

Case C-454/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

23 September 2020

Referring court:

Rayonen sad Lukovit (Bulgaria)

Date of the decision to refer:

23 September 2020

Prosecuting authority:

Rayonna prokuratura Lukovit

Accused person:AZ**Subject matter of the main proceedings**

Criminal proceedings brought by the Rayonna prokuratura Lukovit (District Public Prosecutor's Office, Lukovit, Bulgaria), asking that the accused, AZ, be found guilty of a criminal offence under Article 345(2) of the Nakazatelen kodeks (Criminal Code, 'NK'), for driving a motor vehicle which was not duly registered, thus infringing Article 140(1) and (2) of the Zakon za dvizhenieto po patishtata (Law on road traffic, 'ZDvP') and Naredba No I-45 ot 24.03.2000 za registrirane, otchet, spirane ot dvizhenie i puskane v dvizhenie, vremenno otnemane, prekratyavane i vazstanovyavane na registratsiyata na motornite prevozni sredstva i remarketa, tegleni ot tyah, i reda za predostavyane na danni za registriranite patni prevozni sredstva (Ordinance No I-45 of 24 March 2000 relating to the registration, reporting, entry into service and immobilisation of motor vehicles and their trailers as well as the suspension, termination and reinstatement of their registration, and setting out the procedure for the provision of data relating to registered road vehicles, 'the Ordinance'), following which, under Article 78a(1) of the NK, the accused person should be released from criminal liability and an administrative penalty in the form of a fine should be imposed on him.

Subject matter and legal basis of the request

Second paragraph of Article 267 of the Treaty on the Functioning of the European Union.

Questions referred for a preliminary ruling

- (1) Does the principle of legality of criminal offences and penalties allow national legislation which provides for both administrative and criminal liability for the same act, namely driving a motor vehicle that is not duly registered, in the absence of any criteria enabling the objective assessment of the degree of danger to society?
- (2) Should the Court of Justice answer the first question in the negative, what powers does the national court have to ensure the effective application of the principles of EU law?
- (3) Does the procedural possibility for the court to acquit the person accused of committing a criminal offence and impose an administrative penalty on him or her constitute a sufficient safeguard against the arbitrary application of the law?
- (4) Is a penalty involving deprivation of liberty of up to a year proportionate for the purpose of Article 49(3) of the Charter of Fundamental Rights of the European Union as regards a criminal offence committed by driving a motor vehicle which is not duly registered?

Legal provisions and case-law of the European Union relied on

Convention for the Protection of Human Rights and Fundamental Freedoms: Article 5(1)

Treaty on European Union: Article 6(3)

Treaty on the Functioning of the European Union: Article 90 and Article 91(1)(c)

Charter of Fundamental Rights of the European Union: Article 49

Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC

Directive 2014/46/EU of the European Parliament and of the Council of 3 April 2014 amending Council Directive 1999/37/EC on the registration documents for vehicles

Judgment of 3 May 2007, C-305/05, *Advocaten voor de Wereld VZW*, paragraphs 49 and 50

Judgment of 12 February 2019, C-492/18 PPU, paragraphs 59 and 60

Provisions of national law relied on

Nakazatelen kodeks (Criminal Code): **Article 345(2)**, which sets out the constituent elements of a road traffic criminal offence and pursuant to which the penalty under paragraph 1 of that article (deprivation of liberty of up to one year or a fine of BGN 500 to BGN 1000) is to be imposed also on persons driving a motor vehicle that is not duly registered, and **Article 78a**, which sets out the conditions under which the court may release an accused person of full age from criminal liability and impose an administrative penalty on him or her.

Nakazatelno-protsesualen kodeks (Code of Criminal Procedure): **Article 301(1)**, concerning the matters which are to be discussed and decided by the court when sentencing, and **Article 301(4)** and **Article 305(6)**, concerning the imposition of an administrative penalty.

Zakon za dvizhenieto po patishtata (Law on road traffic): **Article 140(1)**, pursuant to which only motor vehicles that are registered and have number plates attached to the areas designated to that end are allowed on public roads, **Article 140(2)**, pursuant to which the conditions and procedure for registration are to be set out in an ordinance of the Minister for the Interior, and **Article 175(3)**, which provides that a driver of a motor vehicle that is not duly registered or is registered but does not have number plates is to be punished by withdrawal of the authorisation to drive a motor vehicle for a period of 6 to 12 months and the imposition of a fine of BGN 200 to BGN 500.

NAREDBA No I-45 ot 24.03.2000 za registrirane, otchet, spirane ot dvizhenie i puskane v dvizhenie, vremenno otnemane, prekratyavane i vazstanovyavane na registratsiyata na motornite prevozni sredstva i remarketa, tegleni ot tyah, i reda za predostavyane na dannii za registriranite patni prevozni sredstva (ORDINANCE No I-45 of 24 March 2000 relating to the registration, reporting, entry into service and immobilisation of motor vehicles and their trailers as well as the suspension, termination and reinstatement of their registration, and setting out the procedure for the provision of data relating to registered road vehicles): **Article 1(1)**, which provides that that ordinance sets out the conditions and procedure for registration of motor vehicles that are the property of Bulgarian natural and legal persons, and **Article 1(2)**, which provides that that ordinance is to apply also to EU citizens and their family members.

Succinct presentation of the facts and procedure in the main proceedings

- 1 On 29 May 2020, while driving a motorcycle without a number plate, the accused person AZ was stopped for a police check. Following a consultation of the system of the Ministry of the Interior, it was established that the accused person did not have a driving licence and that the motorcycle he was driving was not registered in the central ‘Road traffic control’ database of the Ministry of the Interior.
- 2 Two notices establishing an administrative offence were issued in respect of AZ, including one for driving a motorcycle that was not duly registered and did not have a number plate, which constitutes an infringement of Article 140(1) of the ZDvP.
- 3 In addition, expedited criminal proceedings were brought in respect of a criminal offence under Article 345(2) of the NK.

The essential arguments of the parties in the main proceedings

- 4 The accused person’s defence submits that the act in question constitutes an administrative offence rather than a criminal offence, given the accused person’s good character and lack of a prior criminal record.
- 5 The document on the basis of which the criminal proceedings were brought does not contain any express reasoning of the public prosecutor as to why he considers that the act in question represents a danger to society to the extent that it should be classified as a criminal rather than an administrative offence.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 6 In accordance with the recitals of Directive 2014/45/EU and Directive 2014/46/EU, the registration regime for motor vehicles and the roadworthiness tests form part of the EU measures ensuring that motor vehicles are kept in a safe condition during their use, and are a guarantee that the authorisation of the vehicle to be used in road traffic can be suspended where the motor vehicle constitutes an immediate risk to road safety.
- 7 The initial registration of a motor vehicle ensures administrative authorisation for its entry into service in road traffic. That authorisation may be withdrawn where the vehicle’s technical condition constitutes a risk to road safety.
- 8 Those rules are transposed into the domestic law of the Republic of Bulgaria by the ZDvP and the Ordinance. The two pieces of legislation set out in detail the conditions for initial registration as well as for termination, suspension and ex officio cancellation.

- 9 The domestic law lays down penalties for infringements of the transposed rules. There are two types of liability – administrative and criminal – provided for the act of ‘driving on public roads a motor vehicle that is not duly registered’.
- 10 The objective elements that constitute the administrative offence under Article 175(3) of the ZDvP and the criminal offence under Article 345(2) of the NK fully overlap.
- 11 The domestic law does not provide for any objective criteria enabling a determination of the degree of danger to society, on the basis of which a specific act can be classified as either an administrative or a criminal offence. Nor is there any consideration of the various situations that must lead to a conclusion that a motor vehicle is not duly registered – lack of initial registration, registration that has been cancelled ex officio, registration that has been suspended as a result of technical issues, expired temporary registration, etc.
- 12 The lack of clarity as regards which circumstances increase the danger to society to an extent that the act is to be regarded as a criminal rather than an administrative offence leads to divergent case-law. Three groups of judicial decisions can be identified: (1) those in which the courts agree with the public prosecutor’s view that the act constitutes a criminal offence; (2) those in which the courts acquit the accused persons of the charges, taking the view that the act does not constitute a criminal offence but an administrative offence, in respect of which the courts impose the penalty provided for in the ZDvP; (3) those which result from appeals against orders imposing administrative penalties on the persons in respect of administrative offences and from which it is apparent that those orders were made after the public prosecutor terminated the criminal proceedings.
- 13 In the light of the national legislation and the case-law cited, the referring court expresses doubts whether the Bulgarian law, which provides for criminal liability for infringements of the motor vehicle registration regime, which forms part of the common transport policy of the European Union, is in line with the principle of legality of criminal offences and penalties and with the requirement of proportionality.
- 14 In the judgment of 3 May 2007, C-303/05, *Advocaten voor de Wereld VZW*, in paragraphs 49 and 50, the Court of Justice recalled that ‘the principle of the legality of criminal offences and penalties (*nullum crimen, nulla poena sine lege*), which is one of the general legal principles underlying the constitutional traditions common to the Member States, has also been enshrined in various international treaties, in particular in Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (see in this regard, inter alia, Joined Cases C-74/95 and C-129/95 X [1996] ECR I-6609, paragraph 25, and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraphs 215 to 219). This principle implies that legislation must define clearly offences and the penalties which they attract. That condition is met in the case where the individual

concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable (see, inter alia, European Court of Human Rights judgment of 22 June 2000 in *Coëme and Others v Belgium*, Reports 2000-VII, § 145).’

- 15 In addition, the referring court takes account of the Court’s interpretation, in paragraphs 59 and 60 of the judgment of 12 February 2019, C-492/18 PPU, of the requirements of clarity and predictability to the effect that ‘the objective of the safeguards relating to liberty, such as those enshrined in both Article 6 of the Charter and Article 5 ECHR, consist in particular in the protection of the individual against arbitrariness. Thus, if the execution of a measure depriving a person of liberty is to be in keeping with the objective of protecting the individual from arbitrariness, this means, in particular, that there can be no element of bad faith or deception on the part of the authorities (judgment of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 39 and the case-law cited). ... [S]ince keeping a requested person in detention ... represents a serious interference with that person’s right to liberty, it is subject to compliance with strict safeguards, namely the existence of a legal basis which justifies that continued detention and which must meet the requirements of clarity, predictability and accessibility in order to avoid any risk of arbitrariness, as paragraph 58 of the present judgment makes clear (see, to that effect, judgment of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 40 and the case-law cited)’.
- 16 Since one of the penalties provided for in Article 345(2) of the NK is the deprivation of liberty, the referring court also takes account of the criteria required by the European Convention for Human Rights in respect of the lawfulness of all deprivation of liberty: the deprivation of liberty must be provided for by law, the national law must meet the requirements set out in the Convention as regards quality (it must be sufficiently determinable and certain), the application of the law must be in line with the general principles of the Convention and the persons must be protected against arbitrariness.
- 17 In the judgment in *Medvedyev v. France*, the European Court of Human Rights stated that the standard of lawfulness ‘requires that all law be sufficiently precise to avoid all risk of arbitrariness and to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances of the case, the consequence which a given action may entail’.