

Case C-88/21

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:

12 February 2021

Referring court:

Lietuvos vyriausiasis administracinis teismas (Lithuania)

Date of the decision to refer:

8 February 2021

Applicant:

Regionų apygardos administracinio teismo Kauno rūmai

Defendant:

Lietuvos Respublikos vidaus reikalų ministerija (Ministry of the Interior of the Republic of Lithuania)

Subject matter of the main proceedings

The subject matter of the main proceedings is the verification of the legality of provisions of national law under which vehicles can be registered only after they have been removed from the national Schengen Information System (SIS).

Subject and legal basis of the request for a preliminary ruling

Interpretation of Article 39 of Council Decision 2007/533/JHA of 12 June 2007 in order to clarify whether a Member State may enter in a national register objects for which an alert has been issued in the Schengen Information System if the alert is no longer relevant.

Paragraph 3 of Article 267 of the Treaty on the Functioning of the European Union.

Questions referred

1. Must Article 39 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), in particular Article 39(3), be interpreted as imposing an obligation to prohibit the registration of objects for which an alert has been issued in the Schengen Information System notwithstanding the fact that the alert is no longer relevant (the vehicle has been located; the criminal procedure in the Member State where the vehicle was located has been discontinued in the absence of a criminal offence committed in that Member State; the State that entered the alert has been informed but fails to take action to remove the alert from the system)?
2. Must Article 39 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), in particular Article 39(3), be interpreted as obliging a Member State which has located an object for which an alert was issued pursuant to Article 38(1) of the decision to lay down rules of national law that would prohibit any actions with the located object other than actions by which an objective referred to in Article 38 (seizure or use as evidence in criminal proceedings) would be attained?
3. Must Article 39 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), in particular Article 39(3), be interpreted as allowing Member States to lay down legal rules which would provide for exceptions to the prohibition on registering vehicles for which an alert has been entered in SIS pursuant to Article 38 of the decision, after the competent authorities of the Member State have taken steps in order for the State which entered the alert to be informed about the located object?

Provisions of EU law cited

Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 (OJ 2000 L 239, p. 19): Article 92.

Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (OJ 2006 L 381, p. 1): Article 1(1) and (2).

Council Decision 2007/801/EC of 6 December 2007 on the full application of the provisions of the Schengen *acquis* in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic (OJ 2007 L 323, p. 34): Article 1(1).

Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ 2007 L 205, p. 63) ('Decision 2007/533'): Article 1(2), Article 2(1), Article 3(1)(a), Article 4(1), Article 20(1), Article 21, Article 38(1) and (2)(a), Article 39, Article 45, Article 49(1) and (2), Article 64(1), and Article 65.

Commission Implementing Decision (EU) 2017/1528 of 31 August 2017 replacing the Annex to Commission Implementing Decision 2013/115/EU on the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ 2017 L 231, p. 6): Section 8.

Article 17 of the Charter of Fundamental Rights of the European Union ('the Charter').

Provisions of national law cited

Lietuvos Respublikos vidaus reikalų ministro įsakymas Nr. 1V-324 dėl Lietuvos nacionalinės antrosios kartos Šengeno informacinės sistemos nuostatų patvirtinimo (Order No 1V-324 of the Minister of the Interior of the Republic of Lithuania regarding approval of the regulations for the Lithuanian national second generation Schengen Information System) of 17 September 2007: points 3, 4, 5.1 and 25.

Lietuvos Respublikos saugaus eismo automobilių keliais įstatymas Nr. VIII-2043 (Law No VIII-2043 of the Republic of Lithuania on road traffic safety) of 12 October 2000 (current version): Article 10(5)(3), Article 27(1).

Regulations for the register of road vehicles, approved by Resolution No 1286 of the Government of the Republic of Lithuania of 28 November 2005: point 2.

Rules for the registration of motor vehicles and their trailers, approved by Order No 260 of the Minister of the Interior of the Republic of Lithuania of 25 May 2001 ('the Rules'): point 14.

Article 4.96 of the Lietuvos Respublikos civilinis kodeksas (Civil Code of the Republic of Lithuania; 'the CC').

Succinct presentation of the facts and procedure in the main proceedings

- 1 D. R. (the interested third party in the individual case) purchased a BMW X5 motor car (pursuant to a contract with 'A. M. transportas' UAB) in Germany on

13 November 2015. The car was deregistered in Germany on 20 November 2015, was brought to Lithuania and was sold to the purchaser. When the vehicle was to be registered in Lithuania on 22 February 2016, it turned out that an alert had been entered in SIS: a notice of search for the vehicle was issued in Bulgaria on 23 December 2015.

- 2 A pre-trial investigation was initiated in accordance with a notification from valstybinė įmonė (State undertaking) Regitra ('VĮ Regitra') regarding registration of the BMW X5 vehicle. However, the investigation was discontinued by resolution of the district prosecutor's office on 21 September 2016 after it was not found that a criminal offence had been committed in Lithuania. By that resolution, the vehicle was returned to D. R., its purchaser who had acted in good faith. In addition, by means of that resolution, notification of the procedural decision adopted was given to the owner of the car at the time of theft, NABKO HOLDING GRUP (Bulgaria); it was sent a copy of the resolution and the details of D. R., the potential defendant (the purchaser acting in good faith), and the right to defend its rights in civil court proceedings was explained.
- 3 For more than three years, the owner of the vehicle (the Bulgarian company NABKO HOLDING GRUP) took no measures that would show its intent to recover the vehicle. Furthermore, the responsible Bulgarian authorities did not take any action to remove the alert for the vehicle from SIS.
- 4 On 20 February 2019, D. R. asked the regional division of VĮ Regitra to register the vehicle but it refused the request by decision of 20 February 2019. 'A. M. transportas' UAB (the applicant in the individual case) appealed against this decision to VĮ Regitra but the latter upheld the decision of the regional division by its decision of 28 March 2019. The regional division of VĮ Regitra refused to register the vehicle, on the basis of point 14 of the Rules, due to the fact that data on the search for the vehicle in Bulgaria were entered in the Schengen Information System.
- 5 'A. M. transportas' UAB appealed against the decisions of the regional division of VĮ Regitra and VĮ Regitra to the Regionų apygardos administracinio teismo Kauno rūmai (Regional Administrative Court, Kaunas Division).
- 6 When examining the individual case, the Regional Administrative Court, Kaunas Division, had doubts as to the legality of the provision applicable in the administrative case and submitted to the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania) a request that it examine whether point 14 of the Rules, in so far it establishes that vehicles can be registered only after they have been removed from the Lithuanian national Schengen Information System, is contrary to the constitutional principle of the rule of law.
- 7 According to the Regional Administrative Court, Kaunas Division, such legislation undoubtedly restricts the right of ownership of the owner of the vehicle

as well as the right to dispose of that property because an unregistered vehicle cannot be transferred to other persons. In addition, the legal consequences arising from the contested provision are disproportionate because the legal regulation laid down in point 14 of the Rules prevents the owner of a vehicle from ever registering it, which is a measure disproportionate to the objective pursued, that is to say, ensuring the safety of traffic and road users and efficient control of road users. In the opinion of that court, such a restriction – that is to say, without establishing an end date and the possibility for the authority that decides on registration of the vehicle and/or for the court to adopt a decision on non-application of those restrictions – is contrary to the constitutional principle of the rule of law.

Succinct presentation of the reasons for the request for a preliminary ruling

- 8 Point 14 of the Rules was adopted in implementation of the Law on road traffic safety. It is also designed to safeguard the objectives of the Schengen *acquis* and contribute to the proper functioning and implementation of the Schengen Information System. Therefore, in order to apply that provision correctly, the objectives, substance and meaning of legal acts adopted at EU level must be properly established.
- 9 In the opinion of the Supreme Administrative Court of Lithuania, point 14 of the Rules is worded in such a way that VĮ Regitra has absolutely no discretion when making decisions on the registration of vehicles for which alerts have been entered in SIS, that is to say, as long as there is an alert entered in SIS, such a vehicle cannot be registered and no exceptions to the prohibition on registration have been laid down. It seems that, in such a case, protection of the rights of purchasers acting in good faith, which is established in Article 4.96 of the CC, remains completely unregulated. It is also questionable whether such legislation is compatible with Article 17 of the Charter.
- 10 The court raises the question whether in a situation such as that in the individual case – where the State that entered the alert is informed that the object has been located, and the owner of the stolen object has been informed and given all the details of the purchaser acting in good faith but the alert still remains in the system – the assumption can be made that the alert still remaining in the system *is no longer relevant*.
- 11 Article 39(3) of Decision 2007/533 apparently leaves it to the discretion of the Member State to determine the measures which it may take after the object has been located. The question therefore arises whether a Member State, acting within its discretion, can *discontinue the execution* of such a SIS alert, that is to say, whether national legal measures can provide for exceptions under which the competent authorities would be granted the right to carry out actions with a located object other than actions for the purpose of its seizure or its use as

evidence in criminal proceedings (as provided for in Article 38 of Decision 2007/533), for example grant to VĮ Regitra of the right to register the vehicle.

- 12 Doubts as to the interpretation of Article 39 of Decision 2007/533 are further reinforced by the insights provided by the SIS II Supervision Coordination Group in Common Position No 1/2016 of 14 April 2016 on the deletion of alerts on vehicles sought for seizure or use as evidence in criminal proceedings and the interpretation of Article 38 of the Council Decision 2007/533/JHA. In interpreting, inter alia, Article 39 of Decision 2007/533, an assumption is made that the Member State which has located the object and the Member State which entered the alert have to find an agreement on the measures, conforming to their legal regimes, that are to be taken. It is noted in paragraph 25 of the common position that, if agreement is not reached by the Member States, the purpose of the alert is not fulfilled; hence the alert cannot be deleted, *with clear impact on the rights of the individuals*. The common position emphasises that cooperation between the parties is the key to the functioning of SIS II. If the alert is never executed because cooperation does not happen in practice, the necessity of the alert can be disputed (paragraph 22 of the common position).