

**Action brought on 30 March 2007 — Commission of the European Communities v Republic of Poland**

(Case C-170/07)

(2007/C 183/26)

*Language of the case: Polish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: J. Hottiaux and K. Herrmann, acting as Agents)

*Defendant:* Republic of Poland

**Form of order sought**

- declare that, by introducing a requirement for roadworthiness tests of imported second-hand vehicles prior to their registration whereas there is no such requirement in relation to domestic vehicles in the same circumstances, the Republic of Poland has failed to fulfil its obligations under Article 28 EC;
- order the Republic of Poland to pay the costs.

**Pleas in law and main arguments**

Article 28 EC prohibits quantitative restrictions on imports between Member States and all measures having equivalent effect. According to the Court's case-law, in the absence of harmonisation 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions'.

A measure having equivalent effect to a quantitative restriction constitutes an infringement of Article 28 EC unless it is justified on the basis of Article 30 EC or, in accordance with the Court's case-law, by mandatory requirements in the public interest.

The Polish Law on Road Traffic imposes an obligation to carry out a roadworthiness test prior to the first registration of vehicles in Poland. Since new vehicles are exempted from that obligation, in practice only second-hand vehicles imported from other Member States are subject to mandatory roadworthiness tests prior to their registration in Poland. Consequently, that requirement constitutes a measure discriminating against vehicles imported from other Member States compared with domestic vehicles. Moreover, the above conclusion is supported by the fact that the Polish authorities charge for the roadworthiness tests carried out a significant fee almost twice as high as the fee for periodical tests for a domestic vehicle of the same category. In the Commission's view, the Polish authorities have not put forward a legitimate justification for such differentiation. In accordance with settled case-law, national provisions which impose additional costs on imported goods in comparison with

similar domestic goods constitute a restriction on intra-Community trade for the purposes of Article 28 EC.

In order to justify such a measure, the Member State must prove that it is necessary and proportionate to the objective pursued. In accordance with Article 30 EC, such a measure cannot constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

In this regard, the Commission acknowledges that the fact that a vehicle has been used on the public highway since the last roadworthiness test may justify, on grounds of the protection of health and life of humans, a test carried out at the time of the vehicle's registration establishing that it has not been involved in an accident and is in a good mechanical condition. The Member States may therefore subject vehicles to roadworthiness tests prior to registration, provided however that such a requirement does not constitute arbitrary discrimination, that is to say it concerns both vehicles imported from other Member States and domestic vehicles in a similar position. However, if provisions of national law do not require roadworthiness tests for domestic vehicles submitted for registration in the same circumstances as vehicles imported from other Member States, such provisions must be found to constitute arbitrary discrimination.

Furthermore, the Commission takes the view that the Polish provisions restricting intra-Community trade cannot be justified by the protection of health and life of humans, because they do not meet the requirement that they be necessary and proportionate.

First, if the roadworthiness of a vehicle has been tested in one of the Member States, the principle of equivalence and of mutual recognition resulting from Article 3(2) of Directive 96/96/EC obliges all Member States to recognise a certificate issued in such circumstances as if they had issued it themselves. The Commission has to reject the argument of the Polish authorities that periodical roadworthiness tests carried out in another Member State are immaterial. In the Commission's view, marking in the registration documents the fact that the vehicle's registration has been cancelled is not intended to invalidate all roadworthiness tests and other certificates concerning the vehicle's mechanical state and, moreover, the cancellation of a vehicle's registration has nothing to do with its mechanical state. Second, selective checking would be more proportionate to safeguarding road safety, because it would concern only those vehicles imported from other Member States in relation to which there is reason to suppose that they endanger road safety or the environment. Third, the Commission does not agree with the Polish Government that roadworthiness tests are necessary for the identification of vehicles and the fight against crime. In the Commission's view, the carrying out of thorough roadworthiness tests which cost almost twice as much as periodical roadworthiness tests is not necessary for determining the category, sub-category, intended use or type of a vehicle. That information is usually already contained in the vehicle documents submitted

to the Polish registration bodies. Fourth, the Commission rejects the Polish authorities' argument concerning the Vienna Convention. In the Commission's view, a lack of appropriate rules at international level has no effect on the Republic of Poland's obligations in relation to the Community.

**Reference for a preliminary ruling from the Amtsgericht Landau/Isar (Germany) lodged on 7 May 2007 — Criminal proceedings against Rainer Günther Möginger**

(Case C-225/07)

(2007/C 183/28)

*Language of the case: German*

**Reference for a preliminary ruling from the Sozialgericht Stuttgart (Germany) lodged on 2 May 2007 — Krystyna Zablocka-Weyhermüller v Land Baden-Württemberg**

(Case C-221/07)

(2007/C 183/27)

*Language of the case: German*

**Referring court**

Sozialgericht Stuttgart

**Parties to the main proceedings**

*Applicant:* Krystyna Zablocka-Weyhermüller

*Defendant:* Land Baden-Württemberg

**Question referred**

Are the benefit restrictions laid down in German social compensation law under Paragraph 64e of the Bundesversorgungsgesetz (Federal Law on war pensions — BVG) for those entitled to pensions who have their residence or habitual abode in Poland as a new EU accession state consistent with higher-ranking Community law, in particular from the point of view of freedom of movement?

**Referring court**

Amtsgericht Landau/Isar

**Party to the main proceedings**

Rainer Günther Möginger

**Questions referred**

1. Are Articles 1(2), 7(1)(b), 8(2) and (4) and 9 of Council Directive 91/439/EEC of 29 July 1999 on driving licences <sup>(1)</sup> as amended by Council Directive 97/26/EC of 2 June 1997 (hereinafter: the directive) to be interpreted as meaning

that they preclude a Member State from refusing to recognise a driving licence issued by another Member State even where its holder has, in the first Member State, been subject to a measure withdrawing or cancelling the right to drive issued by that Member State and where a temporary ban on obtaining a new right to drive, with which that measure is coupled, had not yet expired before the date on which the driving licence was issued by the other Member State?

2. If so:

Is that directive to be interpreted as meaning that the principle of mutual recognition may be ignored by the courts and authorities of the first Member State where, on grounds of abuse of a right, the holder of the right to drive is barred in a specific case from relying on the right to drive acquired in another EU Member State, in particular where an overall appraisal of the objective circumstances shows that, despite formal observance of the conditions laid down by the Community rules, the purpose of the rules in the directive has not been achieved and where there is a subjective element consisting in the intention to obtain an advantage from the Community rules, in the form of recognition of the right to drive acquired in another EU Member State, by arbitrarily creating the conditions laid down for acquiring it,