JUDGMENT OF THE COURT (Third Chamber)

20 November 2008*

In Case C-1/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Landgericht Siegen (Germany), made by decision of 29 November 2006, received at the Court on 3 January 2007, in the criminal proceedings against

Frank Weber,

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, J. Klučka, U. Lõhmus, P. Lindh and A. Arabadjiev, Judges,

Advocate General: Y. Bot,
Registrar: R. Grass,

* Language of the case: German.

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Weber, by W. Säftel, Rechtsanwalt,

— the Italian Government, by I.M. Braguglia, acting as Agent, and by S. Fiorentino, avvocato dello Stato,

— the Portuguese Government, by L. Inez Fernandes, acting as Agent,

— the Commission of the European Communities, by G. Braun and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 July 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1; 'Directive 91/439').

2 The reference has been made in criminal proceedings brought against Mr Weber for having driven, on 6 January 2006, a motor vehicle in Germany without being in possession of the driving licence required for that purpose.

Legal context

Community legislation

3 According to the first recital in the preamble to Directive 91/439:

'… for the purpose of the common transport policy, and as a contribution to improving road traffic safety, as well as to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test, it is desirable that there should be a Community model national driving licence mutually recognised by the Member States without any obligation to exchange licences.'

4 The fourth recital in the preamble to that directive states:

'… on road safety grounds, the minimum requirements for the issue of a driving licence should be laid down'.

5 The last recital in the preamble to Directive 91/439 states:

'… in addition, for reasons connected with road safety and traffic, Member States should be able to apply their national provisions on the withdrawal, suspension and cancellation of driving licences to all licence holders having acquired normal residence in their territory'.

6 Article 1(2) of that Directive provides:

'Driving licences issued by Member States shall be mutually recognised.'

7 Pursuant to Article 7(1)(a) and (b) of Directive 91/439, driving licences are to be issued only to those applicants:

'(a) who have passed a test of skills and behaviour and a theoretical test and who meet medical standards, in accordance with the provisions of Annexes II and III;

(b) who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months.'

8 Under Article 7(5) of Directive 91/439:

'No person may hold a driving licence from more than one Member State.'

9 Article 8(2) and the first subparagraph of Article 8(4) of that directive provide:

'(2) Subject to observance of the principle of territoriality of criminal and police laws, the Member [States] of normal residence may apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued by another Member State and, if necessary, exchange the licence for that purpose.

...

(4) A Member State may refuse to recognise the validity of any driving licence issued by another Member State to a person who is, in the former State's territory, the subject of one of the measures referred to in paragraph 2.'

National legislation

10 Paragraph 3(1) and (2) of the Law on road traffic (Straßenverkehrsgesetz), in the version applicable to the case before the referring court (BGBl. 2006 I, p. 1958; 'the StVG'), provides:

'(1) If a person is unfit to drive a motor vehicle, the driving licence authority shall withdraw his driving licence. In the case of a foreign driving licence, withdrawal — even if under other provisions — shall have the effect of revoking the right to use the driving licence in Germany. Paragraph 2(7) and (8) applies mutatis mutandis.

(2) The right to drive expires upon withdrawal of the driving licence. In the case of a foreign driving licence, the right to drive motor vehicles in Germany is cancelled. …'

11 Paragraph 21(1) of the StVG provides:

'(1) Any person who

1. drives a vehicle while not holding a driving licence required for that purpose or while banned from driving a vehicle in accordance with Paragraph 44 of the Criminal Code or with Paragraph 25 of this Law

shall be sentenced to a term of imprisonment of up to one year or to payment of a fine.'

12 Paragraph 28(1), (4) and (5) of the regulation on the authorisation of persons to drive on the highways (the regulation on driving licences) (Verordnung über die Zulassung von Personen zum Straßenverkehr (Fahrerlaubnis-Verordnung)) of 18 August 1998 (BGBl. 1998 I, p. 2214, 'the FeV'), in the version following the regulation of 14 June 2006 (BGBl. 2006 I, p. 1329), provides:

'(1) Holders of a valid [European Union] or [European Economic Area ("the EEA")] driving licence having their normal residence within the meaning of Paragraph 7(1) or (2) in Germany shall be authorised — subject to the restriction laid down in subparagraphs (2) to (4) — to drive motor vehicles in that country within the limits of the rights to which they are entitled. The conditions attached to foreign driving licences shall be observed in Germany also. The provisions of this regulation shall apply to those licences save as otherwise provided.

…

(4) The authorisation referred to in subparagraph 1 shall not apply to holders of a [European Union] or EEA driving licence,

…

3. whose driving licence has been provisionally or definitively withdrawn in Germany by a court or been withdrawn by an immediately enforceable or final decision of an administrative authority, or who have been refused a driving licence by a final decision or whose driving licence has not been withdrawn solely because they have renounced it in the meantime, …

…

(5) The right to use a [European Union] or EEA driving licence in Germany after one of the decisions mentioned in subparagraphs 4(3) and (4) shall be granted on application when the grounds justifying the withdrawal or the prohibition of applying for a new licence no longer obtain. …'

13 Paragraph 46(1) of the FeV states as follows:

'The driving licence authority shall withdraw the right to drive if it is shown that the holder of a licence is unfit to drive motor vehicles. That applies in particular in the case of illness or unfitness for the purposes of Annexes 4, 5 and 6, or in the case of serious or repeated contraventions of the highway code or of the criminal code, thereby excluding fitness to drive a vehicle.'

14 Paragraph 46(5) of the FeV provides:

'The right to drive expires upon withdrawal of the driving licence. In the case of a foreign driving licence, the right to drive motor vehicles in Germany is cancelled by that withdrawal.'

The dispute in the main proceedings and the question referred for a preliminary ruling

15 On 18 September 2004, it was found that Mr Weber, a German national resident in Germany, drove a motor vehicle while under the influence of intoxicating substances (cannabis and amphetamines). As a result of that incident he was fined and his German driving licence was suspended for a month by administrative order of the Kreis Siegen-Wittgenstein on 17 November 2004, which became final on 4 December 2004.

16 On 18 November 2004, Mr Weber obtained a driving licence, valid for 10 years, from the municipal authority of Karlovy Vary (Czech Republic) for classes A1, A, B, and AM. The driving licence gave 16 November 2004 as the date of the driving test taken for the issue of that licence.

17 On 7 January 2005, Mr Weber was informed by letter from the Ordnungsamt of the Kreis Siegen-Wittgenstein that, in view of the offence committed on 18 September 2004, his fitness to drive was to be examined. In February 2005, Mr Weber surrendered his German driving licence to the administrative authority.

18 By decision of 17 March 2005, which became final on 6 April 2005, the Ordnungsamt of the Kreis Siegen-Wittgenstein withdrew Mr Weber's German driving licence under Paragraph 3(1) of the StVG and Paragraph 46(1) of the FeV, which had the effect, under Paragraph 3(2) of the StVG and the second sentence of Paragraph 46(5) of the FeV, of cancelling his right to drive motor vehicles in Germany.

19 By a judgment of the Amtsgericht Siegen of 22 August 2006, Mr Weber was found guilty, under Paragraph 21 of the StVG, of driving a motor vehicle without a driving licence, an offence established at a police check on 6 January 2006.

20 Mr Weber appealed against that judgment to the Landgericht Siegen seeking to have it set aside on the grounds that, since he held a Czech driving licence, he was entitled to continue to drive motor vehicles on the basis of the principle of mutual recognition of driving licences issued in Member States set out in Article 1(2) of Directive 91/439.

21 In those circumstances, the Landgericht Siegen decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 1(2) in conjunction with Article 8(2) and (4) of Directive [91/439] to be interpreted as meaning that a Member State is precluded, within its territory, from refusing to recognise the validity of a right to drive under a driving licence issued by another Member State, and therefore the validity of that licence, because the right to drive was withdrawn from its holder in the first Member State after the grant to him in another Member State of a so-called "second" EU driving licence, if the withdrawal of the right to drive is based on an incident or on misconduct which occurred prior to the issue of the driving licence by the other Member State?'

The question referred

22 By its question, the referring court asks essentially whether Article 1(2) and Article 8(2) and (4) of Directive 91/439 are to be interpreted as meaning that a Member State is precluded from refusing, within its territory, to recognise a right to drive under a driving licence issued by another Member State, and therefore the validity of that licence, where the right to drive was withdrawn from its holder in the first Member State after the issue to him of that driving licence, but as a sanction for an offence which occurred prior to that date.

23 Mr Weber submits principally, referring to the case-law of the Court (orders of 6 April 2006 in Case C-227/05 *Halbritter* and of 28 September 2006 in Case C-340/05 *Kremer*), that a Member State can refuse to recognise a driving licence issued by another Member State only on the basis of conduct which occurred after that driving licence was issued.

24 The Italian Government and the Commission of the European Communities take the view, however, that in a situation such as that in the main proceedings a Member State is entitled to refuse to recognise the validity of the driving licence issued by another Member State, even if that refusal is prompted by conduct prior to the date of issue of that licence.

25 The Portuguese Government takes the view that Article 8(2) and (4) of Directive 91/439 is intended precisely to prevent the risks which ensue from the conduct of persons who, while their driving licence is temporarily suspended in one Member State, travel to another Member State to obtain a second driving licence, when still undergoing checks as to their fitness to drive which are likely to result in withdrawal of their right to drive.

26 First of all, it must be borne in mind that the general principle of mutual recognition of driving licences issued by the Member States, laid down in Article 1(2) of Directive 91/439, was established in order, inter alia, to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test (see, inter alia, Case C-476/01 *Kapper* [2004] ECR I-5205, paragraph 71; Joined Cases C-329/06 and C-343/06 *Wiedemann and Funk* [2008] ECR I-4635, paragraph 49; and Joined Cases C-334/06 to C-336/06 *Zerche and Others* [2008] ECR I-4691, paragraph 46).

27 The Court has consistently held that Article 1(2) of Directive 91/439 provides for mutual recognition, without any formality, of driving licences issued by Member States. That provision imposes on Member States a clear and precise obligation, which leaves no room for discretion as to the measures to be adopted in order to comply with it (see, to that effect, Case C-230/97 *Awoyemi* [1998] ECR I-6781, paragraphs 41 and 42; *Kapper*, paragraph 45; *Wiedemann and Funk*, paragraph 50; and *Zerche and Others*, paragraph 47).

28 Nevertheless, Article 8(2) and (4) of Directive 91/439 permits Member States, in certain circumstances and in particular for reasons of road traffic safety, to apply their national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to any holder of a driving licence having normal residence in their territory and to refuse to recognise the validity on that territory of any driving licence issued by another Member State to a person who is the subject of one of those measures.

29 The Court has held on a number of occasions in that regard that the first subparagraph of Article 8(4) of Directive 91/439 constitutes a derogation from the general principle of mutual recognition of driving licences and is, therefore, to be interpreted strictly (see, inter alia, *Wiedemann and Funk*, paragraph 60, and *Zerche and Others*, paragraph 57).

30 It is apparent from the information supplied by the referring court that, at the date on which Mr Weber obtained his Czech driving licence, that is to say, 18 November 2004, his German driving licence was the subject of a temporary suspension, which was ordered on 17 November 2004 for one month and became definitive on 4 December 2004. Subsequent to his acquisition of the Czech driving licence, his right to drive was withdrawn on 17 March 2005. Furthermore, it is common ground that the facts justifying both the temporary suspension and the withdrawal of Mr Weber's right to drive occurred on 18 September 2004, that is to say, before the date of issue of the Czech driving licence.

31 The view cannot be taken that Directive 91/439 imposes an obligation to recognise the validity of a driving licence issued in such circumstances.

32 The Court has, indeed, had occasion to rule that a Member State can exercise its right under Article 8(2) of Directive 91/439 to apply its own provisions on withdrawal of the right to drive to the holder of a driving licence issued by another Member State only by reason of some conduct of the person concerned after he has obtained that driving licence (see judgments in *Wiedemann and Funk*, paragraph 59; and orders in *Zerche and Others*, paragraph 56; *Halbritter*, paragraph 38; and *Kremer*, paragraph 35).

33 Nevertheless, the withdrawal of the driving licence held by the person concerned in *Kremer* was not accompanied by a prohibition on obtaining a new licence. In the other cases listed in the previous paragraph, the temporary prohibition on obtaining a new licence which accompanied the withdrawals had all expired by the date when the new licence was issued.

34 It was in the light of such considerations that the Court held that a Member State may exercise the right under Article 8(2) of Directive 91/439 only by reason of some conduct of the person concerned after he has obtained a driving licence issued by another Member State. That provision does not permit the Member State of normal residence to refuse to recognise a driving licence issued by another Member State just because the holder has earlier had a previous licence withdrawn in the first Member State (*Wiedemann and Funk*, paragraph 66, and *Zerche and Others*, paragraph 63).

35 The situation in the main proceedings is quite different. Firstly, when Mr Weber obtained his Czech driving licence, his German driving licence had been temporarily suspended by the competent German authorities. Secondly, following the issue of his Czech driving licence, his right to drive was withdrawn on the basis of the same facts as those which led to the temporary suspension.

36 In such a situation, the right of the competent authorities and courts of a Member State to refuse to recognise the validity of a driving licence obtained in another Member State by a person whose driving licence has been temporarily suspended in the first Member State must be recognised absolutely and definitively on the basis of the provisions of Directive 91/439, in particular Article 8(4) thereof, where the temporary suspension is followed by the withdrawal of the right to drive on the basis of the same facts (see, to that effect, the order of 3 July 2008 in Case C-225/07 *Möginger*, paragraph 41). The fact that withdrawal of the right to drive is ordered after the date of issue of the new driving licence is irrelevant in that regard, since the grounds for that measure existed at that date (see, a contrario, *Kapper*, paragraph 74).

37 Any other interpretation would wholly negate the Member State's right under the first subparagraph of Article 8(4) of Directive 91/439 to refuse to recognise the

validity of a driving licence obtained in another Member State by a person whose right to drive has been withdrawn in the first State.

38 As the Advocate General observes in point 42 of his Opinion, the Member State in whose territory an offence is committed has sole competence to punish that offence by ordering, as necessary, withdrawal of the driving licence or of the right to drive, with or without an order that no application may be made for the issue of a new driving licence during a particular period.

39 To require a Member State to recognise the validity of a driving licence issued by another Member State on the ground that the holder of that licence has not committed any offence on the territory of the first Member State after issue of that licence, despite the fact that he is subject to a valid measure withdrawing his right to drive on the basis of facts arising prior to that issue, would have the effect of encouraging offenders likely to be subject to such withdrawal to travel without delay to another Member State in order to evade the administrative or criminal consequences of those offences and would ultimately destroy the confidence on which the system of mutual recognition of driving licences rests.

40 Furthermore, as the Commission pointed out in its written observations, in a situation such as that in the main proceedings, recognition of the validity of the driving licence issued to Mr Weber by the Czech authorities, despite the fact that, at the date of issue of that licence, he still held a German driving licence, would undermine both the spirit of Directive 91/439 and the letter of Article 7(5), which provides that a person may not hold a driving licence from more than one Member State.

41 Consequently, the answer to the question referred must be that Articles 1(2) and 8(2) and (4) of Directive 91/439 must be interpreted as meaning that a Member State is not precluded from refusing to recognise, in its territory, a right to drive under a driving licence issued by another Member State to a person whose right to drive was withdrawn, in the territory of the first Member State, even though that withdrawal was

ordered after the issue of that driving licence, provided that the licence was obtained during a period in which a licence issued in the first Member State was suspended and both the suspension and the withdrawal are based on grounds existing at the date of issue of the second driving licence.

Costs

42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences must be interpreted as meaning that a Member State is not precluded from refusing to recognise, in its territory, a right to drive under a driving licence issued by another Member State to a person whose right to drive was withdrawn, in the territory of the first Member State, even though that withdrawal was ordered after the issue of that driving licence, provided that the licence was obtained during a period in which a licence issued in the first Member State was suspended and both the suspension and the withdrawal are based on grounds existing at the date of issue of the second driving licence.

[Signatures]