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ECLI:EU:C:2017:408

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

31 May 2017 (\*)

(Reference for a preliminary ruling — Article 45 TFEU — Freedom of movement for workers — Obligation to register a vehicle belonging to a person resident in Belgium and intended to be used in Italy)

In Case C-420/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium), made by decision of 12 June 2015, received at the Court on 30 July 2015, in criminal proceedings against

**U,**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça (Rapporteur), President of the Chamber, M. Berger, A. Borg Barthet, E. Levits and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr U, by J. Waldron, avocate,
- the Greek Government, by S. Papaïoannou and K. Nasopoulou, acting as Agents,

– the European Commission, by D. Martin and M. Kellerbauer, 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, 20, 45, 49 and 56 TFEU.

2 The request was made in the course of criminal proceedings brought against Mr U, an Italian national and an official of the European Commission, for driving in Belgium a motor vehicle registered in Italy.

### **Belgian legal framework**

#### *Belgian law*

3 Article 2(1) of the arrêté royal du 20 juillet 2001, relatif à l'immatriculation des véhicules (Royal Decree of 20 July 2001 on the registration of vehicles) (*Moniteur belge* of 8 August 2001; the 'Royal Decree of 20 July 2001') states that:

'A vehicle may be put into circulation only if it is registered and carries the registration plate issued at the time of registration.'

4 According to paragraph 2 of that article, however, registration is not compulsory for a series of vehicles, due to their specific characteristics.

5 Article 3(1) of that decree provides:

'Persons residing in Belgium shall register the vehicles that they intend to put into circulation in Belgium in the register of vehicles referred to in Article 6, even if those vehicles have previously been registered abroad.

Persons shall be deemed to be resident in Belgium if they meet one of the following conditions:

(a) they are entered in the population register of a Belgian commune;

...'

6 Paragraph 2 of that article sets out the cases in which the registration in Belgium of vehicles registered abroad and put into circulation by persons resident in Belgium is not compulsory.

## **The case in the main proceedings and the question referred for a preliminary ruling**

7 It appears from the order for reference that Mr U was the object of a police check in Brussels (Belgium) on 22 November 2013, while driving his motor vehicle registered in Italy.

8 The referring court observes that, according to the police report, Mr U has his principal place of residence in Belgium and holds Italian and Belgian driving licences.

9 Before that court, Mr U stated that he was an official of the Commission and that he divided his residence between Belgium and Italy, where he went every week to teach at the University of Pisa and for family reasons, linked in particular to the illness of his father. He stated that he owned two motor vehicles, one registered in Belgium and the other in Italy, the latter being intended to be used mainly in that second Member State. He also stated that, on the day of the police check he was merely passing through Belgium from Italy, where he had been the day before, in order to pick up another person, in Brussels, whom he was to take with him to a seminar in Germany. After the seminar, Mr U was going to return to Italy, leave the vehicle there and return to Brussels by plane.

10 By a judgment of the tribunal de police de Bruxelles (Local Criminal Court, Brussels, Belgium), of 10 September 2014, Mr U was fined for, in particular, having in breach of the provisions of Royal Decree of 20 July 2001 put into circulation a motor vehicle not registered in Belgium.

11 Hearing the appeal brought by Mr U, the referring court recalls that the issue of the possible incompatibility of Articles 2 and 3 of the Royal Decree of 20 July 2001 with the provisions of the FEU Treaty on the free movement of persons has been the subject of Opinion 31.530/4 of 13 June 2001 of the Belgian Conseil d'État (Council of State), on the one hand, and of the judgment of the Court of 15 December 2005, *Nadin and Nadin-Lux* (C-151/04 and C-152/04, EU:C:2005:775).

12 In those circumstances, the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are Articles 2 and 3 of the Royal Decree of 20 July 2001 ... incompatible with Articles 18, 20, 45, 49 and 56 [TFEU], in that, in order to be driven in Belgium, even if only in order to pass through the country, vehicles belonging to a resident of a Member State of the European Union other than [the Kingdom of] Belgium and registered in that other State must be registered in [the Kingdom of] Belgium, if that person is also a Belgian resident?’

## **Consideration of the question referred**

13 As a preliminary point, as regards the provisions of the Treaty applicable to the case in the main proceedings, it is important to note that a national of the Union, such as Mr U, working for an institution or body thereof in a Member State other than his Member State of origin falls within the scope of Article 45 TFEU (see, to that effect, judgments of 3 October 2000, *Ferlini*, C-411/98, EU:C:2000:530, paragraph 42; of 16 December 2004, *My*, C-293/03, EU:C:2004:821, paragraph 47; and of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraphs 24 and 25).

14 Thus, Article 49 TFEU, which prohibits restrictions of freedom of establishment, is irrelevant in the main proceedings, since that freedom concerns the right to take up and pursue activities as self-employed persons.

15 Nor is Article 56 TFEU relevant in this context, in so far as the file before the Court reveals no evidence 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 that article.

16 As for Article 18 TFEU, it applies independently only to situations governed by EU law for which the Treaty lays down no specific rules of non-discrimination. In relation to the freedom of movement for workers, the principle of non-discrimination was implemented by Article 45 TFEU (see, to that effect, judgment of 25 October 2012, *Prete*, C-367/11, EU:C:2012:668, paragraphs 18 and 19).

17 Lastly, Article 20 TFEU, while establishing citizenship of the Union, merely provides that citizens of the Union enjoy the rights conferred by the Treaty and are subject to the duties imposed thereby. It cannot therefore be applied independently of the specific provisions of the Treaty which govern the rights and the duties of the citizens of the Union (see, to that effect, judgment of 16 December 2004, *My*, C-293/03, EU:C:2004:821, paragraph 32).

18 In the light of those considerations, Articles 18, 20, 49 and 56 TFEU are irrelevant in the main proceedings.

19 Accordingly, the question referred for a preliminary ruling must be reformulated as asking whether Article 45 TFEU must be interpreted as precluding legislation of a Member State which obliges a worker resident there to register, in that Member State, in order to be able to drive there, even if only occasionally, a vehicle belonging to that worker, which is registered in another Member State.

20 In that regard, first, Article 45 TFEU precludes any measure which, albeit applicable without discrimination on grounds of nationality, is liable to hinder or render less attractive the exercise by EU nationals of the fundamental freedoms guaranteed by the Treaty (judgment of 16 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749 paragraph 26 and the case-law cited). Consequently, a restriction of freedom of movement for persons, even of limited scope or minor importance, is prohibited by

Article 45 TFEU (see, to that effect, judgment of 12 July 2012, *Commission v Spain*, C-269/09, paragraph 55 and the case-law cited).

21 Next, the Court has previously held that the obligation, imposed on workers residing in a Member State, to register, in that Member State, a company vehicle made available to them by a company established in another Member State, constituted an obstacle to the free movement of workers (see, to that effect, judgments of 15 September 2005, *Commission v Denmark*, C-464/02, EU:C:2005:546, paragraphs 46 and 52, and of 15 December 2005, *Nadin and Nadin-Lux*, C-151/04 and C-152/04, EU:C:2005:775, paragraph 36).

22 In addition, the Court has held that, even if it applies irrespective of the nationality of the workers concerned, legislation that affects not only the access of workers to the labour market but also the conditions in which an economic activity is pursued may constitute an obstacle to freedom of movement for workers (judgment of 15 September 2005, *Commission v Denmark*, C-464/02, EU:C:2005:546, paragraphs 36 and 37).

23 Lastly, in the context of proceedings concerning the application of Article 3 of the Royal Decree of 20 July 2001 at issue in the case in the main proceedings, the Court held, in essence, that the Member States might lay down an obligation to register under that article, in respect of a company vehicle made available to a self-employed worker resident in Belgium and already registered in another Member State, if it was intended that that vehicle should be used essentially in the first Member State on a permanent basis or if it was in fact used in that manner (see, to that effect, judgment of 15 December 2005, *Nadin and Nadin-Lux*, C-151/04 and C-152/04, EU:C:2005:775, paragraphs 41 to 43).

24 In the present case, it is apparent from the order for reference that, under Articles 2 and 3 of the Royal Decree of 20 July 2001, the Belgian authorities impose a fine on residents who drive on the roads of that Member State in a motor vehicle belonging to them and registered in another Member State.

25 It must be held that such a practice prevents a Union national resident in Belgium who has left his home Member State and exercised his right to freedom of movement as a worker, from making use, even marginally, of the Belgian road network with a motor vehicle belonging to him which is registered in another Member State.

26 In those circumstances, an obligation to register, such as that established by Articles 2 and 3 of the Royal Decree of 20 July 2001, even if it applies to all Belgian residents, without distinction as to nationality, is liable to make the exercise of the fundamental freedom provided for in Article 45 TFEU less attractive. Consequently, such an obligation constitutes an obstacle to freedom of movement for workers.

27 As regards the possible justification for such an obstacle, it appears from the information available to the Court that the vehicle belonging to Mr U, registered in Italy, was intended to be used essentially in that Member State.

28 If that was indeed how that vehicle was to be used, which it is for the referring court to verify, the condition requiring there to be a connection to the Member State imposing the obligation to register, provided for in paragraph 23 above, would not be satisfied.

29 Thus, national legislation, such as that at issue in the main proceedings, could be accepted only as a derogation expressly provided for in Article 45(3) TFEU or if it pursued a legitimate aim compatible with the Treaty and justified by overriding reasons relating to the public interest. Nevertheless, in such a situation, their application would still have to be apt to ensure attainment of the object in question and not go beyond what was necessary for that purpose (judgment of 15 September 2005, *Commission v Denmark*, C-464/02, EU:C:2005:546, paragraph 53).

30 The referring court did not set out any grounds that could justify the obstacle to freedom of movement for workers constituted by Articles 2 and 3 of the Royal Decree of 20 July 2001, as applied by the Belgian authorities. Similarly, the Belgian Government refrained from pleading any reasons whatsoever for those provisions.

31 In those circumstances, the answer to the question referred is that Article 45 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the case in the main proceedings, in accordance with which a worker residing there is required to register in that Member State a motor vehicle which he owns, but which is already registered in another Member State and is intended essentially for use in that latter State.

### **Costs**

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

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

Article 45 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the case in the main proceedings, in accordance with which a worker residing there is required to register in that Member State a motor vehicle which he owns, but which is already registered in another Member State and is intended essentially for use in that latter State.

[Signatures]

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\* Language of the case: French.

