

Case C-266/21**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:**

26 April 2021

Referring court:

Sofiyski gradski sad (Bulgaria)

Date of the decision to refer:

26 April 2021

Prosecuting authority at first instance:

Sofiyska gradska prokuratura

Defendant at first instance:

HV

Subject matter of the main proceedings

- 1 The subject matter of the main proceedings is a general criminal case in which a person was finally convicted for a road traffic accident caused by him in breach of road traffic regulations pursuant to Article 20(2) of the *Zakon za dvizhenie po patishtata* (Law on road traffic, Bulgaria; ‘the ZDvP’) and for the resulting negligent infliction of moderate bodily harm on several persons, an offence under the first alternative of Article 343(3)(a) and Article 343(1)(b) of the *Nakazatelen kodeks* (Criminal Code, Bulgaria; ‘the NK’), read in conjunction with the third alternative of Article 342(1) thereof.
- 2 In accordance with Article 2(1) of the NK, read in conjunction with Article 78a(1) thereof, the accused person was released from criminal liability and the administrative penalty of a fine of 1 000 leva (BGN) was imposed on him. By the conviction, the right of the accused person to drive a motor vehicle was temporarily withdrawn for a period of six months from the date on which the judgment became final, in accordance with Article 78a(4) and Article 343d of the NK.

Subject matter and legal basis of the request for a preliminary ruling

- 3 The request for a preliminary ruling concerns the application of Article 2(4) and Article 4(1)(d) of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, in a case where the sanction imposed – ‘suspension of the right to drive a motor vehicle’ – cannot be enforced in the State of conviction because the convicted person has taken up residence in another Member State in which the driving licence issued to him by the State of conviction was exchanged for a driving licence issued by the State of residence.

Owing to the executing Member State’s refusal to enforce the penalty, there is a risk that the convicted person will go unpunished.

Questions referred for a preliminary ruling

1. 1. – Do judicial decisions in criminal proceedings by which, in the case of offences consisting of a breach of road traffic regulations and moderate bodily harm caused by negligence, the administrative sanction of suspension of the right to drive a vehicle for a specified period is imposed on the offender fall within the scope of Article 2(4) and Article 4(1)(d) of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions?

1. 2. – Do the provisions of Article 11(2) and the first to third subparagraphs of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences constitute a basis for the Member State in which the holder of a driving licence issued by that State is habitually resident to refuse to recognise and enforce an administrative sanction, in the form of a temporary withdrawal of the right to drive a vehicle, imposed in another Member State for the offence of breaching road traffic regulations and negligently causing moderate bodily harm to another person, an offence committed at a time when the offender held a driving licence issued by the State of residence, for which the driving licence originally issued by the State of conviction had been exchanged?

Provisions of EU law relied on

- 4 Article 2(4) and Article 4(1)(d) of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

- 5 Article 11(2) and the first to third subparagraphs of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences

Article 91(1)(c) of the Treaty on the Functioning of the European Union (TFEU)

Provisions of national law relied on

Nakazatelen kodeks na Republika Bulgaria (Criminal Code, Bulgaria):

Article 342

(1) Whosoever breaches road traffic regulations while driving railway rolling stock, flying an aircraft, driving a motor vehicle, navigating a vessel or driving a combat or special vehicle and thereby poses a threat to the life or limb of another person shall be liable to serve a custodial sentence of up to two years or a suspended sentence.

Article 343

(1) If the offences referred to in the preceding article caused, through negligence:

b) serious or moderate bodily harm, the penalty shall be, irrespective of whether the consequences referred to in a) occurred, a custodial sentence of up to four years in the case of serious bodily harm and, in the case of moderate bodily harm, a custodial sentence of up to three years or a suspended sentence;

(3) If the offence was committed while under the influence of alcohol or after the use of narcotic or similar substances, or if it causes bodily harm to, or results in the death of, several persons, or if the offender fled the scene of the accident, the penalty shall be:

a) in the case of serious or moderate bodily harm, a custodial sentence of up to five years ...

Article 343d In all cases referred to in Articles 343, 343a, 343b and 343c(1), the court shall also order the withdrawal of the right pursuant to point 7 of Article 37(1) and may order the withdrawal of the right pursuant to point 6.

Article 37(1) Penalties:

7. Withdrawal of the right to pursue a particular profession or a particular activity;

Article 78a A person of full age shall be released from criminal liability by the court and an administrative penalty of 1 000 to 5 000 leva (BGN) shall be imposed on him or her if all the following conditions are met:

a) for the offence concerned, a custodial sentence not exceeding three years or other less severe penalty is provided for where committed intentionally, or a custodial sentence not exceeding five years or other less severe penalty is provided for where committed through negligence;

b) the offender has neither been convicted of an offence that is the subject of prosecution by the public prosecutor nor released from criminal liability under the provisions of this section;

c) the damage to property caused by the offence has been compensated.

(4) The court which imposes the fine under paragraph 1 may also impose the administrative penalty of withdrawal of the right to pursue a particular profession or a particular activity for a period of up to three years if the withdrawal of that right is provided for in respect of the offence concerned.

Succinct presentation of the facts and procedure in the main proceedings

- 6 In a general criminal case, the accused person was finally convicted for a road traffic accident caused by him in breach of road traffic regulations pursuant to Article 20(2) of the ZDvP and for the resulting negligent infliction of moderate bodily harm on several persons, an offence under the first alternative of Article 343(3)(a) and Article 343(1)(b) of the NK, read in conjunction with the third alternative of Article 342(1).
- 7 In accordance with Article 2(1) of the NK, read in conjunction with Article 78a(1) thereof, the accused person was released from criminal liability and the administrative penalty of a fine of 1 000 leva (BGN) was imposed on him. By the judgment, the right of the accused person to drive a motor vehicle was temporarily withdrawn for a period of six months from the date on which the judgment became final, in accordance with Article 78a(4) and Article 343d of the NK.
- 8 After the judgment became final, a copy of it was transmitted to the Sofiyska gradska prokuratura (Public Prosecutor's Office for the City of Sofia) for enforcement.
- 9 The Public Prosecutor's Office for the City of Sofia informed the Sofiyski gradski sad (Sofia City Court) that it was not possible to enforce the administrative penalty of a six-month suspension of the right to drive a motor vehicle because the convicted person was permanently residing in the Kingdom of Spain, and that penalty therefore could not be enforced in the territory of the Republic of Bulgaria.
- 10 In response to a request made by the court, information was received from the 'Patna politsiya' (traffic police) department of the Ministry of Interior. The information showed that the convicted person held a category B driving licence

issued in the Republic of Bulgaria, which was exchanged for a driving licence issued in the Kingdom of Spain.

- 11 On 27 October 2020, a judge of Sofia City Court issued a certificate pursuant to Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.
- 12 The Kingdom of Spain was specified as the executing State in the certificate, as that is where the convicted person is lawfully and ordinarily resident.
- 13 In point (j)(4) of the certificate, entitled ‘Nature of the probation measure(s) or alternative sanction(s)’, the box ‘instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity’ was ticked, and, in point (j)(5), the alternative sanction imposed on the convicted person was described as ‘Suspension of the licence to drive a motor vehicle for a period of six months’.
- 14 The certificate thus issued was translated into Spanish and sent to JDO. CENTRAL DE LO PENAL, MADRID by post.
- 15 By decision of 17 February 2021, JDO. CENTRAL DE LO PENAL, MADRID refused to enforce the penalty imposed on HV – suspension of the licence to drive a motor vehicle.
- 16 The grounds for that decision read as follows: ‘The withdrawal of a driving licence is not provided for as a penalty to be recognised under Law No 23/2014 of 20 November on the mutual recognition of court judgments, either under Article 94 of that law as a “probation measure” to be enforced in Spain, or under one of the Framework Decisions on the enforcement of sentences or probation measures in Europe. Consequently, as regards enforcement (of the judgment), we must refer to Directive 2006/126/EC, which, in a judgment of the Fifth Chamber of the Court of Justice of the European Union of 23 April 2015, was interpreted as meaning that “only the authorities of the State of conviction may require the convicted person to surrender his or her driving licence in order to prevent him or her from driving a motor vehicle in the territory of that State”; the penalty in question cannot however be enforced in Spain.’

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

- 17 On the basis of the facts thus established, the question that arises for the Bulgarian court is how the penalty of ‘suspension of the right to drive a motor vehicle for a period of six months’ is to be enforced against the convicted Bulgarian national, who is lawfully and ordinarily resident in Spain.

- 18 The court which delivered the criminal judgment ('the referring court') takes the view that the penalty of suspension of the right to drive for a period of six months imposed on the convicted person falls within the scope of Article 2(4) of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, since it is an 'alternative sanction', other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an instruction. That instruction falls within the scope of Article 4(1)(d) of the Framework Decision inasmuch as it is an 'instruction relating to behaviour', since it contains a prohibition on driving for a certain period of time. Similarly, the imposition of an obligation to stop the consumption of alcohol is given as an example of an order relating to behaviour in recital 10 of the Framework Decision. In the same recital, an obligation to follow a 'safe-driving course' is given as an example of an instruction relating to training which falls within the scope of Article 4(1)(d).
- 19 After having identified, in consultation with the contact point of the European Judicial Network, the competent Spanish judicial authority responsible for recognition and enforcement under the abovementioned Framework Decision, the Bulgarian court issued and transmitted the certificate containing the necessary information on the judgment and the convicted person.
- 20 The refusal by the competent Spanish court to enforce the penalty imposed in Bulgaria – suspension of the licence to drive a motor vehicle – on the ground that such a penalty does not fall within the scope of Council Framework Decision 2008/947/JHA of 27 November 2008 requires an interpretation of that act of EU law in accordance with the first question referred, for which the Court of Justice of the European Union ('the Court of Justice') has jurisdiction. As already stated in paragraph 18, the court that delivered the criminal judgment takes the view that that penalty falls within the scope of Article 2(4) and Article 4(1)(d) of Council Framework Decision 2008/947/JHA of 27 November 2008 because it contains an instruction relating to a certain behaviour of the sentenced person.
- 21 The other reasoning on which the Spanish court based its refusal to enforce the Bulgarian criminal judgment in so far as it withdrew the convicted person's right to drive a motor vehicle for a period of six months also requires an interpretation of EU law in accordance with the second question referred. According to the Spanish court, a basis for refusing to enforce the penalty imposed by the Bulgarian court is also contained in the provisions of Directive 2006/126/EC, as interpreted by the Court of Justice in its judgment of 23 April 2015, according to which only the authorities of the country of conviction can require the convicted person to surrender his or her driving licence in order to prevent him or her from driving a motor vehicle in the territory of that country.
- 22 Although that judgment was not clearly identified by the Spanish court, it is clear from the indications of the date, Chamber, and provision of EU law to be

interpreted that it was referring to the judgment of the Court of Justice in Case C-260/13.

- 23 The referring court takes the view that the interpretation of EU law given in the cited judgment of the Court of Justice in Case C-260/13 cannot be applied to the main proceedings without restriction, since the latter are characterised by factual and legal circumstances which differ from those at issue in that case, for the resolution of which a request for a preliminary ruling was made in Case C-260/13.
- 24 Very briefly, the dispute in which the request for a preliminary ruling in Case C-260/13 was made concerned the compatibility with the provisions of Directive 2006/126/EC of measures of the authorities of the Member State in which the unlawful conduct had taken place refusing to recognise the validity of the driving licence of an offender who was staying in that State on a temporary basis. The dispute before the referring court in that case concerned the validity under EU law of measures to withdraw (refuse to recognise the validity) a driving licence of the perpetrator of an offence which had taken place in the territory of that State, in view of the fact that the driving licence had previously been issued in the Member State of normal residence.
- 25 In the case in the main proceedings, the main problem from a factual perspective is the impossibility of effectively enforcing in full a final judgment imposing, in application of Bulgarian substantive law, a sanction – suspension of the perpetrator’s right to drive a motor vehicle – for an offence committed in the territory of the Republic of Bulgaria. That impossibility of enforcement arises from the fact that the convicted person is lawfully and ordinarily resident in another Member State – *in casu*, Spain – and that his driving licence, originally issued in Bulgaria, was exchanged in that other State.
- 26 The Spanish court’s refusal to recognise and enforce the sanction imposed in Bulgaria leads to a state of impunity for the convicted person, both in Spain and in Bulgaria, as he could return to Bulgaria either temporarily or permanently in exercise of his right of freedom of movement, where he could drive a motor vehicle with his currently valid Spanish driving licence, despite the fact that his right to drive a motor vehicle has been temporarily withdrawn.
- 27 From a legal point of view, the interpretation given in Case C-260/13 concerns the application of Article 2(1) and the second subparagraph of Article 11(4) of Directive 2006/126/EC. In the main proceedings before the referring court, there is no need for an interpretation of Article 2(1) of Directive 2006/126/EC, since the obligation of the Member States of the European Union mutually to recognise driving licences issued by them is not disputed and does not require further clarification. The facts of the case in the main proceedings do not fall entirely and exclusively within the scope of the second subparagraph of Article 11(4) of Directive 2006/126/EC, since, at the time when the sanction – suspension of the perpetrator’s right to drive a motor vehicle – imposed by the Bulgarian court took legal effect, the convicted person held a driving licence issued by the Spanish

authorities, for which his driving licence originally issued in Bulgaria was exchanged.

- 28 The referring court takes the view that an interpretation of Article 11(2) of Directive 2006/126/EC is necessary since, in the circumstances of the main proceedings, the principle of territoriality of criminal and police laws referred to in that provision conflicts with the principle of mutual recognition of judgments in criminal matters and its application under Framework Decision 2008/947/JHA. The referring court takes the view that that interpretation must provide an answer to the question of which of the acts of EU law referred to in the two questions referred for a preliminary ruling is *lex specialis* in relation to the other: is it Directive 2006/126/EC, with the result that, on the basis of its provisions, the enforcement of a judgment in respect of which a certificate has been issued under Framework Decision 2008/947/JHA may be refused, or is that framework decision the more specific law in relation to the principle of national effect of criminal and police laws which is enshrined in Article 11(2) of Directive 2006/126/EC?
- 29 The referring court takes the view that the circumstances of the case in the main proceedings also require an interpretation of the first to third subparagraphs of Article 11(4) of Directive 2006/126/EC. According to the wording of those provisions, they appear to provide, unconditionally, that the restriction of the right to drive a motor vehicle in one Member State constitutes a ground on which another Member State can refuse to issue a driving licence or to recognise its validity. However, a broader interpretation is required as to the extent to which the same consequences of a restriction of the right to drive a motor vehicle by a Member State also apply to a driving licence that was originally issued in the State which imposed the restriction and has since been exchanged in another Member State.
- 30 The facts of the case in the main proceedings require an interpretation of the second subparagraph of Article 11(4) of Directive 2006/126/EC and, in that regard, further clarification of the interpretation of that provision already given by the Court of Justice in point 1 of the operative part of the judgment in Case C-260/13, in the light of the fact that the factual circumstances are different [from those in that case] but the validity of the principles established in that judgment remains the same. The referring court takes the view that those principles are given expression in the competence, recognised in the judgment, of the Member State in which the offence took place to apply its national legislation on the restriction of the right of the offender to drive a motor vehicle in its territory, even though, prior to the offence, he held a driving licence issued by another Member State.
- 31 In that respect, taking into account the interpretation of the second subparagraph of Article 11(4) of Directive 2006/126/EC in the judgment of the Court of Justice in Case C-260/13, the penalty of suspension of the convicted person's right to drive a motor vehicle for a period of six months imposed in the conviction in the

main proceedings appears to be valid irrespective of the fact that, at the time of the offence, he held a driving licence issued by the Kingdom of Spain, for which his driving licence originally issued in Bulgaria had been exchanged.

- 32 On the basis of the second subparagraph of Article 11(4) of Directive 2006/126/EC, the validity of the penalty imposed by the Bulgarian court – suspension of the right to drive a motor vehicle for a period of six months – should entail its enforceability, both on Bulgarian territory and in Spain, having regard to the principle of mutual recognition and the fact that the convicted person is habitually resident there.
- 33 At the same time, the Spanish court’s refusal to recognise and enforce the penalty of suspension of the right to drive a motor vehicle for a period of six months imposed by the referring court, relying on the interpretation of the second subparagraph of Article 11(4) of Directive 2006/126/EC given by the Court of Justice in the judgment in Case C-260/13, also prevents the enforcement of the penalty in Bulgaria, since it is almost impossible to enforce the withdrawal of the driving licence of the convicted person, in the event that he is in the country, owing to the freedom of movement and the border controls carried out by the Bulgarian authorities in respect of traffic in the European Union in accordance with the risk analysis procedure. In that respect, it is necessary to clarify whether such an outcome is compatible with the spirit and purpose of the second subparagraph of Article 11(4) of Directive 2006/126/EC, having regard to the facts of the case in the main proceedings and the principles already established in the context of the interpretation of that provision given by the Court of Justice in Case C-260/13.
- 34 Lastly, the referring court takes the view that the requested interpretation of the provisions of Framework Decision 2008/947/JHA and Directive 2006/126/EC referred to in the two questions referred for a preliminary ruling must also be given in the light of the common transport policy laid down in Article 91(1)(c) of the Treaty on the Functioning of the European Union, within the framework of which the Member States are required to adopt measures to improve transport safety.
- 35 The referring court takes the view that an interpretation of Framework Decision 2008/947/JHA and Directive 2006/126/EC to the effect that enforcement of the penalty imposed – suspension of the right of the convicted person to drive a motor vehicle – is not permissible would constitute an obstacle to the pursuit of the objectives of the common policy on improving transport safety, since the perpetrator of a traffic offence in which two road users suffered moderate bodily harm would in fact go unpunished.
- 36 That impunity would manifest itself in the impossibility of enforcing the most appropriate punishment for the purposes of education and prevention, namely the temporary suspension of the right to drive a motor vehicle. By contrast, under another of the existing instruments of mutual recognition – Council Framework

Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties – there are no obstacles to the recognition of the other, less severe penalty imposed in the main proceedings, namely the fine imposed.

- 37 Following the refusal thus issued by the Spanish court to recognise and enforce the penalty imposed in Bulgaria – suspension of the right to drive a motor vehicle for a period of six months – the question that arises for the referring court is whether it should take no action and let the limitation period for the enforcement of that penalty provided for in Bulgarian law expire, on 20 November 2022, or whether it should transmit a new certificate within the meaning of Framework Decision 2008/947/JHA in which it provides more detailed reasons for the applicability of precisely that regime of mutual recognition and enforcement and for the compatibility of the requested recognition with Article 11(2) and the first to third subparagraphs of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006.