted that such provisions exist in the legislation of the Contracting States.

(33) However, this possibility is limited. Such rules must be applied within certain limits. In paragraph 28, the ECtHR summarises this as follows:

> "Article 6 para. 2 (art. 6-2) does not therefore regard presumptions of fact or of law provided for in the criminal law with indifference. It requires States to confine them within reasonable limits which take into account the importance of what is that stake and maintain the rights of the defence."

(34) Regard must thus be had to the importance of the case and the defendant's fundamental rights of the defence.

(35) The ECtHR's ruling of 16 March 2000 in *Hansen v. Denmark* concerned a fine of DKK 1,500 issued to the chair of a transport company because one of its drivers had violated rules on driving time and rest periods. The facts of the case were very similar to those in the case at hand. After having referred to, among others, the *Salabiaku* judgment, the Court stated:

> "In the present case the Court recalls that the Order No. 448 of 2 June 1981 was introduced to secure the fulfilment of EU regulations on the harmonisation of certain social legislation relating to road transport. More specifically the offence at issue related to road safety and the Order in addition aims that eliminating the financial incitements which may exist in disregarding the rules. The Court considers that this is an area where the Contracting States are well within the 'reasonable limits which take into account what is that stake'.

> Furthermore, even though the applicant did not as such commit the punishable act this does not mean that he was left entirely without a means of defence. Not only was it necessary for the trial court to establish the employer/employee relationship between the applicant and the driver but it was also necessary to establish that the driver was driving in the interest of the employer. There is nothing indicating that the courts in fulfilling their functions started from the assumption that the applicant was liable pursuant to the Ministerial Order.
>
> Finally, the Court considers that the fines imposed do not appear disproportionate having regard to the aim pursued."

(36) The ECtHR points out that the rules aim is to fulfil EU regulations relating to road safety. The purpose of the rules is then linked to the criteria in *Salabiaku*, and the Court considers this to be within the established limits. Then, it is stressed that the chair of the board was not completely without possibilities to defend himself, and that the fine in question was not disproportional with regard to the aim pursued.

(37) The Grand Chamber judgment of 28 June 2018 *G.I.E.M. S.r.l. and Others v. Italy* also deals with the possibility to impose objective penal sanctions. In this case, the Court, in contrast to in the other central judgments in this area, links its discussion to the requirement of a legal basis in Article 7 of the ECHR, and not to the presumption of innocence in Article 6 (2).

(38) The judgment concerned the confiscation of properties belonging to the applicants – four property companies. The properties had been developed in conflict with nature protection legislation, and, according to Italian law, all such property was to be automatically confiscated. The confiscation could be executed regardless of any fault demonstrated by the persons representing the companies. Although Italian law did not warrant punishment of legal persons, the confiscation was nonetheless ordered by criminal tribunals, without the applicants having acted as parties to the cases.

(39) In paragraph 241 of the judgment, the Grand Chamber references paragraph 116 of the ECtHR judgment of 20 January 2009 *Sud Fondi S.r.l. and Others v. Italy,* stating among other things:

> "As regards the Convention, Article 7 does not expressly mention any mental link between the material element of the offence and the person deemed to have committed it. Nevertheless, the rationale of the sentence and punishment, and the 'guilty' concept (in the English version) and the corresponding notion of 'personne coupable' (in the French version), support an interpretation whereby Article 7 requires, for the purposes of punishment, an intellectual link (awareness and intent) disclosing an element of liability in the conduct of the perpetrator of the offence, failing which the penalty will be unjustified."

(40) The Grand Chamber then states in paragraph 242:

> "The Grand Chamber endorses the analysis to the effect that the rationale of the sentence and punishment, and the 'guilty' concept (in the English version) with the corresponding notion of 'personne coupable' (in the French version), support an interpretation whereby Article 7 requires, for the purposes of punishment, a mental link."

(41) Here, the Court expresses that a mental link is required in order to apply a penal reaction towards an undertaking. The further implications of this are not addressed and remain unclear.

(42) To assess the scope of the *G.I.E.M.* judgment, one should also address paragraph 243, where the Court emphasises that the requirement of a *mental link* "does not preclude the existence of certain forms of objective liability … provided they comply with the Convention". The Court also mentions previous case law related to Article 6 (2), including the *Salabiaku* judgment. In its account in paragraph 243, the Court uses mainly the same wording as in this judgment, and stresses both here and in paragraph 244 that case law related to Article 6 (2) is also relevant to Article 7. Overall, there is nothing to suggest that *G.I.E.M.* should be interpreted as a departure from previous case law with regard to the possibility to punish on an objective basis.

(43) This is supported by the subsequent judgment of 3 June 2021 *Busuttil v. Malta*. With reference to previous rulings, including *G.I.E.M* and *Salabiaku*, the ECtHR states in paragraph 46 and 47:

> "The Court has previously found that the Contracting States may, in principle and under certain conditions, penalise a simple or objective fact as such, irrespective of whether it results from criminal intent or from negligence […]
>
> While the Convention does not regard such presumptions with indifference, they are not prohibited in principle, as long as States remain within reasonable limits, taking into account the importance of what is that stake and maintaining the rights of the defence […]. In other words, the means employed have to be reasonably proportionate to the legitimate aim sought to be achieved […]."

(44) In its further discussion in paragraph 54, the ECtHR also refers to the *Hansen* ruling.

Summary of ECtHR case law

(45) In my view, ECtHR case law should not be interpreted to rule out that sanctions considered to be a reaction to a criminal offence under the ECHR may be imposed on an objective basis; that is, without it being demonstrated that an individual person has been at fault. Nonetheless, this applies only within a rather limited scope. A proportionality assessment must be carried out, covering the content and seriousness of both the act and the sanction. Furthermore, the accused must have the possibility to be released from criminal liability. Criminal liability can thus not be fully objective in any context – it must be possible to assert grounds for release.

(46) Against this background, objective criminal liability is primarily applicable in connection with various forms of mass-violations, where the act is not very serious and thus do not carry any significant degree of stigma, and where the reaction is moderate.

The significance of HR-2021-797-A

(47) The Supreme Court's ruling HR-2021-797-A concerned an enterprise penalty under section 27 of the Penal Code for violation of the Immigration Act. A company was fined NOK 30,000 for having employed a general manager that did not have a residence and work permit in Norway.

(48) It was established through the Court of Appeal's judgment that the company's chair of the board had acted negligently. Nonetheless, the Supreme Court, with a basis in the *G.I.E.M*

ruling, particularly addressed the question of whether an enterprise penalty under section 27 of the Penal Code may be imposed even if no one has demonstrated subjective culpability. In paragraph 23 of the judgment, Justice Ringnes expressed that such punishment cannot be imposed on "purely objective grounds". Since negligence had been established, there was no reason for the Supreme Court to go any further into the implications of that.

(49) I cannot see that the position held in this judgment may dictate the outcome of the present case. HR-2021-797-A concerned a much larger fine imposed under the rules on enterprise penalty in the Penal Code. Our case concerns an administrative sanction that, despite being considered a reaction to a criminal offence under the ECHR, is not the same according to Norwegian rules. A small fine has been imposed. As I have emphasised, the ECtHR's judgments must be understood to attach considerable importance to the seriousness of the act and the reaction when assessing whether a reaction, on an objective basis, will be compatible with the requirements in the ECHR.

The assessment in this case

(50) The present case concerns a standard fine of limited size. The rules on driving time and rest periods with related sanctions are made for the purpose of road safety. It is a matter of mass administration, where rules should be easy to enforce.

(51) Even if the criminal liability of the enterprise is objective at the outset, it is possible to assert specific circumstances as a basis for avoiding a fine. As already pointed out, a fine is not meant to be imposed where the violation is caused by unforeseen accidents or due to force majeure. Nor is there a basis for imposing a fine if the driver has not been employed in the enterprise or cannot be considered to have acted on its behalf.

(52) As mentioned, the case at hand is by far a parallel to the *Hansen* ruling, where the ECtHR found that the imposition of a fine was compatible with the ECHR.

(53) Against this background, I find that the rules in the ECHR did not prevent the imposition of a fine on Hagens Transport under the rules in the Road Traffic Act with related Regulations compared to section 46 subsection 1 of the Public Administration Act, as the provision read at the time.

(54) In their pleadings before the Supreme Court, the parties have also, to some extent, addressed EU law issues. As pointed out, the Norwegian rules on driving time and rest periods are based on EU regulations, which under the EEA Agreement are applicable also in Norway. However, I cannot see that EU law is decisive for the issues at hand. EU regulations on driving time and rest periods prescribe sanctions for violations, but the further formulation of such rules are left to the Member States. There is no evidence that EU law, when it comes to the use of criminal sanctions on an objective basis, contains stricter requirements that what follows from the ECHR.

(55) The next question is thus the significance of the subsequent amendment in section 46 subsection 1 of the Public Administration Act.

The amendment to section 46 subsection 1 of the Public Administration Act from 1 July 2022

The content in and background to for the amendment

(56) Following an amendment act of 17 June 2022 no. 63, which entered into force on 1 July 2022, section 46 subsection 1 first sentence of the Public Administration Act reads:

> "When a statute prescribes that administrative sanctions may be imposed against an enterprise, the culpability requirement is negligence unless otherwise decided."

(57) In contrast to what previously applied, it is now a condition for sanctioning an enterprise that a person acting on behalf on the enterprise has been negligent. However, that does not apply if special legislation provides otherwise.

(58) The background to the amendment is described in Proposition 81 L (2021–2022). Here, the Supreme Court's judgment in HR-2021-797-A is highlighted as an important cause. This judgment concerned, as mentioned, an enterprise penalty. The Ministry also stressed on pages 28–29 that a main rule on negligence would be well in line with the considerations of individual and general deterrence justifying the use of administrative sanctions. It also stressed that negligence requirements are unlikely to have large consequences in practice, including because a strict duty of care may be imposed in many cases. Furthermore, the Ministry presupposed that in special legislation, rules on administrative enterprise penalties may still be laid down on a virtually objective basis.

Is the new statutory provision applicable in this case?

(59) According to section 3 subsection 1 first sentence of the Penal Code, the criminal legislation at the time of the act applies. However, the second sentence states that the legislation at the time of the decision applies "when this results in a more favourable outcome for the person charged and the legislative amendment is due to a change in view as to which acts should be punishable or as to the use of criminal sanctions." However, for administrative sanctions, which are not considered a reaction to a criminal offence under Norwegian law, there is no corresponding domestic rule.

(60) As pointed out, the administrative sanction in this case is considered a reaction to a criminal offence under the ECHR. To the extent the ECHR requires that penal legislation adopted after the time of the act applies, it will also be significant for the reaction in the present case. Central here is the Grand Chamber judgment *Scoppola v. Italy of* 17 September 2009.

(61) The judgment concerned Article 7 (1) of the ECHR, which initially establishes that no one can be punished for any act that did not constitute a criminal offence at the time it was committed, and that no heavier penalty can be imposed than the one that was applicable at the time the criminal offence was committed. In *Scoppola*, however, the ECtHR established that Article 7 (1) also implies that if, prior to a final judgment, a new penal provision enters that is more favourable to the person charged, this is the one that applies. In paragraph 109, the Court stated that Article 7 (1)

> "guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient

> criminal law. That principle is embodied in the rule that where there are differences between the criminal law in force that the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant."

(62) The decisive point of intersection is the time of a final judgment. It is therefore necessary to identify when a final judgment is present in the case at hand.

(63) In HR-2016-1982-A, the Supreme Court assessed the same issue in a case that concerned the imposition of a surcharge in addition to VAT. Such surcharge is considered to be a reaction to a criminal offence under the ECHR. The question was partially whether new and more lenient guidelines for surcharge should be applied. The Supreme Court found, in that case, that it was not necessary to consider the relevance of the principles set out in *Scoppola*. Justice Falch gave the following grounds in paragraph 48:

> "I do not need to take a stand as to whether this principle applies in a case like ours, as the actual adjudication in the Norisol case took place in the public administration – in the VAT Appeals Board. What the courts must then decide is whether the decision of the Appeals Board contains errors that may render it invalid. In such cases, the courts must apply the same rules as the decision-making body; that is, the rules that applied when the decision was made. This means that the courts are not to apply the guidelines that were adopted later.

(64) The statements must be understood to mean that the time of the "final judgment" was considered to be the date of the Appeals Board's decision. The fact that the decision could be reviewed later did not change this. It applied although the court review covered all aspects of the case.

(65) Nonetheless, I find that the case at hand requires a different assessment. Admittedly, also fines for violations of provisions on driving time and rest period are initially imposed by the public administration. However, it is not possible to appeal to an administrative body – the courts function as the appellate instance. The court review is subject to rules of criminal procedure and covers all aspects of the case. To me, it is then clear that that the "final judgment" is not yet present. As long as the District Court's order was appealed, it has no relevance that the amendment entered into force after the case had been heard in the District Court.

(66) Hence, I find that the rule in section 46 subsection 1 of the Public Administration Act in its current form is the one that applies in this case. This implies that it is a condition for upholding the fining of Hagens Transport that someone acting on behalf of the company has been negligent.

The consequence of applying the new provision

(67) The Court of Appeal found that that the case had to be decided under section 46 subsection 1 of the Public Administration Act as the provision read until 1 July 2022. I have arrived at the result that this interpretation is incorrect.

(68) With the Court of Appeal's starting point, the discussion focused on whether there was a possibility to fine Hagens Transport on an objective basis. The question of negligence is not

discussed. Thus, I cannot see that the Supreme Court, within its limited jurisdiction, has a sufficient basis for taking a stand as to whether the fine may be upheld when the provision in section 46 subsection 1 of the Public Administration Act as it currently reads, is to apply.

Conclusion and costs

(69) Against this background, the Court of Appeal's order must be set aside.

(70) The appeal has succeeded, and there is no basis for ordering Hagens Transport to pay costs.

(71) I vote for this

O R D E R :

The Court of Appeal's order is set aside.

(72) Justice **Bull:** I agree with Justice Bergh in all material respects and with his conclusion.

(73) Justice **Arntzen:** Likewise.

(74) Acting Justice **Remen:** Likewise.

(75) Justice **Webster:** Likewise.

(76) Following the voting, the Supreme Court issued this

O R D E R :

The Court of Appeal's order is set aside.