



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

6 October 2022 \*

(Reference for a preliminary ruling – Common transport policy – Directive 2006/126/EC – Article 11(2) and (4) – Suspension of the right to drive a motor vehicle – Driving licence issued by the Member State of normal residence in exchange for a driving licence issued by another Member State – Refusal by the first Member State to enforce a decision suspending the right to drive adopted by the second Member State – Obligation for the second Member State not to recognise, in its territory, the validity of the driving licence that has been suspended)

In Case C-266/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 26 April 2021, received at the Court on the same day, in the criminal procedure against

**HV,**

intervening parties:

**Sofiyska gradska prokuratura,**

THE COURT (Third Chamber),

composed of K. Jürimäe, President of Chamber, N. Jääskinen, M. Safjan, N. Piçarra (Rapporteur) and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the German Government, by J. Möller, A. Hoesch and D. Klebs, acting as Agents,
- the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,
- the Hungarian Government, par M.Z. Fehér and R. Kissné Berta, acting as Agents,

\* Language of the case: Bulgarian.

– the European Commission, by S. Grünheid, P. Messina and I. Zaloguín, 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 Article 2(4) and Article 4(1)(d) of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ 2008 L 337, p. 102) and of Article 11(2) and (4) 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 concerning the enforcement, in Spain, of a decision suspending the right to drive taken in Bulgaria in respect of a person residing in Spain and holding a driving licence issued by the latter Member State in exchange for a driving licence issued by the former Member State.

### **Legal context**

#### ***European Union law***

##### *Framework Decision 2008/947*

- 3 Article 1(2) of Framework Decision 2008/947, that article being entitled ‘Objectives and scope’, provides:

‘This Framework Decision shall apply only to:

- (a) the recognition of judgments and, where applicable, probation decisions;
- (b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;

...

as described and provided for in this Framework Decision.’

- 4 Article 2 of that framework decision, entitled ‘Definitions’, is worded as follows:

‘For the purposes of this Framework Decision:

...

4. “alternative sanction” shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

...’

5 According to Article 4(1) of the said framework decision, concerning the ‘types of probation measures and alternative sanctions’:

‘This Framework Decision shall apply to the following probation measures or alternative sanctions:

...

(d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;

...’

6 Article 6(1) of the same framework decision, that article being entitled ‘Procedure for forwarding a judgment and, where applicable, a probation decision’, provides:

‘When, in application of Article 5(1) or (2), the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a certificate, the standard form for which is set out in Annex I.’

#### *Directive 2006/126*

7 Recital 15 of Directive 2006/126 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.’

8 According to Article 2(1) of that directive, ‘driving licences issued by Member States shall be mutually recognised’.

9 Article 11(1), (2) and (4) of the said directive, that article being entitled ‘Various provisions concerning the exchange, the withdrawal, the replacement and the recognition of driving licences’, provides:

‘1. Where the holder of a valid national driving licence issued by a Member State has taken up normal residence in another Member State, he may request that his driving licence be exchanged for an equivalent licence. ...

2. Subject to observance of the principle of territoriality of criminal and police laws, the Member State of normal residence may apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued by another Member State and, if necessary, exchange the licence for that purpose.

...

4. A Member State shall refuse to issue a driving licence to an applicant whose driving licence is restricted, suspended or withdrawn in another Member State.

A Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State's territory.

A Member State may also refuse to issue a driving licence to an applicant whose licence is cancelled in another Member State.'

- 10 According to the first paragraph of Article 12 of the same directive, that article being entitled 'Normal residence':

'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.'

- 11 Under the first sentence of Article 15 of Directive 2006/126, that article being entitled 'Mutual Assistance':

'Member States shall assist one another in the implementation of this Directive and shall exchange information on the licences they have issued, exchanged, replaced, renewed or revoked.'

### ***Bulgarian law***

- 12 Pursuant to Article 78a of the Nakazatelen kodeks (Criminal Code; 'the NK'):

'(1) A person of full age shall be released from criminal liability by the [competent] court and a fine of 1 000 to 5 000 [Bulgarian leva (BGN) (approximately EUR 500 to 2 500)] shall be imposed on him or her if all the following conditions are met:

- (a) for the offence concerned, a custodial sentence not exceeding three years or other less severe penalty is provided for where committed intentionally, or a custodial sentence not exceeding five years or other less severe penalty is provided for where committed through negligence;
- (b) the offender has neither been convicted of an offence that is the subject of prosecution by the public prosecutor nor released from criminal liability under the provisions of this section;
- (c) the damage to property caused by the offence has been compensated.

...

(4) The court which imposes the fine under paragraph 1 may also impose the administrative penalty of suspension of the right to pursue a particular profession or activity for a period not exceeding three years if the suspension of that right is provided for in respect of the offence concerned.'

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

- 13 By judgment of 26 June 2018, which became final on 20 November 2019, the Sofiyski gradski sad (Sofia City Court, Bulgaria), the referring court in the present case, found HV guilty of driving a motor vehicle in Bulgarian territory in breach of road traffic regulations and negligently causing moderate bodily harm to more than one person. On the basis of Article 78a(1) of the NK, that court released HV from criminal liability under that offence and imposed an administrative fine of BGN 1 000 (approximately EUR 500) on him. In addition, pursuant to Article 78a(4) of the NK, the said court decided to suspend HV's right to drive a motor vehicle for a period of six months from the day on which that judgment would become final.
- 14 The prosecutor at the referring court informed the latter that that suspension was not enforceable in Bulgarian territory because HV is permanently resident in Spain and his driving licence issued by the Bulgarian authorities was exchanged against an equivalent licence issued by the Spanish authorities.
- 15 On 27 October 2020, the referring court issued a certificate under Framework Decision 2008/947, which was forwarded to the Juzgado Central de lo Penal (Central Criminal Court, Spain). Under point 4 of Section (j) of that certificate, entitled 'Nature of the probation measure(s) or alternative sanction(s)', the box referring to 'instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity' was ticked. Under point 5 of that section it was noted that the alternative sanction was the suspension of the right to drive a motor vehicle for a period of six months.
- 16 By decision of 17 February 2021, the Juzgado Central de lo Penal (Central Criminal Court) refused to recognise the judgment forwarded and to enforce the sanction imposed on HV, on the ground that it was not listed among the sanctions provided for by Ley 23/2014 de reconocimiento mutuo de resoluciones penales en la Unión Europea (Law 23/2014 on the mutual recognition of judgments in criminal matters in the European Union) of 20 November 2014 (BOE No 282 of 21 November 2014, p. 1), and by the framework decisions on the enforcement of sanctions or probation decisions in the European Union. That court also based the reasons for its refusal on Directive 2006/126.
- 17 The referring court takes the view that that refusal makes it impossible effectively to enforce the suspension of HV's right to drive, which leads, de facto, to his impunity. The referring court argues that, however, that decision falls within Framework Decision 2008/947 since it constitutes an 'alternative sanction', imposing an 'instruction relating to behaviour', within the meaning of Article 2(4) and Article 4(1)(d) of that framework decision.
- 18 The referring court is also of the opinion that the principle of territoriality of criminal and police laws, set out in Article 11(2) of Directive 2006/126, conflicts with the principle of mutual recognition of judgments in criminal matters, as embodied in Framework Decision 2008/947. In its view, the question arises which of these two acts of EU law is applicable, for the purpose of determining whether or not a new certificate is to be transmitted to the Juzgado Central de lo Penal (Central Criminal Court) under that framework decision.

19 In those circumstances, the Sofijski gradski sad (Sofia City Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Do judicial decisions in criminal proceedings by which, in the case of offences consisting of a breach of road traffic regulations and moderate bodily harm caused by negligence, the administrative sanction of suspension of the right to drive a vehicle for a specified period is imposed on the offender fall within the scope of Article 2(4) and Article 4(1)(d) of Framework Decision [2008/947]?’
- (2) Do the provisions of Article 11(2) and the first to third subparagraphs of Article 11(4) of Directive [2006/126] constitute a basis for the Member State in which the holder of a driving licence issued by that State is habitually resident to refuse to recognise and enforce an administrative sanction, in the form of a temporary [suspension] of the right to drive a vehicle, imposed in another Member State for the offence of breaching road traffic regulations and negligently causing moderate bodily harm to another person, an offence committed at a time when the offender held a driving licence issued by the State of residence, for which the driving licence originally issued by the State of conviction had been exchanged?’

### **Admissibility**

- 20 The German Government harbours doubts about the admissibility of the request for a preliminary ruling, arguing that no proceedings are pending before the referring court and that the referring court appears to be seeking confirmation that the Spanish authorities infringed EU law, which cannot be the subject matter of a request for a preliminary ruling.
- 21 It is settled case-law that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraphs 60 and 61 and the case-law cited).
- 22 In that regard, it is apparent from the actual wording of Article 267 TFEU that the question referred for a preliminary ruling must be ‘necessary’ to enable the referring court to ‘give judgment’ in the case before it (see, to that effect, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 45 and the case-law cited).
- 23 In the present case, it is apparent from the request for a preliminary ruling that the referring court, before which the case was brought by the public prosecution service, is called upon to rule on the way in which the decision suspending HV’s right to drive a motor vehicle is to be enforced, in the context of proceedings pending before it. In that context, as stated in paragraph 18 above, that

court asks whether, for the purpose of determining whether or not a new certificate is to be transmitted to the Juzgado Central de lo Penal (Central Criminal Court) under that framework decision, it must rely on Directive 2006/126 or on Framework Decision 2008/947.

- 24 Accordingly, the interpretation of EU law sought appears necessary to enable the referring court to give judgment.
- 25 In those circumstances, the present request for a preliminary ruling is admissible.

## **Consideration of the questions referred**

### ***The second question***

- 26 By that question, which it is appropriate to examine first, the referring court asks, in essence, whether the combined provisions of Article 11(2) and the second subparagraph of Article 11(4) of Directive 2006/126 must be interpreted as authorising the Member State of normal residence of the holder of a driving licence issued by that Member State not to recognise and enforce in its territory a decision suspending that holder's right to drive a motor vehicle adopted by another Member State on account of a road traffic offence committed in that Member State's territory, including where that driving licence was issued in exchange for a driving licence previously issued by the Member State in which the road traffic offence was committed.
- 27 In the first place, it is apparent from Article 11(2) of Directive 2006/126, read in the light of recital 15 thereof, that, for reasons of road safety and subject to observance of the principle of territoriality of criminal and police laws, the Member State of normal residence, within the meaning of Article 12 of that directive, of the holder of a driving licence issued by another Member State may apply to that person its own national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive and, if necessary, exchange the licence for that purpose. That provision therefore covers the situation in which the holder of a driving licence has his or her normal residence in a Member State other than the Member State which issued that licence (see, by analogy, judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 52).
- 28 Here, HV's driving licence was issued by his Member State of normal residence in exchange for the driving licence which had been issued to him by the Member State in which a decision was taken in respect of HV suspending his right to drive due to a road traffic offence committed in that Member State's territory, which is at issue in the main proceedings. That situation therefore falls outside the scope of Article 11(2) of Directive 2006/126. Once a person has had his or her driving licence from one Member State exchanged for a driving licence issued by the Member State of normal residence, that person must no longer be regarded as the 'holder of a driving licence issued by another Member State' within the meaning of that provision.
- 29 In the second place, with regard to Article 11(4) of Directive 2006/126, it is important to note that, according to the wording of the second subparagraph thereof, a Member State is to refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State's territory. It follows from the phrase 'refuse to recognise' that that provision provides not merely a possibility but an

obligation for the Member State concerned (see, to that effect, judgments of 26 April 2012, *Hofmann*, C-419/10, EU:C:2012:240, paragraph 53, and of 28 October 2020, *Kreis Heinsberg*, C-112/19, EU:C:2020:864, paragraph 37).

- 30 The second subparagraph of Article 11(4) of Directive 2006/126 concerns measures taken pursuant to the criminal and police laws of one Member State which affect the validity, in the territory of that Member State, of a driving licence issued by another Member State (judgment of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 61). The obligation laid down by that provision thus seeks to ensure the effective enforcement of a decision suspending the right to drive imposed in the territory of the Member State which adopted it, in accordance with the principle of territoriality of criminal and police laws, referred to in Article 11(2) of that directive. Under that principle, the Member State in whose territory a road traffic offence is committed has sole competence to punish that offence by taking, as necessary, a decision suspending the right to drive (see, by analogy, judgments of 20 November 2008, *Weber*, C-1/07, EU:C:2008:640, paragraph 38, and of 23 April 2015, *Aykul*, C-260/13, EU:C:2015:257, paragraph 62).
- 31 It follows that the second subparagraph of Article 11(4) of Directive 2006/126, read in the light of the principle of territoriality of criminal and police laws, does not mean that the decision suspending the right to drive taken in the territory of a Member State must be recognised and enforced in other Member States, in particular the Member State of normal residence, within the meaning of the first paragraph of Article 12 of that directive, of the holder of the driving licence in respect of whom such a decision was taken. Only the Member State which adopted the decision suspending the right to drive is competent to ensure, in its territory, the enforcement of such a decision, even where the addressee of that decision is normally resident in another Member State.
- 32 It follows that the fact, noted by the referring court, that HV had held a driving licence issued by the Bulgarian authorities before the Member State in which he has taken up normal residence issued him, by virtue of an exchange pursuant to Article 11(1) of Directive 2006/126, a driving licence which he held at the time of the facts in the main proceedings is irrelevant for the purpose of determining whether the decision suspending HV's right to drive on account of unlawful conduct in Bulgaria is enforceable in Spain.
- 33 In that context, it should be added, however, that the first sentence of Article 15 of Directive 2006/126 requires Member States to assist one another in the implementation of that directive and to exchange information on the licences they have issued, exchanged, replaced, renewed or withdrawn.
- 34 That provision can contribute to the effective enforcement of a decision suspending the right to drive imposed in the Member State which is not the Member State of normal residence of the person concerned. At the request of that Member State and in accordance with headings 13 and 14 of part (a) of the third sentence of point 3, and point 4(a), of Annex I to Directive 2006/126, the Member State of normal residence may record on the driving licence any endorsements prohibiting driving within the territory of the said Member State (see, to that effect, judgment of 29 April 2021, *Stadt Pforzheim (Information on driving licence)*, C-56/20, EU:C:2021:333, paragraphs 45 and 46).
- 35 In the light of the foregoing, the answer to the second question is that the combined provisions of Article 11(2) and the second subparagraph of Article 11(4) of Directive 2006/126 must be interpreted as authorising the Member State of normal residence of the holder of a driving licence issued by that Member State not to recognise and enforce in its territory a decision



suspending that holder's right to drive a motor vehicle adopted by another Member State on account of a road traffic offence committed in that Member State's territory, including where that driving licence was issued in exchange for a driving licence previously issued by the Member State in which the road traffic offence was committed.

### *The first question*

- 36 In view of the answer given to the second question and of the fact that only Directive 2006/126 governs the situation in which a Member State suspends, pursuant to its national legislation and on account of unlawful conduct in its territory, the right to drive of the holder of a driving licence issued by another Member State, in so far as it establishes that the effect of such suspension is limited to that territory alone, there is no need to answer the first question.

### **Costs**

- 37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

**The combined provisions of Article 11(2) and the second subparagraph of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council 20 December 2006 on driving licences,**

**must be interpreted as authorising the Member State of normal residence of the holder of a driving licence issued by that Member State not to recognise and enforce in its territory a decision suspending that holder's right to drive a motor vehicle adopted by another Member State on account of a road traffic offence committed in that Member State's territory, including where that driving licence was issued in exchange for a driving licence previously issued by the Member State in which the road traffic offence was committed.**

[Signatures]