Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

21 May 2015 *

(Reference for a preliminary ruling — Directive 2006/126/EC — Mutual recognition of driving licences — Period of prohibition — Issue of the driving licence by a Member State before the entry into force of a period of prohibition in the Member State of normal residence — Grounds for refusing to recognise in the Member State of normal residence the validity of a driving licence issued by another Member State)

In Case C-339/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Nürnberg (Germany), made by decision of 26 June 2014, received at the Court on 14 July 2014, in the criminal proceedings against

Andreas Wittmann,

THE COURT (Tenth Chamber),

composed of C. Vajda, President of the Chamber, A. Rosas (Rapporteur), and E. Juhász, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr. Wittmann, by W. Säftel, Rechtsanwalt,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18).

* Language of the case: German.

2 The request has been made in criminal proceedings brought against Mr Wittmann for having driven, on 16 May 2013, a motor vehicle in Germany without being in possession of the driving licence required for that purpose.

Legal context

EU law

3 Recitals 2 and 15 in the preamble to Directive 2006/126 state:

‘(2) The rules on driving licences are essential elements of the common transport policy, contribute to improving road safety, and facilitate the free movement of persons taking up residence in a Member State other than the one issuing the licence. Given the importance of individual means of transport, possession of a driving licence duly recognised by a host Member State promotes free movement and freedom of establishment of persons. …

…

(15) For reasons connected with road safety, Member States should be able to apply their national provisions on the withdrawal, suspension, renewal and cancellation of driving licences to all licence holders having acquired normal residence in their territory.’

4 Under Article 2(1) of that directive, driving licences issued by Member States are to be mutually recognised.

5 Article 11(4) of that directive provides:

‘A Member State shall refuse to issue a driving licence to an applicant whose driving licence is restricted, suspended or withdrawn in another Member State.

A Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State’s territory.

A Member State may also refuse to issue a driving licence to an applicant whose licence is cancelled in another Member State.’

German law

6 The relevant provisions of German law are those of the Regulation on access of persons to road traffic (Verordnung über die Zulassung von Personen zum Straßenverkehr — Fahrerlaubnis-Verordnung), in its version of 10 January 2013 (‘the FeV’).

7 Paragraph 28(1) of the FeV established the principle that a valid European Union or European Economic Area (EEA) driving licence, issued in another Member State, entitled the holder of that licence to drive a motor vehicle in Germany.

8 Paragraph 28(4) thereof, which provided for an exception to that rule, stated:

‘The entitlement provided for in subparagraph (1) shall not apply to holders of an EU or EEA driving licence:

…

(3) whose driving licence has been provisionally or finally withdrawn by a court or withdrawn by an immediately enforceable or definitive decision of an administrative authority in national territory, who have been definitively refused a driving licence, or whose driving licence has not been withdrawn only because they have since surrendered the licence;

(4) who, by virtue of a final judicial decision, may not be issued with a driving licence;

…

Points 3 and 4 of the first sentence shall be applicable only if the measures referred to there are entered in the Central Traffic Register and have not been removed from that register in accordance with Paragraph 29 of the Straßenverkehrsgesetz. …’

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

9 On 16 May 2013, during a traffic control in Rothenburg-ob-der-Tauber (Germany), Mr Wittmann, a German national, presented a European Union driving licence which had been issued to him by the Polish authorities.

10 Since the German authorities considered that the validity of the driving licence obtained in Poland could not be recognised in Germany, they brought criminal proceedings against Mr Wittmann for driving without a driving licence. He could not, in their opinion, rely on the Polish driving licence because he had a previous conviction in Germany which stipulated a period during which he was prohibited from obtaining a new licence.

11 As a result, on 23 January 2014, he was prosecuted and then sentenced by the Amtsgericht Ansbach (Local Court, Ansbach) to a six-month prison sentence for driving without a driving licence.Thereby, that court confirmed the position of the German authorities.

12 Concerning the facts that gave rise to the dispute before the referring court, the latter states that, during a traffic control carried out on 1 December 2004, Mr Wittmann had presented a forged Czech driving licence. The Amtsgericht Lindau (Local Court, Lindau), which was then the competent local court, had, in a judgment of 18 July 2005, simply imposed a suspension of the issue of a driving licence, that is to say a period during which a driving licence may not be issued to persons who do not have a driving licence — either because their driving licence was withdrawn from them previously or because they have never possessed a driving licence. The Amtsgericht Lindau ruled in that way because Mr Wittmann’s driving licence had been withdrawn in 2001.

13 That judgment of the Amtsgericht Lindau became final on 14 July 2006. The period of the prohibition on issuing a licence started on 14 July 2006 and ended one year later, namely on 14 July 2007. According to the German criminal code, the period of prohibition on issuing a driving licence starts to run only when the conviction becomes final.

14 Although, after the judgment of the Amtsgericht Lindau, Mr Wittmann did not apply for a new driving licence in Germany, he did, however, obtain a driving licence in Poland on 14 September 2005, that is to say after the delivery of the judgment of 18 July 2005, but before that judgment became final, and before the one-year suspension began.

15 On 15 September 2009, Mr Wittmann presented his Polish driving licence during a traffic control in Rothenburg-ob-der-Tauber. By a judgment of 4 May 2010, he was sentenced for driving without a driving licence to six months in prison, which he served.

16 It is that same Polish driving licence that Mr Wittmann presented during the traffic control on 16 May 2013, referred to in paragraph 9 of the present judgment.

17 By its judgment of 23 January 2014, the Amtsgericht Ansbach also noted that, in the past, Mr Wittmann had been convicted on 11 occasions for driving without a driving licence. In particular, his German driving licence had been withdrawn in 2001 and no other licence had subsequently been issued to him in Germany.

18 Mr Wittmann appealed against that judgment of 23 January 2014 before the Oberlandesgericht Nürnberg (Higher Regional Court, Nuremburg). The enforcement of the prison sentence was suspended pending delivery of the judgment by the appeal court.

19 Since it had some doubts concerning the possible obligation, under Directive 2006/126, to recognise the Polish driving licence, the Oberlandesgericht Nürnberg decided to stay the proceedings and to refer the following question to the Court:

‘Must Article 11(4) of Directive [2006/126] be interpreted as meaning that a situation where a driving licence has not been withdrawn from the driver of a vehicle only because his driving licence was withdrawn from him previously and he therefore no longer had a driving licence, and where, at the same time, an order is made to the effect that that person is not in any event to be issued with a new driving licence for a given period of time, is equivalent to the withdrawal of a driving licence?’

The question referred for a preliminary ruling

20 By its question, the referring court asks, in essence, whether the second subparagraph of Article 11(4) of Directive 2006/126 must be interpreted as meaning that a measure by which a Member State, which is unable to withdraw the driving licence from the driver of a motor vehicle on the ground that he has already been subject to an earlier withdrawal decision, orders that a new driving licence may not be issued to that person for a given period of time must be regarded as a measure restricting, suspending or withdrawing the driving licence for the purposes of that provision, with the consequence that it precludes the recognition of any licence issued by another Member State before the expiry of that period.

21 Mr Wittmann considers that the facts giving rise to previous judgments of the Court on that issue are not comparable to those of the present case. He claims, referring to the Court’s case-law on the principle of mutual recognition of driving licences (judgment in *Akyüz*, C-467/10, EU:C:2012:112, paragraph 46), that no new exceptions should be added to that principle. In his opinion, the Court expounded two clear exceptions, namely failure to comply with the residence requirement, which is not relevant to the case in the main proceedings, and, secondly, obtaining a foreign driving licence after the withdrawal of the national authorisation or during a period of suspension. According to Mr Wittmann, he did not obtain his Polish driving licence during a period of suspension since that suspension entered into force only after obtaining that licence.

22 The European Commission notes that the referring court found similarities between the present case and the facts which gave rise to the judgment in *Weber* (C-1/07, EU:C:2008:640). It considers that it is necessary to examine whether there exist, between those two cases, differences justifying a different legal appraisal. In its opinion, that is not the case because Mr Wittmann is, with regard to his Polish driving licence, in a situation comparable to that in the case which gave rise to the judgment in *Weber* (C-1/07, EU:C:2008:640).

23 It must be noted that, according to settled case-law, Article 2(1) of Directive 2006/126, and Article 1(2) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), which precedes Directive 2006/126, provide for the mutual recognition, without any formality, of driving licences issued by Member States (see, to that effect, judgments in *Akyüz*, C-467/10, EU:C:2012:112, paragraph 40, and *Hofmann*, C-419/10, EU:C:2012:240, paragraphs 43 and 44).

24 However, the second subparagraph of Article 11(4) of Directive 2006/126 provides that a Member State must refuse to recognise the validity of any driving licence obtained in another Member State by a person whose driving licence is the subject, in the first Member State's territory, of a restriction, suspension or withdrawal.

25 It is apparent from the information supplied by the referring court that, before Mr Wittmann obtained his Polish driving licence on 14 September 2005, the Amtsgericht Lindau had, on 18 July 2005, prohibited the issue to him of a German driving licence. Since the judgment of the Amtsgericht Lindau became final on 14 July 2006, the prohibition on issuing the licence consequently entered into force on that day and came to an end one year later, namely on 14 July 2007. Moreover, the facts justifying the prohibition on issuing a driving licence in Germany were established on 1 December 2004, that is to say before the date of issue of that Polish driving licence.

26 It should be noted that, in the case giving rise to the judgment in *Weber* (C-1/07, EU:C:2008:640), at issue was a person who had driven a motor vehicle in Germany under the influence of drugs and who was subject, in addition to a fine, to a one-month suspension of his driving licence. His German driving licence had then been withdrawn for the same reasons. After the administrative decision to suspend his driving licence, but before that decision became final, and before the later decision withdrawing his licence, that person had obtained a Czech driving licence which the German authorities had refused to recognise.

27 By that judgment, the Court held that Articles 1(2) and 8(2) and (4) of Directive 91/439 do not preclude a Member State 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 that licence was obtained after a decision to suspend the licence issued in the first Member State and both the suspension and the withdrawal are based on grounds existing at the date of issue of the second driving licence (see, to that effect, judgment in *Weber*, C-1/07 EU:C:2008:640, paragraph 41. See also judgment in *Apelt*, C-224/10, EU:C:2011:655, paragraph 31).

28 It is true, in the main proceedings, that the measure imposed on Mr Wittmann differs from those imposed on Mr Weber, due to the fact that Mr Weber still had his German driving licence when he committed in Germany the offence at issue in the case giving rise to the judgment in *Weber* (C-1/07, EU:C:2008:640), which was not the case concerning Mr Wittmann at the time of the offence at issue in the main proceedings. However, the fact that Mr Wittmann no longer possessed a German driving licence which could have been withdrawn is irrelevant for the purposes of the application of the second subparagraph of Article 11(4) of Directive 2006/126. In those circumstances, a prohibition on obtaining a new driving licence must be regarded as a measure restricting, suspending or withdrawing a licence within the meaning of that provision (see, to that effect, judgment in *Apelt*, C-224/10, EU:C:2011:655, paragraph 33, in which the Court held that a confiscation may be regarded as constituting a suspension within the terms of Article 8(2) and (4) of Directive 91/439).

29 As the Commission has contended, the exclusion of such measures from the scope of the second subparagraph of Article 11(4) of Directive 2006/126 would mean that persons who have committed traffic offences without possessing a driving licence would be treated more leniently than those who have committed such offences when in possession of a driving licence. Such an outcome would be contrary to the objective of road safety, the importance of which is highlighted in recitals 2 and 15 in the preamble to that directive.

30 To require a Member State to recognise the validity of a driving licence issued to a person by another Member State, although a measure prohibiting the issue of a driving licence in the first Member State has been pronounced against that person by that Member State with respect to events which took place before the second Member State issued that licence, would have the effect of encouraging persons committing offences in the territory of a Member State who are likely to be subject to such a measure to travel to another Member State in order to obtain a new licence and thus 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 (see, to that effect, judgment in *Weber*, C-1/07, EU:C:2008:640, paragraph 39).

31 The fact that the judgment announcing that measure became final after the issue of the driving licence in the second Member State is in that regard irrelevant, since that licence was obtained after the delivery of that judgment and the grounds justifying that measure existed on the date that licence was issued (see, to that effect, judgment in *Weber*, C-1/07, EU:C:2008:640, paragraphs 36 and 41).

32 Consequently, the answer to the question referred is that the second subparagraph of Article 11(4) of Directive 2006/126 must be interpreted as meaning that a measure by which the Member State of normal residence of the driver of a motor vehicle, which is unable to withdraw his driving licence because he has already been subject to an earlier withdrawal decision, orders that a new driving licence may not be issued to him for a given period of time must be regarded as a measure restricting, suspending or withdrawing the driving licence for the purposes of that provision, with the consequence that it precludes the recognition of any licence issued by another Member State before the expiry of that period. The fact that the judgment concerning that measure became final after the issue of the driving licence in the second Member State is irrelevant in that regard, provided that the licence was obtained after the delivery of that judgment and the grounds justifying that measure existed on the date that licence was issued.

Costs

33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

The second subparagraph of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences must be interpreted as meaning that a measure by which the Member State of normal residence of the driver of a motor vehicle, which is unable to withdraw his driving licence because he has already been subject to an earlier withdrawal decision, orders that a new driving licence may not be issued to him for a given period of time must be regarded as a measure restricting, suspending or withdrawing the driving licence for the purposes of that provision, with the consequence that it precludes the recognition of any licence issued by another Member State before the expiry of that period. The fact that the judgment concerning that measure became final after the issue of the driving

licence in the second Member State is irrelevant in that regard, provided that the licence was obtained after the delivery of that judgment and the grounds justifying that measure existed on the date that licence was issued.

[Signatures]