Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

29 October 2015*

(Reference for a preliminary ruling — Principle of non-discrimination — Article 18 TFEU — Citizenship of the Union — Article 20 TFEU — Freedom of movement for persons — Article 63 TFEU — Free movement of capital — Road use — Drivers resident in the Member State concerned — Requirement to provide on the spot proof of lawful use of vehicles registered in another Member State at a police check)

In Case C-583/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Szombathely Administrative and Labour Court, Hungary), made by decision of 11 December 2014, received at the Court on 18 December 2014, in the proceedings

Benjámin Dávid Nagy

v

Vas Megyei Rendőr-főkapitányság,

THE COURT (Seventh Chamber),

composed of A. Arabadjiev, President of the Sixth Chamber, acting as President of the Seventh Chamber, C. Lycourgos (Rapporteur) and J.-C. Bonichot, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Hungarian Government, by M. Tátrai and G. Koós, acting as Agents,

— the European Commission, by E. Montaguti and B. Béres, acting as Agents,

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

gives the following

* Language of the case: Hungarian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 18 TFEU and Article 20(2)(a) TFEU.

2 The request has been made in proceedings between Benjámin Dávid Nagy and Vas Megyei Rendőr-főkapitányság (Vas County Police Headquarters, 'the Police Headquarters') concerning an administrative fine for breach of the national legislation on the use in Hungarian territory, by a person residing there, of a vehicle with foreign registration plates.

Legal context

3 In Hungary, Paragraph 20, subparagraph (1)(1) and subparagraph (4) of Law I of 1988 on road transport (A közúti közlekedésről szóló 1988. évi I. törvény, 'the Law on road transport') provides:

'1. A fine may be imposed on anyone who infringes the present law, specific legislation, or acts of Community law, relating to the keeping or use … within the national territory by persons or organisations resident in Hungary of vehicles with foreign registration plates.

…

4. A fine of between HUF 10 000 and HUF 800 000 [Hungarian forints (HUF) (about EUR 32 to EUR 2 500)] … may be imposed on anyone who breaches the provisions of point (1) of subparagraph 1 … Special legislation shall set out the maximum amount of the fines …'

4 Pursuant to Paragraph 25/B of that law:

'1. Any vehicle … which has Hungarian administrative authorisation and registration plates provided by the Traffic Authority may be driven on the road, provided that:

(a) its keeper is considered to be a Hungarian keeper under this Law, or

(b) its driver is resident within national territory.

2. Subparagraph 1(a) shall not be applied if:

(a) the keeper is not a natural person and carries out its habitual activity in a foreign country where it has a registered establishment (subsidiary) …

…

4. Subparagraph (1)(b) shall not be applied if:

(a) the driver of the vehicle does not have his habitual residence in the national territory;

(b) the driver of the vehicle uses the vehicle in the national territory for no more than a total of 30 days in a six-month period and the keeper has consented in writing to that use, indicating the date of the delivery of possession of the vehicle and the duration of the right to use it; or

(c) the driver has obtained the right to use the vehicle in national territory from the foreign keeper in order to carry out habitual work.

…

5. The keeper or the driver of the vehicle, as the case may be, must prove, during a check, that the requirements set out in subparagraphs 2 and 4 are satisfied, by means of a public document or a private certified document in Hungarian or accompanied by a certified or uncertified translation into Hungarian.'

5 Paragraph 12/A of Decree No 156/2009 fixing the amounts of the fines applicable for breach of certain provisions concerning the carriage by road of goods and persons, and road traffic, and governing the administrative powers in relation to the imposition of fines (A közúti árufuvarozáshoz, személyszállításhoz és a közúti közlekedéshez kapcsolódó egyes rendelkezések megsértése esetén kiszabható bírságok összegéről, valamint a bírságolással összefüggő hatósági feladatokról szóló 156/2009. Kormányrendelet), of 29 July 2009, provides:

'1. The Hungarian keeper of a vehicle having infringed Paragraph 20(1)(l) of the [Law on road transport], if it is not a natural person, must pay a fine of:

(a) HUF 400 000 [about EUR 1 250] for cars with an engine capacity of 2 000 cm^3 or less;

(b) HUF 800 000 [about EUR 2 500] for cars with an engine capacity of more than 2 000 cm^3; or

(c) HUF 200 000 [about EUR 625] for other vehicles.

2. If a natural person infringes the provisions referred to in Paragraph 20(l), he must pay a fine equal to half of the amount indicated in subparagraph 1.

…'

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

6 Mr Nagy is a Hungarian national residing in Hungary who, as at 16 May 2013, was not a worker, within the meaning of EU law, and was not habitually resident abroad.

7 Mr Nagy's half-brother, a Hungarian national residing in Austria, is a member of and the legal representative of Alpen-Reisen Horváth OG ('Alpen-Reisen'), a company registered in Austria.

8 Pursuant to a contract of 3 December 2010, Alpen-Reisen granted Mr Nagy the use of a particular car, which had an Austrian registration plate, from 7 December 2010 until the withdrawal of that right.

9 Mr Nagy did not keep the vehicle in his uninterrupted possession, but used it ad hoc on occasions when his half-brother asked him to perform certain business tasks for Alpen-Reisen. The costs of maintaining the vehicle were borne by that company.

10 On 16 May 2013, while Mr Nagy was driving this particular car in Szombathely (Hungary), officers of the Szombathely police carried out a check. During the check, Mr Nagy explained that his half-brother had lent him the car so that he could use it in Hungary, but he was not able to produce on the spot the contract giving him the right to use the vehicle in question. The police officers therefore removed the vehicle's registration plates and administrative authorisation.

11 By decision of 30 May 2013, the Szombathely Police (Szombathelyi Rendőrkapitányság) imposed on Mr Nagy an administrative fine of HUF 400 000 (about EUR 1 250) for breach of the law on the use in Hungarian national territory of vehicles with foreign registration plates by persons resident in that Member State.

12 Mr Nagy lodged an administrative appeal against that decision with the Police Headquarters. In support of that appeal, he argued that he had been authorised by his half-brother to drive the car at issue and that the provisions of Hungarian law under which the fine had been imposed on him were contrary to EU law, in particular the principle of freedom of movement of persons. In that regard, Mr Nagy referred to the case that subsequently led to the order in *Kovács*, (C-5/13, EU:C:2013:705), which was then pending before the Court, and concerned the same Hungarian law.

13 By decision of 15 July 2013, the Police Headquarters confirmed the decision of the Szombathely Police. The Police Headquarters held, inter alia, that Mr Nagy had not been able to produce on the spot the document certifying that he was using the vehicle completely lawfully in national territory.

14 Mr Nagy brought an action against the decision of the Police Headquarters before the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Szombathely Administrative and Labour Court). In support of that action he submitted that Paragraphs 20(1)(l) and 25/B(1)(b) of the Law on road transport, on which the decision of the Police Headquarters of 15 July 2013 is based, infringed EU law. He produced, in that regard, the contract of 3 December 2010 granting him the use of the vehicle in question and declared that he had never had a job.

15 The referring court stayed the proceedings in the main action until the order in *Kovács* (C-5/13, EU:C:2013:705) was delivered. By that order, the Court held that Article 45 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, as a rule, only vehicles having administrative authorisation and registration plates issued by the Member State in question may be used on the road network in that Member State and a resident of that Member State who seeks to rely on a derogation from that rule, on the ground that he uses a vehicle made available to him by his employer established in another Member State, must be able to prove on the spot, at a police check, that he fulfils the requirements for such a derogation, as laid down by the national legislation in question, on pain of the immediate imposition of a fine equivalent to that applicable in the event of infringement of the registration requirement, without any possibility of exemption from that fine.

16 In view of the fact that Mr Kovács had the status of worker, within the meaning of Union law, the Court gave the court that had referred the matter to it an answer on the basis of Article 45 TFEU and not Articles 18 TFEU and 20 TFEU, which had also been referred to in the order for reference.

17 Following the resumption of the proceedings in the main action, Mr Nagy presented additional facts indicating that, at his half-brother's request, he regularly provided his assistance as a helping member of the family in the performance of tasks pertaining to Alpen-Reisen, which involved crossing the border between Hungary and Austria, but were unremunerated. According to the referring court, on the day of the police check, Mr Nagy was required to carry out such tasks.

18 In those circumstances, the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Szombathely Administrative and Labour Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 18 TFEU be interpreted as precluding a provision of the law of a Member State such as that at issue in the case in the main proceedings in accordance with which, as a rule, only motor vehicles that have administrative authorisation and registration plates issued by the authorities of that Member State may be used on the roads in the Member State, and a person resident in the Member State who is not a worker within the meaning of EU law and who seeks exemption from that provision on the grounds that he is using a vehicle made available to him by an undertaking established in another Member State is required to prove on the spot the lawfulness of its use under the law of the Member State concerned, during a police check, on pain of an immediate fine from which no exemption is possible, the amount of which is equivalent to the fine that may be imposed for failure to register the vehicle?

(2) Must Article 20(2)(a) TFEU be interpreted as precluding a provision of the law of a Member State such as that at issue in the case in the main proceedings in accordance with which, as a rule, only motor vehicles that have administrative authorisation and registration plates issued by the authorities of that Member State may be used on the roads in the Member State, and a person resident in the Member State who is not a worker within the meaning of EU law and who seeks exemption from that provision on the grounds that he is using a vehicle made available to him by an undertaking established in another Member State is required to prove on the spot the lawfulness of its use under the law of the Member State concerned, at a police check, on pain of an immediate fine from which no exemption is possible, the amount of which is equivalent to the fine that may be imposed for failure to register the vehicle?'

The questions referred

19 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 18 TFEU and Article 20(2)(a) TFEU preclude national legislation under which, as a rule, only vehicles that have administrative authorisation and registration plates issued by the Member State in question may be used on the road network in that Member State and if a resident of that Member State seeks to rely on a derogation from that rule, on the ground that he uses a vehicle made available to him by the keeper of that vehicle established in another Member State, he must be able to prove on the spot, at a police check, that he fulfils the conditions for such a derogation, as laid down by the national legislation in question, on pain of the immediate imposition of a fine equivalent to that applicable in the event of infringement of the registration requirement, without any possibility of an exemption from that fine.

20 At the outset, it should be noted that, even though, formally, the referring court has limited its questions to the interpretation of Article 18 TFEU and Article 20(2)(a) TFEU, such a situation does not prevent the Court from providing the referring court with all the elements of interpretation of European Union law which may be of assistance in adjudicating on the case before it, whether or not that court has specifically referred to them in the questions (see, to that effect, judgments in *ING. AUER*, C-251/06, EU:C:2007:658, paragraph 38, and *van Putten and Others*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 23).

21 The questions referred must be answered in the light of all the provisions of the Treaty and of secondary legislation which may be relevant to the problem (see, to that effect, judgments in *Mutsch*, 137/84, EU:C:1985:335, paragraph 10, and *van Putten and Others*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 24).

22 It is clear from the case file submitted to the Court that Mr Nagy had used on the Hungarian road system, as a resident, a vehicle registered in another Member State, which had been lent to him free of charge by the Austrian company, Alpen-Reisen, of which Mr Nagy's half-brother is one of the members and the legal representative.

23 As the European Commission correctly states, the Court has already held, in relation to a loan agreed between citizens resident in different Member States, that the cross-border lending of a vehicle free of charge constitutes a movement of capital within the meaning of Article 63 TFEU (see, to that effect, judgment in *van Putten and Others*, C-578/10 to C-580/10, EU:C:2012:246, paragraphs 28 and 36).

24 Since Article 63 TFEU is applicable and provides specific rules on non-discrimination, Article 18 TFEU does not apply (see, to that effect, judgment in *Missionswerk Werner Heukelbach*, C-25/10, EU:C:2011:65, paragraph 19).

25 In those circumstances, it is appropriate first to examine the questions referred in the light of Article 63 TFEU then, if necessary, having regard to Article 20(2)(a) TFUE.

26 In that regard, it must be recalled that measures taken by a Member State which are liable to dissuade its residents from obtaining loans in other Member States constitute restrictions within the meaning of Article 63(1) TFEU (see, to that effect, judgments in *Commission* v *Belgium*, C-478/98, EU:C:2000:497, paragraph 18, and *van Putten and Others*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 40).

27 In paragraph 29 of the order in *Kovács* (C-5/13, EU:C:2013:705), which concerned the same Hungarian law as that at issue in the main proceedings, the Court held that that law was tantamount, in its consequences, to the retention of the requirement to register a vehicle in Hungary.

28 That law requires a driver, such as the applicant in the main proceedings, to have permanently in his possession the documents proving that the conditions for the derogation from the registration requirement are fulfilled, on pain of a fine equivalent to that which may be imposed on a person who has infringed the registration requirement. Such a penalty is manifestly disproportionate to the infringement at issue in the main proceedings, which is plainly less serious than that of failure to register a vehicle (see, to that effect, the order in *Kovács*, C-5/13, EU:C:2013:705, paragraphs 25 and 28).

29 In that regard, it must be observed that the situation of a Hungarian resident who uses, on the road network of that Member State, a vehicle that is registered there and made available to him free of charge is objectively comparable to that of another Hungarian resident who uses, under the same conditions, a vehicle registered in a different Member State. However, the use of a vehicle lent free of charge is not subject to the conditions referred to in the previous paragraph of this judgment if the vehicle in question is registered in Hungary.

30 Thus, unless the vehicle registered in a different Member State is intended to be used essentially in Hungary on a permanent basis or if it is, in fact, used in that way, which it is for the referring court to determine, a national law such as that at issue in the main proceedings constitutes a restriction of the free movement of capital within the meaning of Article 63(1) TFEU (see, to that effect, judgment in *van Putten and Others*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 50).

31 According to the Court's well-established case-law, such a restriction of one of the fundamental freedoms guaranteed by the TFEU is permissible only if it pursues a legitimate objective compatible with that Treaty and is justified by overriding reasons in the public interest. Even if that were so, application of that measure would still have to be appropriate for securing the attainment of the objective pursued and not go beyond what is necessary in order to attain that objective (see, inter alia, the order in *Kovács*, C-5/13, EU:C:2013:705, paragraph 31 and the case-law cited).

32 The Court held, in paragraph 34 of the order in *Kovács* (C-5/13, EU:C:2013:705), that while a law such as that at issue in the main proceedings appeared to be appropriate for securing the attainment of the objective of combating tax fraud in the field of registration tax and tax on motor vehicles, it must nevertheless be considered to go beyond what is necessary to attain that objective.

33 As with the factual circumstances giving rise to the order in *Kovács* (C-5/13, EU:C:2013:705), there is nothing in the case file submitted to the Court that leads to the conclusion that, in circumstances such as those at issue in the main proceedings, the objective of combating tax fraud could be attained only if the documents proving that the conditions for derogation from the registration requirement are fulfilled are produced on the spot at a roadside check, on pain of a fine equivalent to that applicable for breach of the registration requirement, and that such an objective could not be attained if those documents were produced, as in the case in the main proceedings, within a short period of time after that check (order in *Kovács*, C-5/13, EU:C:2013:705, paragraph 35).

34 As regards the reasons given based on the need for roadside checks to be effective, relied on by the Hungarian Government in its written observations, it must be recalled that the national law at issue in the main proceedings imposes a fine of a considerable sum intended specifically to penalise the

failure to comply with the registration requirement. Such a measure goes beyond what is necessary to attain the objective of ensuring roadside checks are effective (see, to that effect, the order in *Kovács*, C-5/13, EU:C:2013:705, paragraph 38).

35 In that regard, the Hungarian Government submits that the requirement for the restriction to be proportionate, which the Court had held was not satisfied in the case giving rise to the order in *Kovács*, (C-5/13, EU:C:2013:705), is satisfied in circumstances such as those at issue in the main proceedings which concern a 'citizen of the Union', within the meaning of Article 20 TFEU, who is not a 'worker', within the meaning of Article 45 TFEU. It argues that the possibilities for the checks carried out by the competent national authorities are fewer and the risk of breach of the national law at issue in the main proceedings, more specifically as regards the conditions for the derogations from the registration requirement referred to in Paragraph 25/B of the Law on road transport, are increased in the case of a citizen of the Union who is not a worker. However, such a difference in situation between workers and other citizens of the Union as regards the possibilities of checks, even if it were proved, cannot in any way justify, for the sake of the objective of the effectiveness of roadside checks, the imposition of a fine such as that provided for by that national law.

36 It follows from the foregoing considerations that the law at issue in the main proceedings does not observe the principle of the free movement of capital, within the meaning of Article 63 TFEU and, therefore, it is not necessary to answer the questions referred in relation to Article 20(2)(a) TFEU.

37 Consequently, the answer to the questions referred is that Article 63(1) TFUE precludes national legislation under which, as a rule, only vehicles that have administrative authorisation and registration plates issued by the Member State in question may be used on the road network in that Member State and under which, if a resident of that Member State seeks to rely on a derogation from that rule, on the grounds that he uses a vehicle made available to him by the keeper of that vehicle established in another Member State, he must be able to prove on the spot, during a police check, that he fulfils the conditions for such a derogation, as laid down by the national legislation in question, on pain of the immediate imposition of a fine equivalent to that applicable in the event of infringement of the registration requirement, without any possibility of an exemption from that fine.

Costs

38 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 (Seventh Chamber) hereby rules:

Article 63(1) TFUE precludes national legislation under which, as a rule, only vehicles that have administrative authorisation and registration plates issued by the Member State in question may be used on the road network in that Member State and under which, if a resident of that Member State seeks to rely on a derogation from that rule, on the grounds that he uses a vehicle made available to him by the keeper of that vehicle established in another Member State, he must be able to prove on the spot, during a police check, that he fulfils the conditions for such a derogation, as laid down by the national legislation in question, on pain of the immediate imposition of a fine equivalent to that applicable in the event of infringement of the registration requirement, without any possibility of an exemption from that fine.

[Signatures]