

JUDGMENT OF THE COURT (Third Chamber)

26 June 2008^{*}

In Joined Cases C-334/06 to C-336/06,

REFERENCES under Article 234 EC for a preliminary ruling from the Verwaltungsgericht Chemnitz (Germany) (C-343/06), made by decisions of 20 July, 17 July and 31 July 2006, respectively, received at the Court on 3 August 2006, in the proceedings

Matthias Zerche (C-334/06),

Manfred Seuke (C-336/06)

v

Landkreis Mittweida,

and

^{*} Language of the case: German.

Steffen Schubert (C-335/06)

v

Landkreis Mittlerer Erzgebirgskreis,

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, J.N. Cunha Rodrigues, J. Klučka, A. Ó Caoimh and A. Arabadjiev, Judges,

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 27 September 2007,

after considering the observations submitted on behalf of:

— Mr Schubert, by G. Zimmermann, Rechtsanwalt,

— Mr Seuke, par Th. Rehm, Rechtsanwalt,

— the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,

— the Portuguese Government, by L. Fernandes and M. Ribes, acting as Agents,

— the Commission of the European Communities, by G. Braun and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 February 2008,

gives the following

Judgment

¹ The references for a preliminary ruling concern the interpretation of Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Regulation (EC) No 1882/2003 of the Euro-

pean Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1, 'Directive 91/439').

- 2 The references have been made in three sets of proceedings, between Mr Zerche (Case C-334/06) and Mr Seuke (Case C-336/06) and the Landkreis Mittweida (rural district authority of Mittweida) and between Mr Schubert (Case C-335/06) and the Landkreis Mittlerer Erzgebirgskreis (rural district authority of Mittlerer Erzgebirgskreis) concerning the Federal Republic of Germany's refusal to recognise the driving licences obtained by Mr Zerche, Mr Seuke and Mr Schubert in the Czech Republic after the administrative withdrawal of their German driving licences for consumption of alcohol.

Legal context

The relevant provisions of Community law

- 3 The first recital in the preamble to Directive 91/439, which repealed First Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence (OJ 1980 L 375, p. 1), states, as from 1 July 1996:

'... [F]or the purpose of the common transport policy, and as a contribution to improving road traffic safety, as well as to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test, it is desirable that there should be a Community model national driving licence mutually recognised by the Member States without any obligation to exchange licences.'

4 It is stated in the fourth recital of the preamble to that directive:

‘... [O]n road safety grounds, the minimum requirements for the issue of a driving licence should be laid down.’

5 The last recital in the preamble to Directive 91/439 states:

‘... [F]or reasons connected with road safety and traffic, Member States should be able to apply their national provisions on the withdrawal, suspension and cancellation of driving licences to all licence holders having acquired normal residence in their territory.’

6 Article 1 of Directive 91/439 provides:

‘1. Member States shall introduce a national driving licence based on the Community model described in Annex I or Ia, in accordance with the provisions of this Directive ...

2. Driving licences issued by Member States shall be mutually recognised.

3. Where the holder of a valid national driving licence takes up normal residence in a Member State other than that which issued the licence, the host Member State

may apply to the holder of the licence its national rules on the period of validity of the licences, medical checks and tax arrangements and may enter on the licence any information indispensable for administration.’

- 7 In accordance with Article 7(1) of Directive 91/439, the issue of a driving licence is subject to the following conditions:

‘Driving licences shall, moreover, 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;
- (b) 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.’

- 8 In accordance with point 14 of Annex III to the directive, headed ‘Minimum standards of physical and mental fitness for driving a power-driven vehicle’, alcohol consumption constitutes a major danger to road safety and in view of the scale of the problem the medical profession must be very vigilant. The first subparagraph of point 14.1 of that annex states that ‘[d]riving licences shall not be issued to, or renewed for, applicants or drivers who are dependent on alcohol or unable to refrain from drinking and driving’. The second subparagraph of point 14.1 provides that ‘[a]fter a proven period of abstinence and subject to authorised medical opinion and regular medical check-ups, driving licences may be issued to, or renewed for, applicants or drivers who have in the past been dependent on alcohol’.

- 9 It is clear from point 5 of that annex that the standards set by Member States for a

medical examination before the issue or any subsequent renewal of driving licences may be stricter than those set out in the annex.

10 In accordance with Article 7(5) of the directive:

‘No person may hold a driving licence from more than one Member State.’

11 Article 8 of Directive 91/439 provides:

‘...

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 may refuse to recognise the validity of any driving licence issued by another Member State to a person who is, in the former State’s territory, the subject of one of the measures referred to in paragraph 2.

...'

- 12 The first paragraph of Article 9 states that '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'.

- 13 Article 12(3) of Directive 91/439 provides:

'The Member States shall assist one another in the implementation of this Directive and shall, if need be, exchange information on the licences they have registered.'

The relevant provisions of German law

The legislation on recognition of driving licences issued by other Member States

- 14 Paragraph 28(1), (4) and (5) of the regulation on access to driving on the highways (the regulation on driving licences) (Verordnung über die Zulassung von Personen

zum Straßenverkehr (Fahrerlaubnis-Verordnung)) of 18 August 1998 (BGBl. 1998 I, p. 2214, ‘the FeV’) provides:

‘(1) Holders of a valid European Union or European Economic Area (“the EEA”) driving licence having their normal residence within the meaning of Paragraph 7(1) or (2) in Germany shall be authorised — subject to the restriction laid down in subparagraphs (2) to (4) — to drive motor vehicles in that country within the limits of the rights recognised. The conditions attached to foreign driving licences shall be observed in Germany also. The provisions of this regulation shall apply to those licences save as otherwise provided.

...

(4) The authorisation referred to in subparagraph 1 shall not apply to holders of a [European] Union or EEA driving licence,

...

3. whose driving licence has, in Germany, been provisionally or definitively withdrawn by act of a court or tribunal or been withdrawn by an immediately enforceable or final decision of an administrative authority, or who have been refused a driving licence by immediately enforceable decision or whose driving licence has been withdrawn not solely because surrendered in the meantime,

...

(5) The right to use an EU or EEA driving licence in Germany after one of the decisions mentioned in subparagraphs 4(3) and (4) shall be granted on application when the grounds justifying the withdrawal or prohibition of applying for a new licence no longer obtain.’

The rules on withdrawal of a driving licence

15 According to Paragraph 69 of the Criminal Code (Strafgesetzbuch), a criminal court is to order the withdrawal of a driving licence if it is apparent from the facts of the case that a defendant is unfit to drive a motor vehicle. In accordance with Paragraph 69a of that code, when a court orders withdrawal of a licence it is also to order that no application may be made for the issue of a new driving licence for a given period (‘the period of the prohibition’) which may vary from six months to five years and may even, in some circumstances, be ordered to last for life.

16 By virtue of Article 46 of the FeV, a provision implementing Paragraph 3 of the Law on Road Traffic (the Straßenverkehrsgesetz), the driving licence authority is to withdraw the right to drive if it is shown that the holder of a licence is unfit to drive motor vehicles. In accordance with Paragraph 46(5), the right to drive is terminated by the act of withdrawal of the driving licence. If that licence was issued abroad, its withdrawal extinguishes the right to drive vehicles in Germany.

The rules on fitness to drive

17 Paragraph 11 of the FeV, headed ‘Fitness’, provides:

‘(1) Applicants for a driving licence must satisfy the relevant physical and mental requirements. In particular, those requirements are not satisfied in the case of sickness or disability referred to in Annex 4 or in Annex 5 which excludes fitness [to drive motor vehicles] or entails only limited fitness. ...

(2) Where circumstances exist which give rise to doubt as to the physical or mental fitness of an applicant for a driving licence, the competent authorities may order the applicant to produce a medical report as an inquiry preparatory to the decisions to be taken on the issue or extension of a driving licence or on the imposition of restrictions or conditions. ...

(3) Production of a report made by an officially approved centre for the testing of fitness to drive (medical-psychological report) may be ordered in order to dispel doubts as to fitness to drive for the purposes of subparagraph 2 [in particular]

...

4. in the case of serious or repeated contraventions of the highway code or of road traffic offences or offences related to fitness to drive ...

or

5. on the new grant of a driving licence,

...

(b) when the withdrawal of the licence was based on one of the grounds set out in subparagraph 4.

...

(8) If the person concerned refuses to be examined or if he does not within the period prescribed produce to the competent driving licence authority the medical report required by the latter, the competent authority is entitled to conclude in its decision that the person concerned is unfit to drive.'

¹⁸ Headed 'Fitness in cases of alcohol problems', Paragraph 13 of the FeV gives the competent authorities power to order, in certain circumstances, the production of a medical-psychological report for the purposes of inquiries preparatory to the decisions to be taken either to issue or extend a driving licence or to impose restrictions or conditions relating to the right to drive. That is, in particular, the case when, according to medical opinion or on account of certain facts, there is evidence of abuse of alcohol or when road traffic offences have on several occasions been committed under the influence of alcohol.

19 Paragraph 20(1) of the FeV provides that, when a new driving licence is issued following a withdrawal, the same provisions apply as for the first issue of a licence. Although, according to Paragraph 20(2) of the FeV, the competent authority may decide not to order the tests in relation to the issue of a licence when there is nothing to suggest that the applicant no longer possesses the knowledge or fitness required for that purpose, Paragraph 20(3) provides that such a decision does not alter the obligation to produce a medical-psychological report laid down in the fifth point of the first paragraph of Paragraph 11(3) of the FeV.

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

Case C-334/06

20 Mr Zerche was the holder of a German Democratic Republic driving licence valid for several categories of vehicle. He had that licence renewed on 31 August 1999 in the form of a secure bank card-type licence.

21 By judgment of 10 January 2003, now final, the Amtsgericht Hainichen (local court of Hainichen) ordered Mr Zerche to pay a fine for drunk driving, the material facts dating back to 28 November 2002. Mr Zerche had his authorisation to drive withdrawn together with his licence, and was prohibited from applying for a new licence for a period of 12 months ending 9 April 2004.

22 On 10 February 2004 Mr Zerche applied for a new Category B driving licence. Failing to present an expert's report demonstrating his fitness to drive, he eventually withdrew his application.

23 On 4 March 2005 Mr Zerche was issued with a new Category B driving licence in Ostrov (Czech Republic). In that licence the holder is stated to be resident at Mittweida (Germany), where Mr Zerche has lived since 18 January 1996.

24 The Landkreis Mittweida, having been informed of the issue of that licence, ordered Mr Zerche by letter of 12 April 2005 to present an expert's report on his fitness to drive motor vehicles. That order not being acted upon, on 19 July 2005 the Landkreis Mittweida revoked Mr Zerche's right to use his Czech licence in Germany.

25 By notice of 21 July 2005 the Czech Minister for Transport stated that Mr Zerche's Czech driving licence was valid. Mr Zerche had undergone a medical examination in the Czech Republic before the licence was issued. Moreover, by signing the application for a licence, he had certified that he was fit to drive. However, no expert medical-psychological report had been prepared.

26 On the rejection of his complaint challenging the withdrawal decision of 19 July 2005, Mr Zerche brought an action against that decision before the Verwaltungsgericht Chemnitz (Administrative Court of Chemnitz), which has decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'On a proper construction of Article 1(2) in conjunction with Article 8(2) and (4) of Directive [91/439], may a Member State refuse to recognise a driving licence issued by another Member State where the person concerned has had a previous driving licence withdrawn or cancelled in the first Member State, when the period ordered in connection with that withdrawal or cancellation measure during which no new licence was to be issued had expired before the new driving licence was issued by the second Member State, and when there are grounds for concluding, on the basis

of objective evidence (non-residence in the Member State issuing the new driving licence issue or the failure of an application for issue of a new licence in the first Member State), that the only reason for acquiring the EU driving licence in the second Member State was to circumvent the strict substantive requirements of national procedure [in force in the first Member State] for the issue of a new driving licence, particularly the need for a medical/psychological report?’

Case C-335/06

27 Mr Schubert had since 1982 held a German Democratic Republic driving licence valid for several categories of vehicle, which was renewed on 7 July 1992.

28 By order of 23 May 2002, subsequently become final, the Amtsgericht Marienberg (local court, Marienberg) ordered Mr Schubert to pay a fine for drunk driving. He had his authorisation to drive and his driving licence withdrawn and was forbidden to obtain a new licence for a period of 20 months ending 22 January 2004.

29 On 21 October 2003 Mr Schubert made an application for a new driving licence. Failing to produce an expert’s report demonstrating his fitness to drive, he withdrew that application on 6 September 2004.

30 On 31 January 2005 Mr Schubert was issued with a new Category B driving licence at Sokolov (Czech Republic). The licence states the holder’s residence to be Olbernhau (Germany), where Mr Schubert has lived since 1 October 1998.

31 Following a general traffic check conducted on 26 April 2005 at Olbernhau, the Landkreis Mittlerer Erzgebirgskreis by letter of 3 May 2005 ordered Mr Schubert to submit an expert's report on his fitness to drive motor vehicles. There being no response to that order, by decision of 9 August 2005 the Landkreis Mittlerer Erzgebirgskreis deprived Mr Schubert of his right to use his Czech licence in Germany.

32 His complaint against that decision having been rejected, Mr Schubert brought an action before the Verwaltungsgericht Chemnitz, which has decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) May a Member State, in accordance with Article 1(2) in conjunction with Article 8(2) and (4) of Directive [91/439], require the holder of a driving licence issued in another Member State to apply to the administrative authorities of the first Member State for recognition of the right to use that licence in its territory when the holder of that licence has previously, in the territory of the first Member State, had his driving licence withdrawn or cancelled for some reason?

(2) If not, on a proper construction of Article 1(2) in conjunction with Article 8(2) and (4) of Directive [91/439], may a Member State refuse to recognise a driving licence issued by another Member State where the person concerned has had a previous driving licence withdrawn or cancelled in the first Member State, when the period ordered in connection with that withdrawal or cancellation measure during which no new licence was to be issued had expired before the new driving licence was issued by the second Member State, and when there are grounds for concluding, on the basis of objective evidence (non-residence in the Member State issuing the new driving licence issue or the failure of an application for issue of a new licence in the first Member State), that the only reason for acquiring the European driving licence in the second Member State was to circumvent the strict substantive requirements of national procedure [in force in the first

Member State] for the issue of a new driving licence, particularly the need for a medical/psychological report?’

Case C-336/06

33 Mr Seuke held an old Category 3 driving licence.

34 By enforceable penal order of 4 September 2003, the Amtsgericht Amberg (local court, Amberg) imposed a fine on Mr Seuke for drunk driving. He had both his authorisation to drive and his driving licence withdrawn, and was forbidden to apply for a new licence before the expiry of a period of 10 months.

35 Mr Seuke having applied for a new driving licence, the competent authorities required him on 15 March 2004 to produce a medical-psychological report certifying his fitness to drive. He did not satisfy that requirement and his application was rejected by decision of 27 July 2004.

36 On 5 November 2004 when the period ordered by the Amtsgericht Amberg in which it was forbidden to apply for a new licence had expired, Mr Seuke, who, it had been ascertained, according to the decision for reference, had been continuously resident in Germany since 19 August 1980, was issued with a new Category B driving licence at Ostrov (Czech Republic).

37 On being informed of the issue of that licence, the Landkreis Mittweida ordered Mr Seuke on 28 November 2005 to submit an expert’s report on his fitness to drive

motor vehicles. Mr Seuke not having obeyed that order, by decision of 22 March 2006 the Landkreis Mittweida deprived Mr Schubert of the right to use his Czech licence in Germany.

38 His complaint against that decision having been rejected, Mr Seuke brought an action before the Verwaltungsgericht Chemnitz, which has decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) May a Member State, in accordance with Article 1(2) in conjunction with Article 8(2) and (4) of Directive [91/439], require the holder of a driving licence issued in another Member State to apply to the administrative authorities of the first Member State for recognition of the right to use that licence in its territory when the holder of that licence has previously, in the territory of the first Member State, had his driving licence withdrawn or cancelled for some reason?
- (2) If not, on a proper construction of Article 1(2) in conjunction with Article 8(2) and (4) of Directive [91/439], may a Member State refuse to recognise a driving licence issued by another Member State where the person concerned has had a previous driving licence withdrawn or cancelled in the first Member State, when the period ordered in connection with that withdrawal or cancellation measure during which no new licence was to be issued had expired before the new driving licence was issued by the second Member State, and when there are grounds for concluding, on the basis of objective evidence (non-residence in the Member State issuing the new driving licence issue or the failure of an application for issue of a new licence in the first Member State), that the only reason for acquiring the European driving licence in the second Member State was to circumvent the strict substantive requirements of national procedure [in force in the first

Member State] for the issue of a new driving licence, particularly the need for a medical/psychological report?’

Procedure before the Court of Justice

³⁹ By order of 10 October 2006 the President of the Court of Justice ordered that Cases C-334/06 to C-336/06 should be joined for the purposes of the written and oral procedures and also for judgment.

⁴⁰ By a series of written questions notified on 1 August 2007, the Court asked the Czech Government about the law of the Czech Republic concerning the investigation of the conditions laid down in Article 7(1)(a) and (b) of Directive 91/439 and whether it is possible to issue a driving licence including an entry indicating the holder’s residence in another Member State and also about the criteria applicable in order to ascertain whether a person has his residence in that Member State and whether checks are made to establish whether that residence is genuine.

⁴¹ By fax received at the Court Registry on 31 August 2007, the Czech Government stated in response to those questions that the condition of normal residence, as laid down by Directive 91/439, was not been introduced into the Czech legal order until 1 July 2006. In the period before that date, the Czech rules allowed authorisation to drive to be issued to persons having neither a permanent nor a temporary residence in the territory of the Czech Republic.

Concerning the questions referred for a preliminary ruling

42 The first point to be noted here is that in the procedure laid down by Article 234 EC providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. In addition, it is to be borne in mind that the Court has a duty to interpret all provisions of Community law necessary to national courts in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (Case C-280/91 *Viessmann* [1993] ECR I-971, paragraph 17; Case C-42/96 *Immobiliare SIF* [1997] ECR I-7089, paragraph 28; and Case C-45/06 *Campina* [2007] ECR I-2089, paragraphs 30 and 31).

43 Here, having regard to the facts giving rise to the cases in the main proceedings and also to the terms of the observations submitted to the Court, examination of the questions raised must take into account Article 7(1)(a) and (b) of Directive 91/439. In order to furnish a reply both helpful and as complete as possible to the questions referred, it is therefore appropriate to widen their scope in so far as the national courts have not done so.

44 By its question in Case C-334/06 and by the second question in Cases C-335/06 and C-336/06, the referring court has in essence sought to ascertain whether Articles 1(2), 7(1)(a) and (b) and 8(2) and (4) of Directive 91/439 are to be interpreted as preventing one Member State (the host Member State) from refusing to recognise in its territory the right to drive stemming from a driving licence issued by another Member State (the issuing Member State) to a person and, therefore, the validity of that licence, when that person has earlier, in the first Member State, been the object of a measure withdrawing his precious licence for driving under the influence of alcohol, and when that person has obtained that licence after any period in which he is forbidden to apply for a new licence, but in disregard of the condition of residence

or of the conditions of fitness to drive imposed by the host Member State in that respect for the purposes of road safety.

⁴⁵ Those questions may appropriately be examined with the first question in Cases C-335/06 and C336/06 which seeks, in essence, to ascertain whether a host Member State may require the holder of a new driving licence, issued by another Member State, to apply for recognition of the right to use that licence in the host Member State, before using the licence, when his previous driving licence has been withdrawn or cancelled in that latter State.

⁴⁶ The first recital in the preamble to Directive 91/439 states that the general principle of mutual recognition of driving licences issued by the Member States, laid down in Article 1(2) of that directive, was established in order to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test (Case C-476/01 *Kapper* [2004] ECR I-5205, paragraph 71).

⁴⁷ The Court has consistently held that Article 1(2) of Directive 91/439 provides for mutual recognition, without any formality, of driving licences issued by Member States. That provision imposes on Member States a clear and precise obligation, which leaves no room for discretion as to the measures to be adopted in order to comply with it (judgments in Case C-230/97 *Awoyemi* [1998] ECR I-6781, paragraphs 41 and 43; Case C-246/00 *Commission v Netherlands* [2003] ECR I-7485, paragraphs 60 and 61; and *Kapper*, paragraph 45; orders of 6 April 2006 in Case C-227/05 *Halbritter* [2006] ECR I-0049, and of 28 September 2006 in Case C-340/05 *Kremer* [2006] ECR I-0098).

⁴⁸ It follows that the host Member State may not impose any formality as a precondition for recognition of a driving licence issued by another Member State. It is

therefore contrary to that principle of mutual recognition to demand of the holder of a driving licence issued by one Member State that he should apply for recognition of that licence in another Member State (see, to that effect, *Commission v Netherlands*, paragraph 60 et seq.).

49 It is for the issuing Member State to investigate whether the minimum conditions imposed by Community law, particularly those relating to residence and fitness to drive, have been satisfied and, therefore, whether the issue of a driving licence — as the case may be, of a new licence — is justified.

50 Once, therefore, the authorities of one Member State have issued a driving licence in accordance with Article 1(1) of Directive 91/439, the other Member States are not entitled to investigate whether the conditions for issue laid down by that directive have been observed (see, to that effect, the orders in *Halbritter*, paragraph 34, and *Kremer*, paragraph 27). The possession of a driving licence issued by one Member State has to be regarded as constituting proof that, on the day that licence was issued, its holder fulfilled those conditions (see, to that effect, *Commission v Netherlands*, paragraph 75, the order of 11 December 2003 in Case C-408/02 *Da Silva Carvalho*, and *Kapper*, paragraph 46). The fact that, in accordance with point 5 of Annex III to that directive, a Member State may require, for any issue of a driving licence, a medical examination stricter than those mentioned in that annex does not, therefore, affect that Member State's duty to recognise driving licences issued by the other Member States in accordance with that directive.

51 It follows, first, that a host Member State making the issue of a driving licence subject to stricter domestic conditions, especially after an earlier licence has been withdrawn, may not refuse to recognise a driving licence subsequently issued by another Member State solely on the ground that the holder of that new licence has obtained it pursuant to national legislation that does not impose the same requirements as the host Member State.

- 52 Second, it is contrary to the principle of mutual recognition for a host Member State to refuse to recognise a driving licence issued by another Member State on the ground that, according to the information supplied by the host Member State, the holder of that licence did not, at the date of its issue, satisfy the necessary conditions for obtaining it (see, to that effect, the order in *Da Silva Carvalho*, paragraph 22, and *Kapper*, paragraph 47).
- 53 Inasmuch as Directive 91/439 confers on the issuing Member State exclusive competence to check that driving licences are issued in compliance with the requirements imposed by that directive, it is for that Member State alone to take appropriate measures in respect of which it is subsequently established that the holders did not satisfy those conditions (see, to that effect, the order in *Da Silva Carvalho*, paragraph 23, and *Kapper*, paragraph 48).
- 54 If a Member State has good reason to doubt the validity of a licence issued by another Member State, it must so inform the latter under the rules relating to mutual assistance and the exchange of information contained in Article 12(3) of Directive 91/439. Should the issuing Member State fail to take the appropriate measures, the host Member State may bring proceedings against it under Article 227 EC for a declaration by the Court that there has been a failure to fulfil the obligations arising under Directive 91/439 (see, to that effect, the order in *Da Silva Carvalho*, paragraph 23, and *Kapper*, paragraph 48).
- 55 It is true that, for reasons of road traffic safety, as is made clear by the last recital in the preamble to Directive 91/439, Article 8(2) and (4) permits the Member States, in certain circumstances, to apply their national provisions on the restriction, suspension, withdrawal or cancellation of driving licences to any licence-holder having normal residence in their territory.

- 56 It is, however, to be borne in mind, first, that that right, as it arises from Article 8(2) of Directive 91/439, may be exercised only by reason of some conduct of the person concerned after he has obtained a driving licence issued by another Member State (see, to that effect, the orders in *Halbritter*, paragraph 38, and *Kremer*, paragraph 35).
- 57 Second, the first subparagraph of Article 8(4), which authorises a Member State to refuse to recognise the validity of a driving licence obtained in another Member State by a person who is, in the first Member State's territory, the subject of a measure restricting, suspending, withdrawing or cancelling a licence, constitutes a derogation from the general principle of mutual recognition of driving licences and is, therefore, to be interpreted strictly (see, to that effect, *Kapper*, paragraphs 70 and 72, and the orders in *Halbritter*, paragraph 35, and *Kremer*, paragraph 28).
- 58 It must at the outset be stressed that, even if that provision enables a Member State, on certain conditions, to refuse recognition of a driving licence issued by another Member State, it does not for that reason follow, as the German Government would have it, that that the first Member State may make the right to use a licence issued by the second State conditional upon prior positive authorisation (see, to that effect, the order in *Kremer*, paragraph 37).
- 59 Given that the issuing of a driving licence by a Member State must be effected in compliance with the minimum requirements laid down by Directive 91/439, including those set out in Annex III thereto, relating to fitness to drive, an interpretation of the first subparagraph of Article 8(4) of that directive to the effect that, in general terms, anyone who has held a driving licence that has been withdrawn or cancelled in a Member State may be obliged to appear before the competent authorities of that Member State in order to obtain authorisation to make use of the right to drive arising from the driving licence subsequently issued in another Member State would run counter to the obligation of mutual recognition without formalities.

60 Nor may that provision be relied on by a Member State to refuse indefinitely to recognise, in relation to a person who has been the object in its territory of a measure withdrawing or cancelling a previous licence issued by that State, the validity of any licence that may subsequently be issued to him by another Member State (see, to that effect, *Kapper*, paragraph 76, and the orders in *Halbritter*, paragraph 27, and *Kremer*, paragraph 29). To accept that a Member State is entitled to rely on its national provisions in order to refuse indefinitely to recognise a licence issued by another Member State would be fundamentally incompatible with the principle of mutual recognition of driving licences which is the linchpin of the system established by Directive 91/439 (*Kapper*, paragraph 77, and the orders in *Halbritter*, paragraph 28, and *Kremer*, paragraph 30).

61 More particularly, the Court has held in paragraph 38 of its order in *Kremer* that when a person has been the object of a measure withdrawing his driving licence in the territory of a Member State but not including a period in which it is prohibited to apply for a new licence, it is contrary to Article 1(2) in conjunction with Article 8(2) and (4) of Directive 91/439 for that Member State to refuse to recognise, in its territory, the right to drive stemming from a driving licence subsequently issued in another Member State and, therefore, the validity of that licence, so long as the licence-holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following that withdrawal, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence.

62 In contrast, it is clear from the foregoing that, when the person concerned has been the object of a measure withdrawing his driving licence and prohibiting any application for a new licence for a given period, it is not contrary to Articles 1(2) and 8(4) of Directive 91/439 for a Member State to refuse to recognise a new licence issued by another Member State during the period of that prohibition.

63 Similarly, although Article 8(2) of Directive 91/439 does not permit the Member State of normal residence to refuse to recognise a driving licence issued by another

Member State just because the holder has earlier had a previous licence withdrawn in the Member State of normal residence, that provision does nevertheless allow that State, as recalled in paragraphs 55 and 56 above, subject to observance of the principle of territoriality of criminal and police laws, to restrict, suspend, withdraw or cancel the new licence if that is warranted, according to the law of the host Member State, by the holder's conduct after the issue of the new licence.

⁶⁴ In order to answer the questions raised by the national courts, particular consideration must be next be given to the application of the principle of mutual recognition, as set out above, when it has established that the new driving licence was issued in disregard of the residence condition imposed by Directive 91/439.

⁶⁵ In this regard, the fourth recital in the preamble to that directive shows that the conditions laid down in order to ensure road safety include those contained in Article 7(1)(a) and (b) of that directive, which makes the issue of a driving licence conditional upon the requirements relating to fitness to drive and residence, respectively.

⁶⁶ As remarked by the Commission of the European Communities in its observations, the residence condition helps, inter alia, 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. Moreover, as the Advocate General has pointed out in paragraph 78 of his Opinion, that condition is indispensable if observance of the condition of fitness to drive is to be monitored.

⁶⁷ Article 7(5) of Directive 91/439, in providing that no person may hold a driving licence from more than one Member State, affirms the single nature of a driving

licence. So, as a precondition making it possible to establish whether a particular candidate has observed the other conditions imposed by the directive, the condition of residence, which determines the Member State of issue, assumes special importance in relation to the other conditions laid down by the directive.

68 Road safety might, therefore, be jeopardised if the condition of residence were not observed with regard to someone whose right to drive has been restricted, suspended, withdrawn or cancelled for the purposes of Article 8(4) of Directive 91/439.

69 It follows that, when it is possible to determine, not in the light of information supplied by the host Member State but on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that the condition of residence laid down by Article 7(1)(b) of Directive 91/439 had not been satisfied when that licence was issued, the host Member State, in whose territory the holder of that licence has been the object of a measure withdrawing an earlier driving licence, may refuse to recognise the right to drive stemming from the driving licence later issued by another Member State following any period in which it is prohibited to apply for a new licence.

70 Having regard to all the foregoing considerations, the answer to be given to the questions referred must be that, on a proper construction of Articles 1(2), 7(1) and 8(2) and (4) of Directive 91/439, it is contrary to those provisions for a Member State, in circumstances such as those of the cases in the main proceedings, to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State following any period in which the person concerned is forbidden to apply for a new licence and therefore, the validity of that licence, so long as the licence-holder has not satisfied the necessary conditions in that first Member State for the issue of a new licence following the withdrawal of a previous licence, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence. In the same circumstances, it is not

contrary to those provisions for a Member State to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that when that licence was issued its holder, who had been the object, in the territory of the first Member State, of a measure withdrawing an earlier licence, was not normally resident in the territory of the Member State of issue.

Costs

- ⁷¹ 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 (Third Chamber) hereby rules:

On a proper construction of Articles 1(2), 7(1) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, it is contrary to those provisions for a Member State, in circumstances such as those of the cases in the main proceedings, to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State beyond any period in which the person concerned is forbidden to apply for a new licence and, therefore, to recognise the validity of that licence, so long as the licence-holder has not satisfied the neces-

sary conditions in that first Member State for the issue of a new licence following the withdrawal of a previous licence, including the examination of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence.

In the same circumstances, it is not contrary to those provisions for a Member State to refuse to recognise in its territory the right to drive stemming from a driving licence subsequently issued by another Member State, if it is established, on the basis of entries appearing in the driving licence itself or of other incontestable information supplied by the Member State of issue, that when that licence was issued its holder, who had been the object, in the territory of the first Member State, of a measure withdrawing an earlier licence, was not normally resident in the territory of the Member State of issue.

[Signatures]