

**Case C-47/20**

**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:**

28 January 2020

**Referring court:**

Bundesverwaltungsgericht (Germany)

**Date of the decision to refer:**

10 October 2019

**Applicant, appellant and appellant on a point of law:**

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**Defendant, respondent and respondent in the appeal on a point of law:**

Stadt Karlsruhe

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**Subject matter of the main proceedings**

Recognition of a Spanish driving licence in Germany — Difference between issue and renewal of a driving licence — Power of a Member State to make the recognition, in its sovereign territory, of a licence which has been renewed subject to additional requirements

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

Interpretation of EU law, Article 267 TFEU

**Question referred**

Do Article 2(1) and Article 11(4), second subparagraph, of Directive 2006/126/EC preclude a Member State, within the sovereign territory of which the holder of an EU driving licence for vehicles in categories A and B issued by another Member State had his right to drive vehicles in the first Member State under that driving licence withdrawn because of drink-driving, from refusing to recognise a driving

licence for those categories which was issued to the person concerned in the second Member State, after that right had been withdrawn, through renewal of the licence pursuant to Article 7(3), second subparagraph, of Directive 2006/126/EC?

### **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), Article 2(1), Article 7(3), second subparagraph, Article 11(4), second subparagraph

### **Provisions of national law cited**

Fahrerlaubnis-Verordnung (Driving Licence Regulations; ‘the FeV’), Paragraph 29

Straßenverkehrsgesetz (Law on Road Traffic; ‘the StVG’), Paragraph 3(6)

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

- 1 The applicant, who is a German national, has had a residence in Spain since 1992. He has another residence in Karlsruhe (Germany), which is, however, not his place of normal residence within the meaning of the first paragraph of Article 12 of Directive 2006/126. He was convicted of drink-driving in Germany in 1987, 1990, 1995 and 2000.
- 2 On 21 October 1992, the Spanish authorities issued the applicant with a driving licence that covered vehicles in categories A and B. Since then, the validity of that driving licence has been extended several times.
- 3 On 12 December 2008, the applicant drove a vehicle in Germany while his blood alcohol content was 2.12 per mille. He was accordingly convicted of drink-driving and had the right to drive vehicles in Germany using his Spanish driving licence withdrawn on the ground of unfitness to drive. He was prohibited from applying for a new driving licence for a period of 14 months, which ended on 19 March 2010. His Spanish-issued driving licence was confiscated and sent to the competent Spanish authorities. However, they returned the licence to the applicant a short time afterwards.
- 4 On 23 November 2009, while the prohibition period was still in force in Germany, the applicant was issued in Spain with a new driving licence for vehicles in categories A1, A2, A and B which, like his previous driving licence, was valid until 22 October 2012. On 15 October 2012, he obtained a driving licence in Spain for vehicles in categories A1, A2, A and B which was valid until 22 October 2014; on 18 September 2014 he obtained a driving licence for vehicles in categories AM, A1, A2, A and B which was valid until 22 October 2016; and on 6 September 2016, he obtained his current driving licence for vehicles in

categories AM, A1, A2, A and B which is valid until 22 October 2021. The validity start date indicated in the driving licences for each of those categories of vehicles is 21 October 1992.

- 5 On 20 January 2014, the applicant applied for recognition in Germany of his Spanish driving licence of 21 October 1992, which was valid until 22 October 2014. The defendant rejected that application, as the applicant's Spanish driving licence had been withdrawn in Germany and he had not acquired a new driving licence for recognition after the period of prohibition had expired; rather he was simply issued with replacement licences in Spain. As the applicant had failed to submit the medical and psychological report demanded of him, it was possible to conclude that he was unfit to drive. His objection to that decision was rejected on the same grounds.
- 6 As his action before the Verwaltungsgericht (Administrative Court) and his appeal against its judgment were both unsuccessful, the applicant has lodged an appeal on a point of law with the referring court.

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

- 7 The applicant argues that it has been assumed, arbitrarily and without any legal basis, that the three Spanish administrative acts of 15 October 2012, 18 September 2014 and 6 September 2016 are acts by which the original driving licence issued on 21 October 1992 was extended, not acts by which a driving licence was issued within the meaning of Article 2(1) of Directive 2006/126; that there is likewise no legal basis for assuming that, when a driving licence is renewed, any existing irregularities are transferred to the current driving licence; that the Court of Justice of the European Union has not ruled to that effect; that the power to decide if the applicant is again fit to drive is vested exclusively in the Spanish authorities; and that the German authorities cannot review their decision.
- 8 The defendant claims that the decision adopted by it and upheld by the courts in the previous instances was the correct decision.

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

- 9 The referring court first explains how this case is to be appraised under German law. Paragraph 29(1) of the FeV states that holders of a foreign driving licence may, to the extent permitted by their licence, drive motor vehicles in Germany if they do not have a place of normal residence in Germany. That rule applies, as the applicant has his place of normal residence, within the meaning of the first paragraph of Article 12 of Directive 2006/126, in Spain, not in Germany.
- 10 However, Paragraph 29(3), first sentence, point 3, of the FeV provides for an exception, under which that right is forfeited by holders of a foreign driving licence whose driving licence has been withdrawn in Germany by a legally-

enforceable decision. The applicant's Spanish driving licence was withdrawn in Germany by a legally-enforceable decision on the grounds of drink-driving, as a result of which his right to use the Spanish driving licence in Germany was withdrawn.

- 11 The record of confiscation of the driving licence in the Register of Unfit Drivers has not yet been deleted from that register; had it been deleted, the exclusion from the right to use a foreign driving licence in Germany provided for in Paragraph 29(3), first sentence, point 3, of the FeV would have lapsed. In fact, Paragraph 29(3), third sentence, of the FeV states that points 3 and 4 in the first sentence apply only to an EU or EEA driving licence if the measures referred to therein are entered in the Register of Unfit Drivers and have not been deleted.
- 12 The criteria under which the right to use a driving licence in Germany is regained are set out in Paragraph 29(4) of the FeV ('The right to use a foreign driving licence following one of the decisions referred to in Paragraph 3, points 3 and 4, shall be granted on request, provided that the grounds for withdrawal no longer obtain'), read in conjunction with Paragraph 3(6) of the StVG ('For persons whose place of normal residence is outside Germany, the right to use a foreign driving licence in Germany following its prior withdrawal shall be regained in application, *mutatis mutandis*, of the provisions on the issuance of a new driving licence'). Having been found to be drink-driving with a blood alcohol content of 2.12 per mille, the applicant was required by those provisions to submit a positive medical and psychological report, something, however, which he failed to do.
- 13 The referring court is unsure whether this case would be appraised in the same way under EU law. As EU law takes precedence, the applicant would be entitled, in accordance with the principle of mutual recognition of driving licences issued by the Member States set out in Article 2(1) of Directive 2006/126, to drive vehicles in categories A and B in Germany under his Spanish driving licence, which was last renewed on 6 September 2016 and is valid until 22 October 2021, even without fulfilling these requirements under German law, if such mandatory recognition also applies to licences for vehicles in those categories renewed in accordance with Article 7(3), second subparagraph, of Directive 2006/126.
- 14 Essentially, the question is whether the principle of recognition under EU law set out in Article 2(1) of Directive 2006/126 also applies in the case of renewal of a driving licence pursuant to Article 7(3), second subparagraph, of Directive 2006/126 by the Member State of normal residence after the Member State in which the person concerned was temporarily present has withdrawn the right to use that driving licence in its sovereign territory on grounds of drink-driving and hence unfitness to drive.
- 15 In the opinion of the referring court, it is irrelevant that the applicant's Spanish driving licence issued on 22 October 2007, which he had lost the right to use in Germany by reason of a legally-enforceable decision, was returned to him while the prohibition was still in force in Germany and that, moreover, a new driving

licence, likewise valid until 22 October 2012, was issued while that prohibition was in force. Although the Court of Justice has recognised in its case-law that, when the person concerned has been the subject of a measure withdrawing his driving licence and prohibiting any application for a new licence for a given period, the Member State in whose sovereign territory that measure was applied is not precluded from refusing to recognise a new licence issued by another Member State during the period of that prohibition (see, *inter alia*, judgment of 19 February 2009, *Schwarz*, C-321/07, EU:C:2009:104, paragraph 83), the subject matter of the present proceedings is the question whether Germany is obliged to recognise the applicant's new, valid Spanish driving licence issued in Spain on 6 September 2016, not the driving licence returned during the period of prohibition or even the applicant's old driving licence issued on 23 November 2009, both of which have expired. That driving licence goes back to the corresponding driving licence issued on 21 October 1992, on which no infringement of the EU residence requirement had been recorded and which was not issued during a period of prohibition.

- 16 Given the information in the applicant's current and previous driving licences concerning their validity, the referring court is in no doubt that his driving licence issued in Spain on 6 September 2016 and valid until 22 October 2021 was issued on the basis of Article 7(3) of Directive 2006/126, that is to say, the driving licence was renewed on expiry of its period of validity within the meaning of that provision. It follows from this provision that, where driving licences for the categories of vehicles listed therein are renewed, the Member States are entitled, but not obliged, under EU law to require proof of fitness for driving. Nor does point 14.1 of Annex III to the Directive change that.
- 17 If, where a driving licence is renewed, Article 7(3), second subparagraph, of Directive 2006/126 merely establishes in EU law the possibility, but not the obligation, for the Member States to control compliance, a driving licence for those categories renewed in accordance with Article 7(3), second subparagraph, of Directive 2006/126 differs fundamentally from a driving licence issued in accordance with the requirements of Article 7(1)(a) of the Directive. According to that rule, a driving licence may be issued only to applicants 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.
- 18 In the opinion of the referring court, there is good cause to believe that, where a driving licence is renewed for the categories listed in Article 7(3), second subparagraph, of Directive 2006/126 after the holder has lost the right to use the licence in the sovereign territory of the Member State in which he is temporarily present, because that Member State found that person to be unfit to drive, the obligation to recognise the licence without further formality which must be assumed to apply, in light of the settled case-law of the Court of Justice, where a driving licence is issued subject to verification of the harmonised minimum requirements set out in Article 7(1) of Directive 2006/126, does not exist.

- 19 It refers in this regard to the case-law of the Court of Justice, according to which a driving licence issued in compliance with the residence requirement after expiry of a period of prohibition imposed by a legally-enforceable decision of the Member State must be recognised without any formality. Even if a Member State imposes stricter requirements for reissuing a new driving licence under its national laws, it must therefore recognise an EU driving licence issued by another Member State in compliance with the residence requirement after the period of prohibition has expired (see, *inter alia*, judgment of 26 June 2008, *Wiedemann and Funk*, C-329/06 and C-343/06, EU:C:2008:366, paragraph 54). In those cases, unfitness to drive was set aside by the test of fitness carried out by another Member State when the later driving licence was issued (judgments of 19 February 2009, *Schwarz*, C-321/07, EU:C:2009:104, paragraphs 92 and 93, and of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraph 51). At the same time, the Member State which, on the basis of Article 11(4), second subparagraph, of Directive 2006/126/EC, withdrew the right of the person concerned to use his or her driving licence in its sovereign territory on the grounds of unfitness to drive loses its power to test if he or she is again fit to drive and can therefore again drive motor vehicles there (see judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 74 et seq.).
- 20 In the opinion of the referring court, it follows from the case-law of the Court of Justice that mandatory recognition under Article 2(1) of Directive 2006/126 depends on whether EU law prescribes verification in this particular case of the harmonised minimum requirements laid down in Article 7(1) of Directive 2006/126 for issuing a driving licence. As the referring court considers, however, that this is a case of renewal of the applicant's Spanish driving licence, rather than the issue of a driving licence, for which the issuing Member State is obliged to carry out comprehensive fitness tests in accordance with Article 7(1) of Directive 2006/126, the Member State which withdrew the right of the person concerned to use his driving licence in its sovereign territory on the basis of Article 11(4), second subparagraph, of Directive 2006/126 on the grounds of unfitness to drive retains the power recognised by the Court of Justice to test if the person concerned is once again fit to drive (see judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 74 et seq.).
- 21 This conclusion is also not altered by the fact that the Spanish law on driving licences provides for a medical examination where a driving licence is renewed for categories A and B, that is to say, within the scope of Article 7(3), second subparagraph, of Directive 2006/126. In the opinion of the referring court, it follows from the case-law of the Court of Justice that rules on medical requirements adopted by a particular Member State for the renewal of a driving licence do not give rise to an obligation to recognise the driving licence in accordance with Article 2(1) of Directive 2006/126 for the simple reason that the mutual recognition of driving licences without any formality required under that case-law is based on the fact that EU law prescribes minimum requirements in terms of fitness to drive, including any medical requirements, which are harmonised and are thus binding on all Member States, which the person applying

for a driving licence must fulfil and compliance with which the Member State in which the person has his or her place of normal residence must verify when issuing a driving licence. However, this does not apply for the purposes of Article 7(3), second subparagraph, of Directive 2006/126, where a driving licence is renewed for the classes listed therein.

- 22 In order to clarify whether the view taken by the referring court is correct, the question set out above is referred to the Court of Justice for a preliminary ruling.

WORKING DOCUMENT