

**Case C-56/20**

**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:**

4 February 2020

**Referring court:**

Verwaltungsgerichtshof Baden-Württemberg (Germany)

**Date of the decision to refer:**

30 January 2020

**Applicant and appellant:**

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**Defendant and respondent:**

Stadt Pforzheim

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**Subject-matter of the case in the main proceedings**

Entry of an endorsement indicating a ban in a foreign driving licence; compatibility with EU law

**Subject-matter and legal basis of the reference**

Interpretation of EU law, Article 267 TFEU

**Question referred for a preliminary ruling**

Does EU law, in particular Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2008 L 403, p. 18), as last amended by Commission Directive (EU) 2018/933 of 29 June 2018 correcting the German language version of Directive 2006/126/EC of the European Parliament and of the Council on driving licences (OJ 2008 L 165, p. 35), preclude provisions of national law under which, where a decision refusing to recognise the validity of a driving licence, within the meaning of the second

subparagraph of Article 11(4) of Directive 2006/126/EC, is adopted, the foreign EC card driving licence of a person who does not have normal residence in national territory must be submitted to the decision-making national authority without delay so that the latter can record in the driving licence that that person does not have a right to drive in national territory; the endorsement (indicating a ban) usually being entered on an EC card driving licence by affixing a red 'D', crossed out by a diagonal line, to space 13 (for example by means of a sticker)?

### **Provisions of EU law cited**

Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (recast) (OJ 2006 L 403, p. 18).

### **National legislation cited**

Straßenverkehrsgesetz (Road Traffic Law), Paragraph 3

Fahrerlaubnis-Verordnung (Driving Licence Regulation), Paragraphs 46 and 47

### **Brief summary of the facts and procedure**

- 1 The applicant is an Austrian national who has his normal residence in Austria. On 29 August 2008, he obtained in Austria a driving licence for categories A and B.
- 2 On 26 June 2014, the applicant drove a motor vehicle on a public road in Germany, even though he was under the influence of cannabis at that time.
- 3 By decision of 10 August 2015, the driving licence authority of the German town of Pforzheim withdrew his Austrian driving licence within the territory of the Federal Republic of Germany. At the same time, it requested that he submit to it his Austrian driving licence without delay — at the latest by 28 August 2015 — so that it could record the invalidity of that driving licence in the Federal Republic of Germany in the driving licence document by affixing a red 'D' crossed out by a diagonal line (a 'Sperrvermerk' (an endorsement indicating a ban)). It warned him that, should he fail to comply with that request, enforcement officers would temporarily seize his driving licence, informing him that his driving licence will be returned to him after the endorsement indicating a ban has been affixed.
- 4 The applicant's appeal against that decision of 10 August 2015 was unsuccessful. The action subsequently brought was dismissed as inadmissible at first instance. The appeal lodged before the referring court is directed only against the request that the driving licence be submitted and the warning that the driving licence may be seized. The refusal to recognise the validity of the Austrian driving licence in the territory of the Federal Republic of Germany has, on the other hand, become final and is not addressed in the appeal proceedings.

**Principal arguments of the parties in the main proceedings**

- 5 According to the applicant, the request, set out in the decision of 10 August 2015, that he submit his driving licence so that an endorsement indicating a ban can be entered is incompatible with EU law. Article 2(1) of Directive 2006/126/EC provides for the mutual recognition, without specifying any formal requirements, of driving licences issued by Member States. It is for the country of residence alone to issue and modify driving licences, as is evident, for example, from Article 2(2), Article 7(1)(e) and (3)(b), Article 11(1), (2) and (3), Article 12, and point 3 (concerning spaces 13 and 14) and point 4(a) of Annex I to that directive. If all other Member States were also able to modify the driving licence document — for example by affixing an endorsement indicating a ban — that would run counter to the principle of mutual recognition of driving licences and the aim of Directive 2006/126/EC to create a uniform Community model driving licence (for example recitals 4 and 16 and Article 1(1) of Directive 2006/126/EC).
- 6 It can be assumed that the issue raised by the present case was known at the time Directive 2006/126/EC was adopted. It is a long-standing phenomenon, in particular in border areas, that persons residing in a particular Member State commit, while staying merely temporarily in another Member State, a road traffic offence which, according to the regulations of the latter Member State, leads to their driving licence being withdrawn. Nonetheless, according to Directive 2006/126/EC, the Member State of merely temporary presence is not entitled to make entries in the new Community model driving licence. The only possible conclusion that can be drawn is that such entries are not permitted under EU law.
- 7 The spirit and purpose of the comprehensive provisions on measures taken to make the plastic card driving licence secure against forgery (for example Article 3 and points 1 and 2 of Annex I to Directive 2006/126/EC) also rules out the possibility of a Member State of merely temporary presence modifying the information included in that plastic card by entering additional information in it either permanently or by means of a sticker (that can be easily removed again). In that regard, it should also be borne in mind that, according to Directive 2006/126/EC, space 13 of the driving licence is reserved for entries by the host Member State and an entry already made by that Member State may not be simply ‘concealed’.
- 8 In addition, compliance with the request to submit the driving licence costs the applicant a considerable amount of time and money, restricts his freedom of movement and may subsequently lead to considerable problems in practice, for example, in the event of a roadside check in another Member State, security officers in that Member State could be irritated by an entry in the driving licence which is not known to them. Given those burdens and disadvantages, explicit provision in that regard should have, but has not been made under Directive 2006/126/EC. At best, the Member State issuing the driving licence or the host Member State can make a corresponding entry in the driving licence by way of

mutual assistance under Article 15 of Directive 2006/126/EC and, in that regard, issue a new driving licence document if necessary.

- 9 In any case, in the event of a roadside check in a Member State, an electronic database could easily be consulted in order to check whether the person concerned has the right to drive a motor vehicle in that Member State. This would take little additional time.
- 10 The defendant contends that, in the judgment of 23 April 2015, *Aykul* (C-260/13, EU:C:2015:257), the Court held that, according to the second subparagraph of Article 11(4) of Directive 2006/126/EC, the Member State in whose territory the holder of a driving licence does not have his normal residence is also entitled to refuse to recognise the validity of the driving licence as a result of unlawful conduct in its territory. In that regard, the Court emphasised the importance of such a measure for road safety.
- 11 According to the German legislature, the endorsement indicating a ban to be entered in the driving licence after a decision refusing to recognise its domestic validity has been taken is an essential measure, as it is crucial for the effective enforcement of a decision refusing to recognise the validity of a driving licence within the meaning of the second subparagraph of Article 11(4) of Directive 2006/126/EC. Moreover, it is apparent from the legislative history and recitals of Directive 2006/126/EC that it is intended above all to enhance free movement, freedom of establishment and road safety. Those aims can only be achieved if the EU driving licence does not lose its function as a document evidencing a right to drive. However, this would be the case if the inspecting body was able to determine the status of the right to drive not on the basis of the driving licence, but only by means of additional, time-consuming checks. It must therefore be assumed that there is, in that regard, an unintended regulatory gap in Directive 2006/126/EC which must be closed by way of analogy.
- 12 As Directive 2006/126/EC provides for the possibility of the host Member State modifying the driving licence issued by another Member State (for example, point 3 [concerning space 13] and point 4(a) of Annex I), it cannot be assumed in the present case either that a modification, for example by means of a sticker, constitutes an infringement of the provisions on anti-forgery measures. Moreover, the applicant is not inconvenienced by the fact that document's resistance to forgery would be reduced by the fact that the sticker whose content incriminates him could be removed again.

### **Brief summary of the basis for the reference**

- 13 The order of the German driving licence authority, which is challenged by the applicant, that the applicant submit to it his Austrian driving licence so that an endorsement indicating a ban can be entered is compatible with Paragraph 3 of the Road Traffic Law in conjunction with Paragraphs 46 and 47 of the Driving

Licence Regulation. However, those national provisions could infringe EU law, in particular Directive 2006/126/EC.

- 14 The question as to whether that is the case is not readily apparent from the Court's previous case-law. Unlike the case in which the Court gave its judgment on 23 April 2015, *Aykul* (C-260/13, EU:C:2015:257), the present case does not concern the lawfulness of the decision refusing to recognise the validity of a driving licence pursuant to the second subparagraph of Article 11(4) of Directive 2006/126/EC, as that decision has now become final, rather it concerns the related question as to whether the Member State which has taken the decision refusing to recognise the validity of a driving licence as a result of unlawful conduct in its territory is also entitled to affix a corresponding endorsement indicating a ban to the driving licence issued in another Member State if the holder of that driving licence does not have normal residence, within the meaning of Article 12 of Directive 2006/126/EC, in the Member State which took the decision refusing to recognise the validity of the driving licence.
- 15 The main arguments for and against that entitlement have already been put forward by the parties. As the situation referred to above is likely to arise frequently in practice, the fact that the entitlement in question has not been expressly provided for in law certainly suggests that the Directive does not provide for it. Given that such a modification to the driving licence document interferes with the sovereign rights of the Member State issuing the driving licence and the freedoms of the driving licence holder concerned, the question also arises as to whether an express provision of EU law is required in order for such an entitlement to be accepted.
- 16 An argument for such an entitlement is provided, on the other hand, by the fact that the Member State of merely temporary presence under the second subparagraph of Article 11(4) of Directive 2006/126/EC is generally entitled to refuse to recognise the domestic validity of the driving licence as a result of unlawful conduct in its territory. The entry of a corresponding endorsement indicating a ban in the driving licence is merely a measure to enforce that decision refusing to recognise the validity of the driving licence. In any case, it is not in the interest of traffic safety if the holder of a driving licence can, after a decision refusing to recognise the validity of that driving licence has been taken, create the impression, by presenting his driving licence during a roadside check, that he has a right to drive on domestic roads when he does not in fact have such a right.
- 17 The solution to the problem could also be for Article 15 of Directive 2006/126/EC to impose a strict requirement on the Member State issuing the driving licence or the Member State of residence to enter a corresponding endorsement indicating a ban in the driving licence document at the request of the Member State of merely temporary presence which took the decision refusing to recognise the validity of the driving licence. It could thus also be ensured that, in those cases in which the driving licence is replaced (possibly after the driving licence has been reported lost) or renewed, the entry of the endorsement indicating a ban is retained.

- 18 According to the referring court, the provisions in international treaties such as the Convention on Road Traffic are not relevant to the present case.

WORKING DOCUMENT