

Liability for using an untrue instrument and unlawful driving has been held not to be imposed when a formally valid driving licence has been issued on the basis of misleading information

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The question was whether a driving licence acquired on false premises could be considered to include untrue information regarding driving licence eligibility and whether there are grounds for disregarding such a licence when assessing a charge of unlawful driving.

A man applied to the Swedish Transport Agency for the exchange of a Hungarian driving licence for passenger cars. He had acquired the Hungarian driving licence by exchanging an Uzbek driving licence. The Swedish Transport Agency granted the application and exchanged the Hungarian driving licence for an equivalent Swedish driving licence. Both the Hungarian and Swedish driving licences were later revoked after it had been discovered that the man's Uzbek driving licence was forged and that no driving licence had ever been issued to him in Uzbekistan. The man was charged with using an untrue instrument for citing the Hungarian driving licence when applying to the Swedish Transport Agency, even though he was not eligible to drive. The man was also prosecuted for, on a number of occasions before the Swedish driving licence was revoked, driving a passenger car without being entitled to do so.

The Supreme Court notes that liability for unlawful driving requires that a vehicle for which a driving licence is required is driven without the driver being entitled to do so. According to the provisions of the Driving Licence Act, a person is entitled to drive a passenger car if he or she holds a valid driving licence for the vehicle. According to the Supreme Court, since it is the driving licence itself that authorises the driver to drive a passenger car, it is not in accordance with the principle of legality in criminal law to apply the provisions concerning unlawful driving in such a way, that a driver is deemed to be driving a passenger car without being entitled to do so, when he or she holds a valid driving licence at the time of the driving. The Court therefore concludes that a person who holds a formally valid driving licence cannot be convicted of unlawful driving in such a situation.

The Supreme Court further states that in order to be liable for using an untrue instrument, it is required that someone invokes or otherwise uses untrue information about who he or she is or about something other than one's own affairs. A statement that is objectively untrue must have been made. According to the Supreme Court, the presentation of a valid driving licence issued by another EEA country when applying for the exchange of a driving licence, cannot be considered to constitute untrue information regarding the authorisation to drive within the meaning of the criminal provision, irrespective of whether the driving licence was issued on the basis of misleading or false information, since the licence itself confers such authorisation. The man was therefore also acquitted from the charge with this crime.

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Contact

Press contact

Telephone

08-561 666 30

Email

HDO-Presskontakt@dom.se