



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

25 June 2015 *

(Reference for a preliminary ruling — Transport — Driving licence — Renewal by the issuing Member State — Condition of residence in the territory of that Member State — Declaration of residence)

In Case C-664/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administratīvā apgabaltiesa (Latvia), made by decision of 5 December 2013, received at the Court on 13 December 2013, in the proceedings

VAS ‘Ceļu satiksmes drošības direkcija’,

Latvijas Republikas Satiksmes ministrija

v

Kaspars Nīmanis,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas (Rapporteur), E. Juhász and D. Šváby, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Latvian Government, by I. Kalniņš and L. Skolmeistare, acting as Agents,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the European Commission, by N. Yerrell and E. Kalniņš, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

* Language of the case: Latvian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 12 of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18).
- 2 The request has been made in proceedings between the VAS ‘Ceļu satiksmes drošības direkcija’ (Department of Road Safety; ‘the CSDD’) and the Latvijas Republikas Satiksmes ministrija (Ministry of Transport of the Republic of Latvia), on the one hand, and Mr Nīmanis, on the other, concerning a refusal to renew his driving licence.

Legal context

EU law

- 3 Recital 2 in the preamble to Directive 2006/126 states:

‘The rules on driving licences are essential elements of the common transport policy, contribute to improving road safety, and facilitate the free movement of persons taking up residence in a Member State other than the one issuing the licence. ...’
- 4 Recital 8 in the preamble to that directive states that, on road safety grounds, it is necessary to lay down the minimum requirements for the issue of a driving licence.
- 5 Recital 15 in the preamble to that directive states:

‘For reasons connected with road safety, Member States should be able to apply their national provisions on the withdrawal, suspension, renewal and cancellation of driving licences to all licence holders having acquired normal residence in their territory.’
- 6 Article 2(1) of Directive 2006/126 provides that ‘[d]riving licences issued by Member States shall be mutually recognised’.
- 7 Article 7 of that directive provides:

‘1. Driving licences shall be issued only to those applicants:

 - (a) 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;
 - ...
 - (e) who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months.
 - ...

3. The renewal of driving licences when their administrative validity expires shall be subject to:

...

- (b) normal residence in the territory of the Member State issuing the licence, or evidence that applicants have been studying there for at least six months.

...

5. ... Without prejudice to Article 2, a Member State issuing a licence shall apply due diligence to ensure that a person fulfils the requirements set out in paragraph 1 of this Article and shall apply its national provisions on the cancellation or withdrawal of the right to drive if it is established that a licence has been issued without the requirements having been met.'

- 8 Article 12 of Directive 2006/126 provides:

'For the purpose of this Directive, "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who, consequently, lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.'

Latvian law

- 9 Article 22(1)(1) of the Law on road traffic (*Ceļu satiksmes likums*), in the version in force since 1 January 2013, provides that any person who has reached the age fixed in that law, whose normal residence is in Latvia, or who can prove that he has studied in Latvia during the preceding six months, may be granted the right to drive motor vehicles and a driving licence.

- 10 Article 22(1)(1) states:

'... The normal residence of a person, within the meaning of the present provision, shall be in Latvia if any one of the following conditions is met:

- (a) because of personal ties (ties which show close links between the person concerned and Latvia) and occupational ties, the place of residence of the person and his declared residence during at least 185 days of the calendar years is in Latvia;
- (b) the person does not have occupational ties, but, because of personal ties (ties which show close links between the person concerned and Latvia), his place of residence and his declared residence are in Latvia;
- (c) the person resides abroad, because of occupational ties, but, because of the existence of personal ties (ties which show close links between the person concerned and Latvia), he frequently returns to Latvia and resides there and his declared place of residence is in Latvia;
- (d) the declared place of residence of the person is in Latvia, but he resides abroad in order to pursue studies.'

- 11 In accordance with Article 1 of the Law on the declaration of residence (Dzīvesvietas deklarēšanas likums), the purpose of that law is to ensure the accessibility of every person in their relations with the State and local authorities.
- 12 Article 2 of that law provides that persons are obliged to declare their residence, and provides for the information that must be supplied and the registration procedure. In accordance with that article, that law applies to persons whose place of residence is in Latvia. Furthermore, the declaration of residence does not create civil-law obligations.
- 13 Under Article 3 of that law, the place of residence is any place (with an address) connected to a building, freely chosen by the person, in which he stays with the express or implied intention of living there, in which he lawfully resides and in which he is accessible for the purposes of his legal relations with the State and local authorities. In addition, that article provides that persons are lawfully established in a building if they own that building, have entered into a residential or commercial lease in respect of that building, or if they have obtained the right to use that building by marriage, kinship, affinity or by virtue of any other statutory or contractual basis.

The dispute in the main proceedings and consideration of the question referred

- 14 Mr Nīmanis obtained a driving licence on 13 December 2000, in Latvia, when his declared place of residence was in that Member State. The period of validity of that driving licence was fixed, pursuant to the rules established by Latvian law, at 10 years.
- 15 According to the data in the population register, Mr Nīmanis has not had a declared place of residence in Latvia since February 2002. However, he claims that he is entitled to have his driving licence renewed in Latvia on the ground that he is normally resident there.
- 16 In order to obtain that renewal, Mr Nīmanis applied to the CSDD, which established, after examining the data in the population register, that Mr Nīmanis did not have a declared place of residence in Latvia.
- 17 On 30 December 2010, the CSDD adopted a decision refusing to provide a service, on the ground that, in order to receive that service, Mr Nīmanis had to be resident in Latvia for more than 185 days and to declare his place of residence in accordance with the procedure laid down by Latvian law.
- 18 After examining the administrative appeal brought by Mr Nīmanis, the Latvijas Republikas Satiksmes ministrija, by decision of 3 February 2011, found that the CSDD's decision complied with Article 22 of the Law on road traffic.
- 19 Mr Nīmanis brought judicial-review proceedings before the Administratīvā rajona tiesa (District Administrative Court), seeking the adoption of a favourable administrative measure, namely renewal of his driving licence.
- 20 By order of 3 June 2011, the Administratīvā apgabaltiesa (Regional Administrative Court) adopted a number of interim measures, requiring the CSDD to renew Mr Nīmanis' driving licence.
- 21 By judgment of 3 April 2012, the Administratīvā rajona tiesa held that the CSDD, under the legislation in force, was not entitled to impose a condition relating to a declared place of residence, since, on the date of the refusal to renew Mr Nīmanis's driving licence, Latvian law did not specifically provide that, in order for a driving licence to be renewed in that Member State, it was necessary that the person concerned should have a declared place of residence in Latvia.

- 22 That court accordingly held to be unfounded the decision of the Latvijas Republikas Satiksmes ministrija that only the declared place of residence could constitute evidence that the person concerned is normally resident in Latvia, or that that person resides in Latvia for more than 185 days of each calendar year. It took the view that those facts could also be established by other evidence, and not solely by means of the information concerning a person's declared place of residence contained in the population register.
- 23 The referring court states that the Administratīvā rajona tiesa did not in any way find that Mr Nīmanis' nationality had been called into question in the present case or that other evidence had been produced to show that Mr Nīmanis was not normally resident in Latvia or that he resided in that Member State for less than 185 days of each calendar year.
- 24 The CSDD appealed against the judgment of the Administratīvā rajona tiesa to the referring court, relying, *inter alia*, on the following arguments.
- 25 Directive 2006/126, according to the CSDD, provides for rules applicable throughout the territory of the Member States of the European Union with a view to establishing a single procedure and uniform criteria for the issuing of driving licences, and to ensure, first, that the possibility of obtaining a driving licence in another Member State — if for some reason it is not possible to obtain one in the Member State of residence — is not used for fraudulent purposes, and, second, that the place of residence is only one of the criteria set for issuing a driving licence. The CSDD adds that if Mr Nīmanis wished to have his driving licence renewed in a Member State other than the Republic of Latvia, that Member State would also examine whether he satisfied that criterion. Likewise, the CSDD, for the purposes of issuing a driving licence to nationals of other Member States, applies the criteria laid down in the Law on road traffic and in its implementing provisions adopted by the Council of Ministers. Accordingly, if the person concerned has not declared that he has a place of residence in Latvia and no information to that effect is to be found in the population register, the CSDD refuses to issue the driving licence.
- 26 The CSDD further submits that the declaration of place of residence is not a mere formality, since it is also essential for other issues.
- 27 The Latvijas Republikas Satiksmes ministrija has intervened in support of the appeal brought by the CSDD against the judgment of the Administratīvā rajona tiesa.
- 28 The referring court states that, in accordance with the case-law of the Latvian courts, in examining an action seeking a favourable administrative measure, the court must examine whether, in view of the facts of the case before it, the applicant is entitled to obtain such a measure. In addition, the action must, according to the referring court, be examined in accordance with the facts and the legal framework established at the time of its examination. A court may not impose, by means of a decision, an obligation on the authorities through the application of legislative provisions which are no longer in force.
- 29 For the purpose of ruling on an action seeking the adoption of a favourable administrative measure, in this instance the renewal of a driving licence, the referring court must take into account, in accordance with that case-law, the law in force on the date on which that decision was adopted.
- 30 The referring court states that Article 22 of the Law on road traffic, which establishes a condition that, in order to obtain a driving licence, a person must have a declared place of residence in Latvia, was adopted as a result of the transposition of Directive 2006/126 into Latvian law.
- 31 The referring court states that, in order to resolve the dispute in the main proceedings, it is necessary to determine whether information in the population register concerning a declared place of residence in Latvia constitutes the only means by which Mr Nīmanis can prove that he is normally resident in Latvia for the purposes of having his driving licence renewed.

- 32 According to the referring court, the purpose of the declaration of residence laid down by Latvian law is to ensure that every person is accessible in the context of his relations with the State. The absence of a declared place of residence does not by itself mean that the person does not reside in Latvia.
- 33 Moreover, that court states that, if a person is normally resident in Latvia, without, however, having a declared place of residence in that Member State, that person is also not entitled, by reason of his normal residence in that Member State, to obtain a driving licence in another Member State, since he does not satisfy the condition relating to normal residence in that other Member State set out in Directive 2006/126.
- 34 As it was uncertain whether the Latvian legislation complies with Article 12 of Directive 2006/126 and with its objectives, as defined in recital 2 in the preamble thereto, namely to improve road safety and to facilitate the free movement of persons taking up residence in a Member State other than the State issuing the licence, the Administratīvā apgabaltiesa decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 12 of Directive 2006/126, read in conjunction with the first sentence of recital 2 in the preamble thereto, be interpreted as precluding legislation of a Member State which provides that the only means of proving that a person is normally resident in that State (Latvia) is the declared place of residence of that person? “Declared place of residence” must be understood as referring to the obligation of the person, in accordance with the national legislation, to be registered in a national register, in order to notify his accessibility at the declared place of residence for the purposes of his legal relations with the State and local authorities.’

Consideration of the question referred

- 35 By its question, the referring court asks, in essence, whether Article 12 of Directive 2006/126 must be interpreted as precluding legislation of a Member State under which the only way in which a person who applies for the issue or renewal of a driving licence in that Member State can prove that he satisfies the condition of ‘normal residence’, within the meaning of that article, in the territory of that Member State, set out in Article 7(1)(e) and 7(3)(b) of that directive (‘the normal residence condition’), is to establish that he has a declared place of residence in the territory of the Member State concerned.
- 36 At the outset, it should be stated that observance of the normal residence condition is an essential element of the system established by that directive, the linchpin of which is the principle of mutual recognition of driving licences (see, to that effect, judgment in *Hofmann*, C-419/10, EU:C:2012:240, paragraph 78 and the case-law cited).
- 37 The Court has held that the normal residence condition helps, inter alia, in the fight against ‘driving-licence tourism’, in the absence of complete harmonisation of the laws of the Member States relating to the issuing of driving licences, and that that condition is indispensable if observance of the condition of fitness to drive is to be monitored (see, with regard to the normal residence condition laid down in Article 7(1)(b) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), judgments in *Wiedemann and Funk*, C-329/06 and C-343/06, EU:C:2008:366, paragraph 69; in *Zerche and Others*, C-334/06 to C-336/06, EU:C:2008:367, paragraph 66; and in *Grasser*, C-184/10, EU:C:2011:324, paragraph 27).
- 38 The Court has accordingly taken the view that, in certain cases, failure to observe the condition of normal residence is capable, in itself, of justifying the refusal by a Member State to recognise a driving licence issued by another Member State (see, with regard to the normal residence condition laid down in Article 7(1)(b) of Directive 91/439, judgments in *Apelt*, C-224/10, EU:C:2011:655, paragraph 34, and in *Akyüz*, C-467/10, EU:C:2012:112, paragraph 61).

- 39 Only the Member State issuing a driving licence is competent to verify compliance with the normal residence condition (see, to that effect, order in *Wierer*, C-445/08, EU:C:2009:443, paragraph 55). That rule is equally valid for the Member State in which the holder of a driving licence applies to have it renewed.
- 40 Consequently, it is important that the authorities responsible for issuing and renewing driving licences in a Member State can reliably ensure that the applicant does in fact satisfy the normal residence condition.
- 41 The second subparagraph of Article 7(5) of Directive 2006/126 provides, in this context, that the Member State issuing a driving licence must apply due diligence to ensure that the person concerned fulfils the requirements set out in Article 7(1) of that directive, including the normal residence condition.
- 42 Although Article 12 of Directive 2006/126 defines the criteria for determining what is meant by 'normal residence' for the purposes of the application of that directive, it is clear that that directive does not, however, contain any provision specifying the conditions for proving the existence of such residence to the authorities responsible for issuing and renewing driving licences.
- 43 Although it is true, first, that the conditions for proving compliance with the normal residence condition to the authorities responsible for issuing and renewing driving licences come within the powers of the Member States and, second, that Directive 2006/126 sets only, as is clear from recital 8 in the preamble thereto, the minimum conditions for the issue of a driving licence by the Member States, it none the less follows from Article 12 of that directive, read in conjunction with Article 7(1)(e) and 7(3)(b) thereof, that the result to be achieved by the Member States, in accordance with those provisions, is to determine whether the criteria for establishing that a person has his normal residence in their territory, listed in Article 12, are satisfied, in order to establish whether that person meets the normal residence condition.
- 44 Accordingly, the conditions for proving compliance with the normal residence condition must not go beyond what is necessary to enable the Member State authorities responsible for issuing and renewing driving licences to satisfy themselves that the person concerned meets that condition in the light of the criteria set out in Article 12 of Directive 2006/126.
- 45 To that end, the fact that a Member State makes the issue and renewal of a driving licence subject to the obligation for the person concerned to have a declared place of residence in its territory appears to constitute an appropriate means to facilitate verification, by the competent authorities, of compliance with the normal residence condition.
- 46 However, the absolute obligation to have a declared place of residence in the territory of a Member State, and therefore the refusal for an applicant for a driving licence to use other forms of evidence to establish that he fulfils the criteria set out in Article 12 of Directive 2006/126, goes beyond what is necessary to enable the competent authorities to satisfy themselves that the person concerned complies with the normal residence condition.
- 47 Article 12 of Directive 2006/126 sets out, in relation to the normal residence condition, a set of objective criteria for determining whether the applicant has his normal residence in that territory.
- 48 It is conceivable that an applicant may satisfy those criteria in order to establish that he has his normal residence in the territory of a Member State, even though he does not have a declared place of residence in that Member State, which appears to be the position with regard to Mr Nīmanis. In those circumstances, that applicant could, and even should, also be refused a driving licence in other

Member States on the basis of the normal residence condition, in so far as he does not have his normal residence, within the meaning of Article 12 of Directive 2006/126, in the territory of those Member States.

- 49 The person concerned could therefore be deprived of the possibility of obtaining a driving licence in the European Union, even though he has his normal residence, within the meaning of Article 12 of Directive 2006/126, in the territory of a Member State.
- 50 Furthermore, legislation of a Member State under which the only means available to an applicant for a driving licence to prove to the competent authorities that he satisfies the normal residence condition is to establish the existence of a declaration of a place of residence of the person concerned in the territory of that Member State is overly exclusive in character. Such legislation favours an element which does not reflect all of the criteria set out in Article 12 of Directive 2006/126, in that it excludes all other elements representing the situations referred to in that article.
- 51 In the light of all of the foregoing, the answer to the question referred is that Article 12 of Directive 2006/126 must be interpreted as precluding legislation of a Member State under which the only way in which a person who applies for the issue or renewal of a driving licence in that Member State can prove that he satisfies the condition of ‘normal residence’, within the meaning of that article, in the territory of that Member State, set out in Article 7(1)(e) and 7(3)(b) of that directive, is to establish that he has a declared place of residence in the territory of the Member State concerned.

Costs

- 52 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 12 of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences must be interpreted as precluding legislation of a Member State under which the only way in which a person who applies for the issue or renewal of a driving licence in that Member State can prove that he satisfies the condition of ‘normal residence’, within the meaning of that article, in the territory of that Member State, set out in Article 7(1)(e) and 7(3)(b) of that directive, is to establish that he has a declared place of residence in the territory of the Member State concerned.

[Signatures]