



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

16 December 2021 *

(Reference for a preliminary ruling – Article 63 TFEU – Free movement of capital – Road traffic – Registration and taxation of motor vehicles – Driver residing in a Member State – Vehicle registered in another Member State – Vehicle provided free of charge for a short period – National legislation prohibiting persons who have resided in Italy for more than 60 days from driving in that Member State a vehicle registered in another country)

In Case C-274/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Giudice di pace di Massa (Magistrates' Court, Massa, Italy), made by decision of 16 June 2020, received at the Court on 19 June 2020, in the proceedings

GN,

WX

v

Prefettura di Massa Carrara – Ufficio Territoriale del Governo di Massa Carrara,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, Vice-President of the Court, acting as President of the Sixth Chamber, N. Jääskinen (Rapporteur) and M. Safjan, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- GN and WX, by M. Kòsa, avvocato,
- the Italian Government, by G. Palmieri, acting as Agent, and P. Garofoli, avvocato dello Stato,
- the Czech Government, by M. Smolek, J. Vláčil and J. Očková, acting as Agents,

* Language of the case: Italian.

– the Finnish Government, by M. Pere, acting as Agent,
– the European Commission, by E. Montaguti, B.-R. Killmann and L. Malferrari, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 18, 21, 26, 45, 49 to 55 and 56 to 62 TFEU.
- 2 The reference has been made in proceedings between GN and WX and the Prefettura di Massa Carrara – Ufficio Territoriale del Governo di Massa Carrara (Massa Carrara Regional Authority – Massa Carrara Government representative’s territorial office, Italy) concerning a traffic violation report.

Legal context

- 3 Article 93(1-*bis*) of decreto legislativo n° 285 – Nuovo codice della strada (Legislative Decree No 285 on a New Highway Code) of 30 April 1992 (Ordinary Supplement to GURI No 114 of 18 May 1992), in the version applicable to the dispute in the main proceedings (‘the Highway Code’), provides:

‘Without prejudice to paragraph 1-*ter*, anyone who has established his or her residence in Italy for more than 60 days shall be prohibited from driving a vehicle registered in another country.’
- 4 It is apparent from the order for reference that an infringement of Article 93(1-*bis*) of that code is punishable by an administrative fine of between EUR 712 and EUR 2 848.
- 5 Article 93(1-*ter*) of the code provides:

‘In the case of a vehicle which is leased or rented, without a driver, by an undertaking established in another Member State of the European Union or of the European Economic Area which has not established a secondary office or other place of business in Italy, and in the case of a vehicle loaned free of charge to a person residing in Italy and bound by an employment or working relationship with an undertaking established in another Member State of the European Union or the European Economic Area which has not established a secondary office or other place of business in Italy, a document, signed by the holder and bearing a specific date, demonstrating the right of that person to be using the vehicle and the duration of that use, shall be kept inside the vehicle in accordance with the provisions of the Community Customs Code. In the absence of such a document, the use of the vehicle shall be deemed to be the responsibility of the driver.’
- 6 Article 43 of the Codice Civile (Italian Civil Code), in the version applicable to the dispute in the main proceedings, defines ‘residence’ as ‘the place where the person usually lives’.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 7 GN resides in Italy, while his wife, WX, resides in Slovakia.
- 8 On 17 February 2019, when WX was in Italy, GN and WX used the latter's car, registered in Slovakia, in order to go to a supermarket.
- 9 The car was driven first by WX and then by GN.
- 10 On that occasion, they were stopped and checked by the Massa Carrara traffic police. During that police check, a traffic violation report was drawn up against GN, the driver of the vehicle concerned at the time of the police check, and against WX, as the owner of the vehicle, and it was decided to seize the vehicle for breach of Article 93(1-*bis*) of the Highway Code, since GN, who had resided in Italy for more than 60 days, was driving a car registered in another country.
- 11 The referring court notes that, under the applicable national law, persons who have resided in Italy for more than 60 days are not permitted to drive in Italy a motor vehicle registered in another country and, in order to do so, are obliged to have that vehicle registered in Italy, following complex and costly administrative formalities.
- 12 The referring court specifies that registering a motor vehicle in Italy requires, in addition to the costs of registration and a relatively complex bureaucratic process, the person concerned to have the vehicle serviced again in Italy, to pay the tax on motor vehicles in Italy, even if the equivalent tax for that year has already been paid in another country, and to purchase a new insurance policy from an Italian company.
- 13 The said court considers that the prohibition on driving, in Italy, a motor vehicle registered in another Member State, irrespective of the person in whose name that vehicle is registered, imposed by the Italian legislation on anyone who has resided in Italy for more than 60 days, constitutes discrimination on grounds of nationality. In addition, that court considers that the obligation to register in Italy motor vehicles already registered in another Member State could hinder or limit, indirectly but substantially, the ability of the Union citizens concerned to exercise certain rights enshrined in the FEU Treaty.
- 14 In those circumstances, the Giudice di pace di Massa (Magistrates' Court, Massa, Italy) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - '(1) Is the concept of the prohibition of "discrimination on grounds of nationality" under Article 18 TFEU to be interpreted as meaning that Member States are prohibited from enacting any legislation that could, indirectly, covertly and/or materially, cause difficulties for nationals of other Member States?
 - (2) If the first question is answered in the affirmative, could Article 93(1-*bis*) of [the Highway Code], concerning the prohibition on driving with foreign number plates (registered in anybody's name) after 60 days of residence in Italy, cause difficulties for nationals of other Member States (who own cars with foreign number plates) and consequently be discriminatory on grounds of nationality?
 - (3) Are the following concepts:

- a. “right to move and reside freely within the territory of the Member States”, as referred to in Article 21 TFEU;
- b. “internal market” which “shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties”, as referred to in Article 26 TFEU;
- c. “freedom of movement for workers ... secured within the Union”, as referred to in Article 45 TFEU;
- d. “[prohibited] restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State ...”, as referred to in Articles 49 to 55 TFEU; [and]
- e. “restrictions on freedom to provide services within the Union ... prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended”, as referred to in Articles 56 to 62 TFEU

to be interpreted as meaning that national provisions that could, indirectly, covertly and/or materially, limit or hinder the ability of European citizens to exercise the right of freedom of movement and residence within the territory of the Member States, the right of freedom of movement for workers within the Union, the freedom of establishment and the freedom to provide services, or in any way affect those rights, are also prohibited?

- (4) If the third question is answered in the affirmative, could Article 93(1-*bis*) of [the Highway Code], concerning the prohibition of driving with foreign number plates (registered in anybody’s name) after 60 days of residence in Italy, limit, hinder or in any way affect the exercise of the right of freedom of movement and residence in the territory of the Member States, the right of freedom of movement for workers within the Union, the freedom of establishment and the freedom to provide services?

Consideration of the questions referred

- 15 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 18, 21, 26, 45, 49 to 55 and 56 to 62 TFEU must be interpreted as precluding a provision of national law which prohibits anyone who has resided for more than 60 days in a Member State from driving in that Member State a motor vehicle registered in another Member State, irrespective of the person in whose name that vehicle is registered.
- 16 In that regard, it should be recalled that, even though, formally, the questions referred by the national court concern the interpretation of Articles 18, 21, 26, 45, 49 to 55, and 56 to 62 TFEU, that does not prevent the Court from providing the national court with all the elements of interpretation of EU law which may be of assistance in adjudicating on the case before it, whether or not that court has specifically referred to them in the questions (see, inter alia, judgment of 29 October 2015, *Nagy*, C-583/14, EU:C:2015:737, paragraph 20 and the case-law cited).
- 17 Thus, the Court has already held, in relation to a loan agreed between citizens resident in different Member States, that the cross-border lending of a vehicle free of charge constitutes a movement of capital within the meaning of Article 63 TFEU (judgment of 29 October 2015, *Nagy*, C-583/14, EU:C:2015:737, paragraph 23 and the case-law cited).
- 18 Since Article 63 TFEU is applicable and provides specific rules on non-discrimination, Article 18 TFEU does not apply (judgment of 29 October 2015, *Nagy*, C-583/14, EU:C:2015:737, paragraph 24).

- 19 Furthermore, Articles 49 to 55 TFEU, which prohibit restrictions on freedom of establishment, are irrelevant to the dispute in the main proceedings, since, according to the information provided by the referring court, that dispute does not concern the right either to take up or to pursue activities as self-employed persons.
- 20 Similarly, in so far as the file submitted to the Court contains nothing capable of establishing a link between the situation at issue in the main proceedings and the exercise of the freedom to provide services provided for in Articles 56 to 62 TFEU, the interpretation of those articles does not appear to be relevant for the resolution of that dispute either.
- 21 Furthermore, there is nothing in the order for reference capable of establishing a link between that situation and the exercise of freedom of movement for workers, provided for in Article 45 TFEU.
- 22 Finally, since Article 26 TFEU provides that the internal market is to comprise an area without internal frontiers in which, inter alia, the free movement of capital is ensured in accordance with the provisions of the Treaties and since Article 63 TFEU is applicable, the former article does not apply.
- 23 Thus, in so far as the dispute in the main proceedings concerns the loan of a car by a resident of one Member State to a resident of another Member State, it is appropriate first to examine the questions referred in the light of Article 63 TFEU and then, if necessary, having regard to Article 21 TFEU (see, to that effect, judgment of 29 October 2015, *Nagy*, C-583/14, EU:C:2015:737, paragraph 25).
- 24 Consequently, in order to give a useful answer to the referring court, it is necessary to reformulate the questions referred and to consider that, by those questions, that court asks, in essence, whether Articles 21 and 63 TFEU must be interpreted as precluding legislation of a Member State which prohibits any person who has established his or her residence in that Member State for more than 60 days from driving in that Member State a motor vehicle registered in another Member State, irrespective of the person in whose name that vehicle is registered.

The existence of a restriction

- 25 Measures taken by a Member State which are liable to dissuade its residents from obtaining loans in other Member States constitute restrictions within the meaning of Article 63(1) TFEU (see, inter alia, judgment of 29 October 2015, *Nagy*, C-583/14, EU:C:2015:737, paragraph 26 and the case-law cited).
- 26 Under Article 93(1-*bis*) of the Highway Code, anyone who has established his or her residence in Italy for more than 60 days is prohibited from using a vehicle registered in another country.
- 27 Consequently, a person who has resided in Italy for more than 60 days, such as GN, has a motor vehicle registered in another Member State and wishes to drive it in Italy, is required to have that vehicle registered in the latter Member State, which, as the referring court points out, involves costs and taxes and complex administrative formalities.
- 28 As the essential element of a loan is the option of using the goods loaned, it must be observed that, by requiring persons who have resided in Italy for more than 60 days to pay a tax on the use on the road network in Italy of a vehicle registered in another Member State, including where that vehicle was loaned free of charge by a resident of another Member State, the national legislation at issue in

the main proceedings results in the taxation of loans for cross-border use free of charge of motor vehicles (see, to that effect, judgment of 26 April 2012, *van Putten*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 39). By contrast, loans for use free of charge of a vehicle registered in Italy are not subject to that tax.

- 29 Such a difference in treatment according to the State in which the loaned vehicle is registered is, therefore, liable to dissuade residents of Italy from accepting loans offered by residents of another Member State of a vehicle registered in that State (see, to that effect, order of 10 September 2020, *Wallonische Region (Registration of a loaned vehicle)*, C-41/20 to C-43/20, not published, EU:C:2020:703, paragraph 48 and the case-law cited).
- 30 Therefore, the national legislation referred to in paragraph 24 above, in so far as it is liable to dissuade residents of Italy from obtaining loans in other Member States, constitutes a restriction on the free movement of capital for the purpose of Article 63(1) TFEU (see, to that effect, judgment of 26 April 2012, *van Putten*, C-578/10 to C-580/10, EU:C:2012:246, paragraphs 40 and 41).

Justification of the restriction

- 31 According to the Court's well-established case-law, such a restriction of one of the fundamental freedoms guaranteed by the FEU Treaty is permissible only if it pursues a legitimate objective compatible with that Treaty and is justified by overriding reasons in the public interest. Even if that were so, application of that measure would still have to be appropriate for securing the attainment of the objective pursued and not go beyond what is necessary in order to attain that objective (see, inter alia, judgment of 29 October 2015, *Nagy*, C-583/14, EU:C:2015:737, paragraph 31, and order of 23 September 2021, *Wallonische Region (Registration of a vehicle belonging to an undertaking without legal personality)*, C-23/21, not published, EU:C:2021:770, paragraph 48 and the case-law cited).
- 32 The Italian Government submits, in essence, that the objective of the legislation at issue in the main proceedings is to prevent that, through normal use in national territory of vehicles registered in another country, persons residing and working in Italy commit illegal acts, such as failing to pay taxes, duties and tolls, are able to avoid penalties or to obtain more advantageous insurance premiums, and also to avoid that identification of the persons who actually drive those vehicles is rendered difficult, if not impossible, for the police forces carrying out checks.
- 33 In that regard, it should be recalled that, as regards, in particular, the objectives of combating tax evasion in the field of registration tax and tax on motor vehicles, the Court has already held that a Member State may impose a registration tax on a motor vehicle registered in another Member State where that vehicle is intended to be used essentially in the first Member State on a permanent basis or is, in fact, used in that manner (see, to that effect, judgment of 26 April 2012, *van Putten*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 46 and the case-law cited).
- 34 However, if those conditions are not satisfied, the connection with one Member State of the vehicle registered in another Member State is weaker, so that another justification for the restriction in question is necessary (judgment of 26 April 2012, *van Putten*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 47 and the case-law cited).

- 35 It is therefore the task of the national court to assess the duration of the loans at issue in the main proceedings and how the loaned vehicles have in fact been used (judgment of 26 April 2012, *van Putten*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 49).
- 36 Furthermore, as regards the objective of preventing abuses, it follows from the Court's case-law that, while EU law cannot be relied on for abusive or fraudulent ends, the fact that a person residing in Italy uses, in the territory of that Member State, a vehicle registered in another Member State which has been loaned to him or her free of charge by a person residing in that other Member State cannot form the basis for a general presumption of abuse (order of 10 September 2020, *Wallonische Region (Registration of a loaned vehicle)*, C-41/20 to C-43/20, not published, EU:C:2020:703, paragraph 53 and the case-law cited).
- 37 As regards the justification given based on the need for roadside checks to be effective, relied on by the Italian Government in its written observations, it is not apparent why identification of persons who actually drive vehicles registered in another country would be rendered difficult, if not impossible, for the police forces carrying out those checks.
- 38 Furthermore, as regards the objective of ensuring that the driver concerned does not obtain more advantageous insurance premiums, put forward by that government, it is not apparent either from the order for reference or from the written observations of that government how that objective constitutes a legitimate objective compatible with the FEU Treaty and is justified by overriding reasons in the public interest, in accordance with the case-law cited in paragraph 31 above. In that regard, it must be borne in mind that it is for a Member State which claims to have a reason justifying a restriction on one of the fundamental freedoms guaranteed by that treaty to demonstrate specifically the existence of a reason relating to the public interest (see, to that effect, judgment of 8 May 2003, *ATRAL*, C-14/02, EU:C:2003:265, paragraph 69).
- 39 Finally, according to settled case-law, reduction in tax revenue cannot be regarded as an overriding reason in the public interest which may be relied on to justify a measure which is in principle contrary to a fundamental freedom (see, inter alia, judgments of 7 September 2004, *Manninen*, C-319/02, EU:C:2004:484, paragraph 49; of 22 November 2018, *Sofina and Others*, C-575/17, EU:C:2018:943, paragraph 61; and order of 10 September 2020, *Wallonische Region (Registration of a loaned vehicle)*, C-41/20 to C-43/20, not published, EU:C:2020:703, paragraph 55).
- 40 Consequently, the answer to the questions referred is that Article 63(1) TFEU must be interpreted as precluding legislation of a Member State which prohibits any person who has established his or her residence in that Member State for more than 60 days from driving in that Member State a motor vehicle registered in another Member State, irrespective of the person in whose name that vehicle is registered, without any account being taken of the duration of the use of that vehicle in the first Member State and without the person concerned being able to invoke any right to exemption where that same vehicle is neither intended to be used essentially in the first Member State on a permanent basis nor is, in fact, used in that manner.
- 41 In those circumstances, it is not necessary to rule on the interpretation of Article 21 TFEU.

Costs

- 42 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 (Sixth Chamber) hereby rules:

Article 63(1) TFEU must be interpreted as precluding legislation of a Member State which prohibits any person who has established his or her residence in that Member State for more than 60 days from driving in that Member State a motor vehicle registered in another Member State, irrespective of the person in whose name that vehicle is registered, without any account being taken of the duration of the use of that vehicle in the first Member State and without the person concerned being able to invoke any right to exemption where that same vehicle is neither intended to be used essentially in the first Member State on a permanent basis nor is, in fact, used in that manner.

[Signatures]