

**Case C-703/22****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:**

16 November 2022

**Referring court:**

Afdeling bestuursrechtspraak van de Raad van State (Netherlands)

**Date of the decision to refer:**

16 November 2022

**Appellant:**

WU

**Respondent:**

Directie van het Centraal Bureau Rijvaardigheidsbewijzen (CBR)

**Subject matter of the main proceedings**

The action in the main proceedings concerns a dispute between WU and the Centraal Bureau Rijvaardigheidsbewijzen ('CBR') (Central Office for Motor Vehicle Driver Testing) relating to the refusal by CBR to grant WU a driving licence in the Netherlands for categories C and CE (lorry and bus).

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

This request under Article 267 TFEU concerns the question whether, where it is established that the person concerned is in fact fit to drive a lorry, an exception can be made for the minimum standard of a horizontal field of vision of 160 degrees laid down for that category of vehicles.

**Questions referred for a preliminary ruling**

1. Should point 6.4 of Annex III to Directive 2006/126/EC, more specifically the standard of a horizontal field of vision of both eyes of at least 160°, read in the

light of the principle of proportionality, be interpreted as meaning that a person who does not meet this standard from a medical point of view, but who, according to different medical experts, is actually fit to drive a lorry, can nevertheless meet the standard?

2. If the answer to that question is in the negative, can a proportionality assessment be carried out within the framework of the Driving Licence Directive in an individual case, even if the criterion laid down in point 6.4 of Annex III to Directive 2006/126/EC does not provide any scope for exemption in such cases?

3. If so, what are the circumstances that may play a role in assessing whether there may be derogation from the standard for the field of vision in a specific case, provided for in point 6.4 of Annex III to Directive 2006/126/EC?

### **Provisions of European Union law relied on**

Point 6.4 of Annex III to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences ('the Driving Licence Directive') and Article 15 of the Charter of Fundamental Rights of the European Union.

### **Provisions of national law relied on**

Point 3.3 and point 3.4(b), of the Annex to the Regeling eisen geschiktheid 2000 (Fitness Criteria Regulations 2000).

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 WU obtained his driving licence for vehicles in categories C and CE on 11 July 2007, after which he worked as a professional driver for more than 10 years. He has driven lorries without any problems and free from damage over a distance of more than a million kilometres, both in the Netherlands and abroad. In 2016 he requested a renewal of his driving licence to drive lorries, for which he had to apply to CBR for a 'Certificate of Fitness'. This certificate demonstrates the applicant's mental and physical capacity to drive a motor vehicle.
- 2 WU was the victim of an accident at the age of one, resulting in a skull base fracture. As a result, he suffers from 'hemianopsia', which means that he has a restricted horizontal field of vision. WU does not therefore satisfy the minimum standard of a 160-degree binocular horizontal field of vision, as set out in point 3.3(b) of the Annex to the Fitness Criteria Regulations 2000. This provision transposes into Netherlands law point 6.4 of Annex III to the Driving Licence Directive, which contains the same minimum standard. For that reason, CBR refused to issue the required certificate, despite the positive recommendations of

two ophthalmologists. It is not clear whether CBR was already aware of WU's eye condition when he obtained his driving licence in 2007.

- 3 WU raised an objection to CBR's negative decision. CBR dismissed that objection as unfounded. WU subsequently brought an appeal against this decision before the rechtbank Rotterdam (District Court, Rotterdam, Netherlands). This appeal was dismissed, after which WU brought an appeal before the Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State, Netherlands; 'Council of State'). That appeal was also dismissed.
- 4 While that appeal was still pending, WU submitted a second application to CBR, this time for a driving licence restricted geographically to the Netherlands. Again, despite a third positive recommendation from an ophthalmologist, CBR rejected his application on the ground that he did not meet the minimum standard of a field of vision of 160 degrees. It was specified that WU could not rely on point 3.4(b) of the Fitness Criteria Regulations 2000. According to that provision, a professional driver who already holds one or more driving licences for lorries and buses, and who suddenly loses the vision of one eye, may nevertheless be declared fit for a driving licence geographically restricted to the Netherlands, after an adaptation period of at least three months and on the basis of a positive recommendation from an ophthalmologist. However, WU is not blind in one eye, but is missing half of his field of vision in both eyes (homonymous haemianopsia).
- 5 Once again, CBR declared WU's objection to be unfounded and the rechtbank Rotterdam (District Court, Rotterdam) dismissed his appeal against this. WU again appealed to the Raad van State (Council of State), which decided to refer the above questions to the Court for a preliminary ruling.

### **The essential arguments of the parties in the main proceedings**

- 6 According to CBR, point 3.4(b) of the Annex to the Fitness Criteria Regulations 2000 is not applicable in WU's situation. The mandatory nature of that provision does not allow for WU's individual interests to be taken into account.
- 7 WU argues that he does qualify for a Certificate of Fitness. Meanwhile, there are three reports from different doctors who believe he is capable of driving a lorry. While it is true that his field of vision is impaired, he has had that impairment since a very young age and he has fully compensated for this by means of viewing techniques and head movements. WU once again substantiated that position on appeal, this time with a statement from a neuropsychologist. The neuropsychologist states, in essence, that WU's visual techniques are so well developed that he can function normally in terms of his vision. According to WU, it is not contrary to the purpose of the regulations to permit someone with a visual impairment who has acceptable eyesight to drive a motor vehicle in categories C and CE. That situation applies to him. According to WU, that justifies making an

exception, just as an exception is made for the loss of sight in one eye, as provided for in point 3.4(b) of the Annex to the Fitness Criteria Regulations 2000. His impairment is comparable to this. Therefore, contrary to the District Court's finding, CBR should have followed the positive recommendations of the different doctors.

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

- 8 The Raad van State (Council of State) observes, first of all, that it has become aware of one judgment of the Court concerning point 6.4 of Annex III to the Driving Licence Directive, namely the judgment of 22 May 2014, *Glatzel* (C-356/12, EU:C:2014:350). In that judgment, the Court confirmed the validity of the minimum standard for the horizontal field of vision set out in point 6.4. The Raad van State (Council of State) therefore assumes that validity. However, it has doubts as to the correct interpretation or application of that minimum standard in the present case. The questions which it has asked in that regard are not answered in that judgment.
- 9 It is undisputed that WU does not satisfy, from a medical point of view, the minimum standard of a horizontal field of vision with both eyes of at least 160 degrees, as referred to in point 6.4 of Annex III to the Driving Licence Directive. Nevertheless, three different doctors have concluded, each in their own medical report, that, despite his condition, he is fit to drive vehicles in categories C and CE. In addition, WU has been a professional driver for 10 years and has driven more than one million kilometres in a lorry without any problem. Road safety is therefore not at risk. That is why the Raad van State (Council of State) raises the question whether WU should nevertheless be regarded as fit to drive.
- 10 Point 6.4 of Annex III to the Driving Licence Directive is based on a report from the Eyesight Working Group of May 2005. It follows from that report that, as a general rule, in a situation where a person does not meet, on medical grounds, the standard of a horizontal field of vision with both eyes of at least 160 degrees, that person is not fit to drive vehicles in categories C and CE. However, the report also states that further examination may show that a person with haemianopsia may, in a specific case, compensate for their impairments and be regarded as fit to drive.
- 11 The Raad van State (Council of State) wonders whether point 6.4 of Annex III to the Driving Licence Directive may be interpreted as meaning that a person who does not meet the standard in a medical sense but who, according to different medical experts, is actually fit to drive by compensating for the impairment, can also meet this minimum standard. In that regard, the Raad van State (Council of State) submits that it is important that such an interpretation, made in the light of the principle of proportionality, does not detract from the purpose of the Driving Licence Directive, which is to ensure road safety.
- 12 If point 6.4 of Annex III to the Driving Licence Directive cannot be interpreted in that way, the question then arises as to whether it is possible, having regard to the

report of the Eyesight Working Group and the conclusion drawn from this by the Raad van State (Council of State), to apply the principle of proportionality in the present case. That is to say: the question arises whether, in a situation where a person who, from a medical point of view, does not meet the standard for the required horizontal field of vision with both eyes but who, according to medical experts, is fit to drive a lorry, there is scope for an assessment based on proportionality when making a decision on the renewal of a driving licence, even though the standard laid down in point 6.4 of Annex III to the Driving Licence Directive does not provide for any exception. The Raad van State (Council of State) can imagine that, when assessing the proportionality in the present case, in addition to the experts' findings on the applicant's fitness to drive, the fact that the person has previously been found to be able to drive safely may also play a part. It may also be important that the driving licence is used for the purpose of practising an occupation, since Article 15 of the Charter of Fundamental Rights of the European Union states that everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

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