JUDGMENT OF THE COURT (Third Chamber)

26 June 2008 *

In Joined Cases C-329/06 and C-343/06,

REFERENCES under Article 234 EC for a preliminary ruling from the Verwaltungsgericht Sigmaringen (Germany) (C-329/06) and the Verwaltungsgericht Chemnitz (Germany) (C-343/06), made by decisions of 27 June and 3 August 2006, respectively, received at the Court on 28 July and 8 August 2006, in the proceedings

Arthur Wiedemann (C-329/06)

v

Land Baden-Württemberg,

and

* Language of the case: German.

Peter Funk (C-343/06)

v

Stadt Chemnitz,

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues, J. Klučka, A. Ó Caoimh and A. Arabadjiev, Judges,

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 27 September 2007,

after considering the observations submitted on behalf of:

— Mr Wiedemann, by G. Stöger, Rechtsanwalt,

— Mr Funk, by A.M. Kohn, Rechtsanwalt,

— the Land Baden-Württemberg, by F. Laux, acting as Agent,

— the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,

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

— the Portuguese Government, by L. Fernandes and M. Ribes, acting as Agents,

— 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 14 February 2008,

gives the following

Judgment

1 The references for a preliminary ruling concern the interpretation of Articles 1(2), 7(1) and 8(2) and (4) 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 Those references have been made in two sets of proceedings, one between Mr Wiedemann and the Land Baden-Württemberg (Case C-329/06) and the other between Mr Funk and the Stadt Chemnitz (Case C-343/06), concerning the Federal Republic of Germany's refusal to recognise the driving licences obtained by Mr Wiedemann and Mr Funk in the Czech Republic after the administrative withdrawal of their German driving licences for consumption of drugs and of alcohol, respectively.

Legal context

The relevant provisions of Community law

3 The first recital in the preamble to Directive 91/439, which repealed First Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence (OJ 1980 L 375, p. 1), states, as from 1 July 1996:

'… [F]or 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 It is stated in the fourth recital of the preamble to that directive:

'… [O]n 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:

'… [F]or reasons connected with road safety and traffic, Member States should be able to apply their national provisions on the withdrawal, suspension and cancel-

lation of driving licences to all licence holders having acquired normal residence in their territory.'

6 Article 1 of Directive 91/439 provides:

'1. Member States shall introduce a national driving licence based on the Community model described in Annex I or Ia, in accordance with the provisions of this Directive …

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

3. Where the holder of a valid national driving licence takes up normal residence in a Member State other than that which issued the licence, the host Member State may apply to the holder of the licence its national rules on the period of validity of the licences, medical checks and tax arrangements and may enter on the licence any information indispensable for administration.'

7 In accordance with Article 7(1) of Directive 91/439, the issue of a driving licence is subject to the following conditions:

'Driving licences shall, moreover, 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 In accordance with point 14 of Annex III to the directive, headed 'Minimum standards of physical and mental fitness for driving a power-driven vehicle', alcohol consumption constitutes a major danger to road safety and in view of the scale of the problem the medical profession must be very vigilant. The first subparagraph of point 14.1 of that annex states that '[d]riving licences shall not be issued to, or renewed for, applicants or drivers who are dependent on alcohol or unable to refrain from drinking and driving'. The second subparagraph of Point 14.1 provides that '[a]fter a proven period of abstinence and subject to authorised medical opinion and regular medical check-ups, driving licences may be issued to, or renewed for, applicants or drivers who have in the past been dependent on alcohol'.

9 Point 15 of that annex provides that '[d]riving licences shall not be issued to or renewed for applicants or drivers who are dependent on psychotropic substances or who are not dependent on such substances but regularly abuse them, whatever category of licence is requested'. Point 15.1 states that 'Driving licences shall not be issued to, or renewed for, applicants or drivers who regularly use psychotropic substances, in whatever form, which can hamper the ability to drive safely where the quantities absorbed are such as to have an adverse effect on driving. This shall apply to all other medicinal products or combinations of medicinal products which affect the ability to drive'.

10 It is clear from point 5 of that annex that the standards set by Member States for a medical examination before the issue or any subsequent renewal of driving licences may be stricter than those set out in the annex.

11 In accordance with Article 7(5) of the directive:

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

12 Article 8 of Directive 91/439 provides:

'…

2. Subject to observance of the principle of territoriality of criminal and police laws, the Member State 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.

…'

13 The first paragraph of Article 9 states that 'normal residence' means 'the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living'.

14 Article 12(3) of Directive 91/439 provides:

'The Member States shall assist one another in the implementation of this Directive and shall, if need be, exchange information on the licences they have registered.'

The relevant provisions of German law

The legislation on recognition of driving licences issued by other Member States

15 Paragraph 28(1), (4) and (5) of the regulation on access to driving 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') 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 recognised. 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, in Germany, been provisionally or definitively withdrawn by act of a court or tribunal or been withdrawn by an immediately enforceable or final decision of an administrative authority, or who have been refused a driving licence by immediately enforceable decision or whose driving licence has been withdrawn not solely because surrendered in the meantime

…

(5) The right to use an EU 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 prohibition of applying for a new licence no longer obtain.'

The rules on withdrawal of a driving licence

16 According to Paragraph 69 of the Criminal Code (Strafgesetzbuch), a criminal court is to order the withdrawal of a driving licence if it is apparent from the facts of the case that a defendant is unfit to drive a motor vehicle. In accordance with Paragraph 69a of that code, when a court orders withdrawal of a licence it is also to order that no application may be made for the issue of a new driving licence for a given period ('the period of the prohibition') which may vary from six months to five years and may even, in some circumstances, be ordered to last for life.

17 By virtue of Article 46 of the FeV, a provision implementing Paragraph 3 of the Law on Road Traffic (the Straßenverkehrsgesetz), the driving licence authority is to withdraw the right to drive if it is shown that the holder of a licence is unfit to drive motor vehicles. In accordance with Paragraph 46(5), the right to drive is terminated by the act of withdrawal of the driving licence. If that licence was issued abroad, its withdrawal extinguishes the right to drive vehicles in Germany.

The rules on fitness to drive

18 Paragraph 11 of the FeV, headed 'Fitness', provides:

'(1) Applicants for a driving licence must satisfy the relevant physical and mental requirements. In particular, those requirements are not satisfied in the case of

sickness or disability referred to in Annex 4 or in Annex 5 which excludes fitness [to drive motor vehicles] or entails only limited fitness …

(2) Where circumstances exist which give rise to doubt as to the physical or mental fitness of an applicant for a driving licence, the competent authorities may order the applicant to produce a medical report as an inquiry preparatory to the decisions to be taken on the issue or extension of a driving licence or on the imposition of restrictions or conditions. …

(3) Production of a report made by an officially approved centre for the testing of fitness to drive (medical-psychological report) may be ordered in order to dispel doubts as to fitness to drive for the purposes of subparagraph 2 [in particular]

…

4. in the case of serious or repeated contraventions of the highway code or of road traffic offences or offences related to fitness to drive …

or

5. on the new grant of a driving licence,

…

b. when the withdrawal of the licence was based on one of the grounds set out in subparagraph 4.

…

(8) If the person concerned refuses to be examined or if he does not within the period prescribed produce to the competent driving licence authority the medical report required by the latter, the competent authority is entitled to conclude in its decision that the person concerned is unfit to drive.'

19 Headed 'Fitness in cases of alcohol problems', Paragraph 13 of the FeV gives the competent authorities power to order, in certain circumstances, the production of a medical-psychological report for the purposes of inquiries preparatory to the decisions to be taken either to issue or extend a driving licence or to impose restrictions or conditions relating to the right to drive. That is, in particular, the case when, according to medical opinion or on account of certain facts, there is evidence of abuse of alcohol or when road traffic offences have on several occasions been committed under the influence of alcohol.

20 Paragraph 14 of the FeV, headed 'Fitness in cases of narcotic drugs problems', is worded as follows:

'(1) For the purposes of inquiries preparatory to the decisions to be taken to issue or extend a driving licence or to impose restrictions or conditions, the competent

authorities shall order the production of a medical report (third sentence of Paragraph 11(2)) when certain facts suggest

1. dependence on narcotics within the meaning of the Law on narcotics [(Gesetz über den Verkehr mit Betäubungsmitteln [Betäubungsmittelgesetz])] in the version published on 1 March 1994 (BGBl. 1994 I, p. 358), … amended by Paragraph 4 of the law of 26 February 1998 (BGBl. [1998] I, p. 160), in the text applicable, or on any other substance with psychoactive effect,

2. consumption of narcotics within the meaning of the Law on narcotics, …

…

(2) Production of a medical-psychological report shall be ordered for the purposes of subparagraph 1 if

1. the driving licence has been withdrawn for one of the reasons set out in subparagraph 1 or

2. it is necessary to establish whether the person concerned is still dependent on narcotics or — while not dependent on them — continues to take substances mentioned in subparagraph 1.'

21 Paragraph 20(1) of the FeV provides that, when a new driving licence is issued following a withdrawal, the same provisions apply as for the first issue of a licence. Although, according to Paragraph 20(2) of the FeV, the competent authority may decide not to order the tests in relation to the issue of a licence when there is nothing to suggest that the applicant no longer possesses the knowledge or fitness required for that purpose, Paragraph 20(3) provides that such a decision does not alter the obligation to produce a medical-psychological report laid down in the fifth point of the first paragraph of Paragraph 11(3) of the FeV.

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

Case C-329/06

22 Mr Wiedemann, a German national, has lived in Germany since 30 June 1995, residing first at Bad Waldsee and then at Wangen im Allgäu.

23 On 29 April 2002 the Landratsamt Ravensburg (district administration, Ravensburg) issued him with a category B driving licence for a probationary period of two years. On 2 September 2003 Mr Wiedemann was ordered to take part in a training seminar as the result of the commission of a road traffic offence. On 20 March 2004 a test carried out on his urine revealed use of heroin and cannabis. On that occasion he admitted regular use of cannabis.

24 By decision of 14 April 2004 the Landratsamt Ravensburg withdrew Mr Wiedemann's driving licence on the ground that he was unfit to drive a motor vehicle on account of his drug use.

25 Mr Wiedemann's appeal against that decision was rejected by the Regierungspräsidium Tübingen (Tübingen regional authority) by decision of 16 August 2004, which became final on 20 September 2004.

26 On 19 September 2004, a Sunday, the competent driving licence authorities of the city of Karlovice (Czech Republic) adopted a decision recognising Mr Wiedemann's right to drive. A category B Czech driving licence was issued to him on 1 October 2004, indicating 'Bad Waldsee, Germany' as the holder's place of residence.

27 In possession of that licence, Mr Wiedemann drove in Germany where he caused an accident on 11 October 2004. On 16 October 2004 that licence was taken away by the Ravensburg police.

28 By decision of the Landratsamt Ravensburg of 27 October 2004, Mr Wiedemann was deprived of his right to drive motor vehicles in Germany, that right arising from his Czech driving licence, on the ground that he had not, pursuant to German law, demonstrated that he was fit to drive such vehicles. The driving licence was returned to him after being endorsed as follows: 'This driving licence does not authorise the holder to drive motor vehicles in Germany'.

29 The Czech Ministry of Transport was told by the German authorities that the competent Czech authorities had issued a driving licence without taking into account the fact that Mr Wiedemann had his main residence in Germany or the earlier with-

drawal of his German driving licence on grounds of his unfitness to drive due to his use of drugs, which, moreover, had not ceased.

30 By letters of 18 April 2005 and 10 January 2006 the Czech Ministry of Transport declared that there would be an investigation of the decisions taken by the competent Czech authorities.

31 His appeal against the decision of 27 October 2004 having been unsuccessful, Mr Wiedemann brought an action on 6 July 2005 before the Verwaltungsgericht Sigmaringen (Administrative Court of Sigmarigen), which has decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are Articles 1(2) and 8(2) and (4) of Directive [EEC] 91/439 to be interpreted as meaning that the withdrawal of a driving licence by administrative authorities in the [Member] State of residence on the ground of unfitness to drive does not prevent another Member State from issuing a driving licence, and that in principle the [Member] State of residence must recognise such a driving licence?

(2) Is Article 1(2), in conjunction with Articles 7(1)(a) and 8(2) and (4) of, and Annex III to, Directive [EEC] 91/439, to be interpreted as meaning that there is no obligation imposed on the [Member] State of residence to recognise a driving licence which, after his driving licence was withdrawn in his [Member] State of residence, the holder obtained fraudulently, by deliberately deceiving the competent driving licence authorities of the issuing [Member] State, without proving that he had become fit to drive again, or as a result of collusion with employees of the authorities of the issuing [Member] State?

(3) On a proper construction of Articles 1(2) and 8(2) and (4) of Directive [EEC] 91/439, after a driving licence has been withdrawn by the administrative authorities of the [Member] State of residence, may that State temporarily suspend, or prohibit the use of, a driving licence issued by another Member State while that issuing State considers whether to revoke that driving licence fraudulently obtained?'

32 On 26 April 2007 the Court was notified of a letter dated 14 March 2006 addressed to the German Minister for Transport by his Czech counterpart, in which the latter confirmed that Mr Wiedemann's Czech driving licence had been issued to him in accordance with the applicable rules. That letter, and a translation of it into German, were supplied to the Court by the court making the reference. In accordance with Article 23 of the Statute of the Court of Justice, those documents were notified to all the interested parties that had submitted written observations.

Case C-343/06

33 By final judgment of the Amtsgericht Chemnitz (Chemnitz local court) of 25 May 2001, Mr Funk, the holder of a Category B driving licence issued in Germany on 12 July 2000, was convicted of driving under the influence of alcohol. His authorisation to drive was annulled and his driving licence taken away, and it was ordered that he should not obtain a new German driving licence for a period of nine months expiring on 24 February 2002.

34 As one of the steps taken by Mr Funk in order to obtain a new driving licence, he underwent a medical-psychological examination. The resulting report, of 7 February 2002, concluded that he was not fit to drive motor vehicles, on the ground that that there was a significant danger of his reoffending, his personality not having changed for the better. None the less, after following a course, Mr Funk obtained a new driving licence on 26 March 2002.

35 A check carried out on 17 June 2002 established that Mr Funk was again under the influence of alcohol. Another report, drawn up on 17 June 2003 in response to that check, having concluded that it was to be foreseen that Mr Funk would continue to drive vehicles under the influence of alcohol, the city of Chemnitz again withdrew his licence, by an uncontested decision of 15 July 2003.

36 On 2 December 2003 Mr Funk applied for a new licence. However, an unfavourable report having been prepared on 27 February 2004, he withdrew his application.

37 The decision for reference shows that on 9 December 2004 when, according to the information he had supplied to the residents' registration office of the Stadt Chemnitz, he was resident in that locality exclusively, a fact he himself later confirmed, Mr Funk obtained a Category B driving licence in Teplice (Czech Republic).

38 Informed of that fact, on 10 February 2005 the Stadt Chemnitz ordered Mr Funk to submit a medical-psychological report establishing his fitness to drive motor vehicles. When he failed to comply with that order, the Stadt Chemnitz withdrew his right to use his Czech driving licence in Germany by decision of 11 May 2005 and ordered him, on pain of paying a fine, to produce that licence so that that prohibition could be endorsed on it. By decision of 31 May 2005, the fine payable for non-compliance with that order was fixed at EUR 500, Mr Funk being in addition warned that that licence might be withdrawn.

39 His appeal against those decisions not being successful, Mr Funk brought an action before the Verwaltungsgericht Chemnitz (Administrative Court of Chemnitz), which has decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) May a Member State, in accordance with Article 1(2) in conjunction with Article 8(2) and (4) of Directive [91/439], require the holder of a driving licence issued in another Member State to apply to the national authority of the first Member State for recognition of the right to use that licence in its territory when the holder of that licence has previously, in the territory of the first Member State, had his driving licence withdrawn or cancelled for some reason?

(2) If it may not, 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 may refuse to recognise in its territory a driving licence issued by another Member State when the person concerned has had a previous driving licence [issued by that first Member State] withdrawn by the administrative authorities, where, according to the law of that first Member State, in the case of administrative measures for the withdrawal or cancellation of a driving licence, there is no period during which [a new driving licence] may not be issued and one of the fundamental conditions for entitlement to that issue is that the person concerned should, when so ordered by the administrative authorities, have supplied evidence of his fitness to drive in the form of a medical-psychological report the detailed rules governing which are laid down by national law?

(3) If it is not, 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 may refuse to recognise in its territory a driving licence issued by another Member State when the holder has had a previous driving licence [issued by that first Member State] withdrawn or cancelled by the administrative authorities in that Member State, and when there are grounds for concluding, on the basis of objective evidence (non-residence in the Member State issuing the driving licence in question or the failure of an application for issue of a new licence in the first Member State), that the only reason for acquiring the foreign EU driving licence was to circumvent the strict substantive requirements of national procedure in the first Member State for the issue of a new driving licence, particularly the need for a medical-psychological report?’

40 A letter of 5 September 2005 from the Czech Ministry of Transport confirming the validity of Mr Funk's Czech driving licence was annexed to his observations and also communicated to the Court by letter of 21 June 2007. In accordance with Article 23 of the Statute of the Court Justice, that document has been sent to all the persons having submitted written observations.

Procedure before the Court of Justice

41 By order of 10 October 2006 the President of the Court of Justice ordered that Cases C-329/06 and C-343/06 should be joined for the purposes of the written and oral procedures and also for judgment.

42 By a series of written questions notified on 1 August 2007, the Court asked the Czech Government about the law of the Czech Republic concerning the investigation of the conditions laid down in Article 7(1)(a) and (b) of Directive 91/439, and inquired whether it is possible to issue a driving licence including an entry indicating the holder's residence in another Member State and about the criteria applicable in order to ascertain whether a person has his residence in that Member State and whether checks are made to establish whether that residence is genuine.

43 By fax received at the Court Registry on 31 August 2007, the Czech Government stated in response to those questions that the condition of normal residence, as laid down by Directive 91/439, had not been introduced into the Czech legal order until 1 July 2006. In the period before that date, the Czech rules allowed authorisation to drive to be issued to persons having neither a permanent nor a temporary residence in the territory of the Czech Republic.

Concerning the questions referred for a preliminary ruling

44 These questions referred for a preliminary ruling concern two features of the mutual recognition of driving licences which it is appropriate to examine in turn, namely, first, whether a Member State may refuse to recognise the validity of a driving licence issued by another Member State and, second, whether it may temporarily suspend the right to drive stemming from such a licence until the issuing Member State has taken a decision as to the possible withdrawal of that licence.

Whether a Member State may refuse to recognise the validity of a driving licence issued by another Member State

45 The first point to be noted here is that in the procedure laid down by Article 234 EC providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. In addition, it is to be borne in mind that the Court has a duty to interpret all provisions of Community law necessary to national courts in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (Case C-280/91 *Viessmann* [1993] ECR I-971, paragraph 17; Case C-42/96 *Immobiliare SIF* [1997] ECR I-7089, paragraph 28, and Case C-45/06 *Campina* [2007] ECR I-2089, paragraphs 30 and 31).

46 Here, having regard to the facts giving rise to the cases in the main proceedings and also to the terms of the observations submitted to the Court, examination of the questions raised must take into account Article 7(1)(a) and (b) of Directive 91/439. In order to furnish a reply both helpful and as complete as possible to the questions referred, it is therefore appropriate to widen their scope in so far as the national courts have not done so.

47 By the first two questions in Case C-329/06 and the second and third questions in Case C-343/06, the referring courts have in essence sought to ascertain whether Articles 1(2), 7(1)(a) and (b) and 8(2) and (4) of Directive 91/439 are to be interpreted as preventing one Member State (the host Member State) from refusing to recognise in its territory a driving licence subsequently issued by another Member State (the issuing Member State) to a person who has earlier, in the host Member State, had his previous driving licence withdrawn for driving under the influence of drugs or alcohol, when that person has obtained that licence after any period in which he is forbidden to apply for a new licence, but in disregard of the condition of residence or of the conditions of fitness to drive imposed by the host Member State in that respect for the purposes of road safety.

48 Those questions may appropriately be examined with the first question in Case C-343/06 which seeks, in essence, to ascertain whether a host Member State may require the holder of a new driving licence, issued by another Member State, to apply for recognition of the right to use that licence in the host Member State, before using the licence, when his previous driving licence has been withdrawn or cancelled in that latter State.

49 The first recital in the preamble to Directive 91/439 states that the general principle of mutual recognition of driving licences issued by the Member States, laid down in Article 1(2) of that directive, was established in order to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test (Case C-476/01 *Kapper* [2004] ECR I-5205, paragraph 71).

50 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 (judgments in Case C-230/97 *Awoyemi* [1998] ECR I-6781, paragraphs 41 and 43; Case C-246/00 *Commission* v *Netherlands* [2003] ECR I-7485, paragraphs 60 and 61; and *Kapper*, paragraph 45; orders of 6 April 2006 in Case

C-227/05 *Halbritter* [2006] ECR I-0049, and of 28 September 2006 in Case C-340/05 *Kremer* [2006] ECR I-0098).

51 It follows that the host Member State may not impose any formality as a precondition for recognition of a driving licence issued by another Member State. It is therefore contrary to that principle of mutual recognition to demand of the holder of a driving licence issued by one Member State that he should apply for recognition of that licence in another Member State (see, to that effect, *Commission* v *Netherlands*, paragraph 60 et seq.).

52 It is for the issuing Member State to investigate whether the minimum conditions imposed by Community law, particularly those relating to residence and fitness to drive, have been satisfied and, therefore, whether the issue of a driving licence — as the case may be, of a new licence — is justified.

53 As soon, therefore, as the authorities of one Member State have issued a driving licence in accordance with Article 1(1) of Directive 91/439, the other Member States are not entitled to investigate whether the conditions for issue laid down by that directive have been observed (see, to that effect, the orders in *Halbritter*, paragraph 34, and *Kremer*, paragraph 27). The possession of a driving licence issued by one Member State has to be regarded as constituting proof that, on the day that licence was issued, its holder fulfilled those conditions (see, to that effect, *Commission* v *Netherlands*, paragraph 75; the order of 11 December 2003 in Case C-408/02 *Da Silva Carvalho*, and *Kapper*, paragraph 46). The fact that, in accordance with point 5 of Annex III to that directive, a Member State may require, for any issue of a driving licence, a medical examination stricter than those mentioned in that annex does not, therefore, affect that Member State's duty to recognise driving licences issued by the other Member States in accordance with that directive.

54 It follows, first, that a host Member State making the issue of a driving licence subject to stricter domestic conditions, especially after an earlier licence has been

withdrawn, may not refuse to recognise a driving licence subsequently issued by another Member State solely on the ground that the holder of that new licence has obtained it pursuant to national legislation that does not impose the same requirements as the host Member State.

55 Second, it is contrary to the principle of mutual recognition for a host Member State to refuse to recognise a driving licence issued by another Member State on the ground that, according to the information supplied by the host Member State, the holder of that licence did not, at the date of its issue, satisfy the necessary conditions for obtaining it (see, to that effect, the order in *Da Silva Carvalho*, paragraph 22, and *Kapper*, paragraph 47).

56 Inasmuch as Directive 91/439 confers on the issuing Member State exclusive competence to check that driving licences are issued in compliance with the requirements imposed by that directive, it is for that Member State alone to take appropriate measures in respect of which it is subsequently established that the holders did not satisfy those conditions (see, to that effect, the order in *Da Silva Carvalho*, paragraph 23, and *Kapper*, paragraph 48).

57 If a Member State has good reason to doubt the validity of a licence issued by another Member State, it must so inform the latter under the rules relating to mutual assistance and the exchange of information contained in Article 12(3) of Directive 91/439. Should the issuing Member State fail to take the appropriate measures, the host Member State may bring proceedings against it under Article 227 EC for a declaration by the Court that there has been a failure to fulfil the obligations arising under Directive 91/439 (see, to that effect, the order in *Da Silva Carvalho*, paragraph 23, and *Kapper*, paragraph 48).

58 It is true that, for reasons of road traffic safety, as is made clear by the last recital in the preamble to Directive 91/439, Article 8(2) and (4) permits the Member States,

in certain circumstances, to apply their national provisions on the restriction, suspension, withdrawal or cancellation of driving licences to any licence-holder having normal residence in their territory.

59 It is, however, to be borne in mind, first, that that right, as it arises from Article 8(2) of Directive 91/439, may be exercised only by reason of some conduct of the person concerned after he has obtained a driving licence issued by another Member State (see, to that effect, the orders in *Halbritter*, paragraph 38, and *Kremer*, paragraph 35).

60 Second, the first subparagraph of Article 8(4), which authorises a Member State to refuse to recognise the validity of a driving licence obtained in another Member State by a person who is, in the first Member State's territory, the subject of a measure restricting, suspending, withdrawing or cancelling a licence, constitutes a derogation from the general principle of mutual recognition of driving licences and is, therefore, to be interpreted strictly (see, to that effect, *Kapper*, paragraphs 70 and 72, and the orders in *Halbritter*, paragraph 35, and *Kremer*, paragraph 28).

61 It must at the outset be stressed that, even if that provision enables a Member State, on certain conditions, to refuse recognition of a driving licence issued by another Member State, it does not for that reason follow, as the German Government would have it, that the first Member State may make the right to use a licence issued by the second State conditional upon prior positive authorisation (see, to that effect, the order in *Kremer*, paragraph 37).

62 Given that the issuing of a driving licence by a Member State must be effected in compliance with the minimum requirements laid down by Directive 91/439, including those set out in Annex III thereto, relating to fitness to drive, an interpretation of the first subparagraph of Article 8(4) of that directive to the effect that, in general

terms, anyone who has held a driving licence that has been withdrawn or cancelled in a Member State may be obliged to appear before the competent authorities of that Member State in order to obtain authorisation to make use of the right to drive arising from the driving licence subsequently issued in another Member State would run counter to the obligation of mutual recognition without formalities.

63 Nor may that provision be relied on by a Member State to refuse indefinitely to recognise, in relation to a person who has been the object in its territory of a measure withdrawing or cancelling a previous licence issued by that State, the validity of any licence that may subsequently be issued to him by another Member State (see, to that effect, *Kapper*, paragraph 76, and the orders in *Halbritter*, paragraph 27, and *Kremer*, paragraph 29). To accept that a Member State is entitled to rely on its national provisions in order to refuse indefinitely to recognise a licence issued by another Member State would be fundamentally incompatible with the principle of mutual recognition of driving licences which is the linchpin of the system established by Directive 91/439 (*Kapper*, paragraph 77, and the orders in *Halbritter*, paragraph 28, and *Kremer*, paragraph 30).

64 More particularly, the Court has held in paragraph 38 of its order in *Kremer* that when a person has been the object of a measure withdrawing his driving licence in the territory of a Member State but not including a period in which it is prohibited to apply for a new licence, it is contrary to Article 1(2) in conjunction with Article 8(2) and (4) of Directive 91/439 for that Member State to refuse to recognise, in its territory, the right to drive stemming from a driving licence subsequently issued in another Member State and, therefore, the validity of that licence, so long as the licence-holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following that withdrawal, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence.

65 In contrast, it is clear from the foregoing that, when the person concerned has been the object of a measure withdrawing his driving licence and prohibiting any application for a new licence for a given period, it is not contrary to Articles 1(2) and 8(4) of

Directive 91/439 for a Member State to refuse to recognise a new licence issued by another Member State during the period of that prohibition.

66 Similarly, although Article 8(2) of Directive 91/439 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 Member State of normal residence, that provision does nevertheless allow that State, as recalled in paragraphs 58 and 59 above, subject to observance of the principle of territoriality of criminal and police laws, to restrict, suspend, withdraw or cancel the new licence if that is warranted, according to the law of the host Member State, by the holder's conduct after the issue of the new licence.

67 In order to answer the questions raised by the national courts, particular consideration must next be given to the application of the principle of mutual recognition, as set out above, when it has established that the new driving licence was issued in disregard of the residence condition imposed by Directive 91/439.

68 In this regard, the fourth recital in the preamble to that directive shows that the conditions laid down in order to ensure road safety include those contained in Article 7(1)(a) and (b) of that directive, which makes the issue of a driving licence conditional upon the requirements relating to fitness to drive and residence, respectively.

69 As remarked by the Commission of the European Communities in its observations, the residence condition helps, inter alia, the fight against 'driving-licence-tourism', in the absence of complete harmonisation of the laws of the Member States relating to the issuing of driving licences. Moreover, as the Advocate General has pointed out in paragraph 78 of his Opinion, that condition is indispensable if observance of the condition of fitness to drive is to be monitored.

70 Article 7(5) of Directive 91/439, in providing that no person may hold a driving licence from more than one Member State, affirms the single nature of a driving licence. So, as a precondition making it possible to establish whether a particular candidate has observed the other conditions imposed by the directive, the condition of residence, which determines the Member State of issue, assumes special importance in relation to the other conditions laid down by the directive.

71 Road safety might, therefore, be jeopardised if the condition of residence were not observed with regard to someone whose right to drive has been restricted, suspended, withdrawn or cancelled for the purposes of Article 8(4) of Directive 91/439.

72 It follows that, when it is possible to determine, not in the light of information supplied by the host Member State but on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that the condition of residence laid down by Article 7(1)(b) of Directive 91/439 had not been satisfied when that licence was issued, the host Member State, in whose territory the holder of that licence has been the object of a measure withdrawing an earlier driving licence, may refuse to recognise the right to drive stemming from the driving licence later issued by another Member State following any period in which it is prohibited to apply for a new licence.

73 Having regard to all the foregoing considerations, the answer to be given to the questions referred must be that, on a proper construction of Articles 1(2), 7(1) and 8(2) and (4) of Directive 91/439, it is contrary to those provisions for a Member State, in circumstances such as those of the cases in the main proceedings, to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State following any period in which the person concerned is forbidden to apply for a new licence and therefore, the validity of that licence, so long as the licence-holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following the withdrawal of a previous licence, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence. In the same circumstances, it is not

contrary to those provisions for a Member State to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that when that licence was issued its holder, who had been the object, in the territory of the first Member State, of a measure withdrawing an earlier licence, was not normally resident in the territory of the Member State of issue.

Whether it is possible to suspend temporarily the right to drive stemming from a driving licence issued by another Member State

74 By its third question, the national court in Case C-329/06 seeks, essentially, to ascertain whether, on a proper construction of Articles 1(2) and 8(2) and (4) of Directive 91/439, a Member State may, after a driving licence has been withdrawn by its administrative authorities, temporarily suspend in the interests of road safety the right to drive stemming from a licence subsequently issued by another Member State, when the latter has indicated that it was to conduct an examination of the procedure followed in the issuing of that new licence which might lead to its withdrawal.

The relevance of the question

75 In its written observations concerning Case C-329/06, the German Government maintains that, as a result of the position expressed by the Czech Republic in its letter of 14 March 2006, referred to in paragraph 32 above, that it would not withdraw Mr Wiedemann's licence, the question is no longer relevant.

76 It is to be borne in mind that, in proceedings under Article 234 EC, which is based on a clear separation of functions between the national courts and the Court of Justice, it is for the national court alone, before which the dispute has been brought, and which must assume responsibility for the judicial decision to be made, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it refers to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, in particular, Case C-379/98 *Preussen Elektra* [2001] ECR I-2099, paragraph 38; Case C-341/05 *Laval un Partneri* [2007] ECR I-11767, paragraph 45; and Case C-450/06 *Varec* [2008] ECR I-581, paragraph 23).

77 Nevertheless, the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (*Varec*, paragraph 24 and the case-law cited). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical (see, in particular, *PreussenElektra*, paragraph 39, and *Laval un Partneri*, paragraph 46).

78 In this case the German Government does not challenge the Court's jurisdiction at the moment when the preliminary ruling proceedings were initiated. It does no more than observe that this question has become irrelevant as a result of the letter of 14 March 2006 of the Czech Minister for Transport, given that that letter expresses the definitive refusal of the Czech authorities to initiate a procedure for the withdrawal of the Czech driving licence at issue in the main proceedings.

79 It is, however, for the national court and not for the Court of Justice to determine the significance of that letter in order to establish whether it contains such a refusal. In any case, it is for the national court alone to decide whether, in the light of events of which it was informed after the decision to refer, the reply to that question now serves no purpose in the settlement of the case before it.

80 It follows that an answer must be given to this question.

Substance

81 First of all, it is to be noted that when, on the basis of Directive 91/439, a Member State is bound to recognise a driving licence issued by another Member State, the effectiveness of mutual recognition of driving licences would be jeopardised if it were possible for that Member State to decide to suspend the right to drive stemming from that licence while the second Member State investigates the procedure followed for its issue.

82 In such a situation, even if that investigation may lead to withdrawal of the licence in question, temporary suspension of the right to drive stemming from that licence would be based on a presumption of unlawfulness irreconcilable with the Court's case-law referred to in paragraph 53 above, according to which possession of a driving licence issued by a Member State must be considered by every other Member State as constituting proof that the holder of that licence, on the day it was issued to him, had fulfilled the conditions for issue laid down by Directive 91/439.

83 A Member State which, after adopting a measure withdrawing a person's driving licence, is bound by virtue of the provisions of that directive to recognise a licence subsequently issued to that person by another Member State, may not, therefore, suspend the right to drive stemming from that new licence.

84 When, however, in accordance with the second part of the reply set out in paragraph 73 above, a Member State is, exceptionally, entitled to refuse to recognise the

validity of a driving licence issued by another Member State, that first State is a fortiori empowered to suspend the right to drive of the holder of that licence while the second Member State undertakes the investigation of the procedure followed in the issue of the licence, particularly as regards observance of the condition of residence imposed by Article 7(1)(b) of Directive 91/439, which might possibly lead to the withdrawal of the licence.

85 Furthermore, as has been stated in paragraph 66 above, it is important to bear in mind that a Member State may, by virtue of Article 8(2) of Directive 91/439, 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 on account of that person's conduct after that licence was issued.

86 In light of the foregoing considerations, the reply to be given to the third question referred in Case C-329/06 must be that it is contrary to Articles 1(2) and 8(2) and (4) of Directive 91/439 for a Member State bound, in accordance with that directive, to recognise the right to drive stemming from a driving licence issued by another Member State, to suspend that right temporarily while the latter Member State investigates the procedure followed in the issuing of that licence. In contrast, in that same context, it is not contrary to those provisions for a Member State to decide to suspend that right if it is clear from entries in that licence or other incontestable information supplied by that other Member State that the condition of residence imposed in Article 7(1)(b) of that directive was not satisfied at the moment when that licence was issued.

Costs

87 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:

1. **On a proper construction of Articles 1(2), 7(1) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, it is contrary to those provisions for a Member State, in circumstances such as those of the cases in the main proceedings, to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State beyond any period in which the person concerned is forbidden to apply for a new licence and, therefore, to recognise the validity of that licence, so long as the licence-holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following the withdrawal of a previous licence, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence.**

   In the same circumstances, it is not contrary to those provisions for a Member State to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that when that licence was issued its holder, who had been the object, in the territory of the first Member State, of a measure withdrawing an earlier licence, was not normally resident in the territory of the Member State of issue.

2. **It is contrary to Articles 1(2) and 8(2) and (4) of Directive 91/439, as amended by Regulation No 1882/2003, for a Member State bound, in accordance with**

that directive, to recognise the right to drive stemming from a driving licence issued by another Member State, to suspend that right temporarily while the latter Member State investigates the procedure followed in the issuing of that licence. In contrast, in that same context, it is not contrary to those provisions for a Member State to decide to suspend that right if it is clear from entries in that licence or from other incontestable information supplied by that other Member State that the condition of residence imposed in Article 7(1)(b) of that directive was not satisfied at the moment when that licence was issued.

[Signatures]