

# EUROPEAN PARLIAMENT

2004



2009

---

*Committee on Petitions*

25.01.2007

## NOTICE TO MEMBERS

Petition 781/2003 by Marie-Thérèse Fauré (French) on alleged discrimination based on nationality

### 1. Summary of petition

Referring to a speeding fine imposed by the Belgian police on a German driver, the petitioner indicates that she was informed by the authorities that statutory fines differ depending on whether the offenders are of Belgian nationality or not.

### 2. Admissibility

Declared admissible on 19 February 2004. Commission asked to provide information under Rule 192(4).

### 3. Commission reply, received on 3 February 2006.

#### **Background**

The petitioner refers to a speeding fine imposed by the Belgian police on a German driver. Surprised by the amount of the fine, she called the police station concerned to ask whether there had not perhaps been a mistake. The police informed her that the fine in question was a special fine applicable to foreigners. She believes that if this were true, Belgian law would be discriminatory on grounds of nationality and should be amended.

#### **Legal assessment**

The Belgian law on the collection and payment of traffic fines is the subject of an infringement procedure opened by the Commission in 2001 due to the fact that it differentiates between resident and non-resident offenders, which would appear to be in breach of Article 12 of the EC Treaty.

The Commission has disputed the fact that on the one hand, the fines imposed on residents

under the so-called settlement procedure are lower than those imposed on non-residents with on-the-spot fines, and on the other, that there is a surcharge for legal expenses on the sum to be paid by non-residents who do not immediately pay up and opt for a normal criminal prosecution.

Following an exchange of letters with the Belgian authorities in the context of this infringement, the relevant Belgian law was amended by the law of 7 February 2003 laying down various road safety provisions and published by Belgian's official journal (*Le Moniteur Belge*) on 25 February 2005. This law entered into force on 1 March 2004, together with the relevant implementing decrees.

Compared with the previous rules, the new rules extended the possibility of imposing on-the-spot fines to residents in cases of serious 1st and 2nd degree offences, and the penalties applicable for such offences are now the same for residents and non-residents.

On-the-spot fines cannot, however, be imposed on residents in cases of, *inter alia*, repeat offences or serious, third-degree offences. In such cases, residents are summoned directly to the police court, which may sentence them to a fine and to the withdrawal of their driving licence. Non-residents must pay an on-the-spot fine and if they dispute the offence they have to pay a deposit (*consignation*) and may be sentenced to a fine of the same amount as that applicable to residents, but a Belgian court cannot rule on the withdrawal of their driving licence.

The amendments in question seem to have eliminated the different treatment given to non-residents as far as fines are concerned, except in the case of repeat offences or serious, third-degree offences; in these cases non-residents receive more favourable treatment because they cannot have their driving licences withdrawn.

However, as regards the Commission's second allegation, the rules concerning the payment of a deposit for non-residents have been maintained, and the sum established for legal expenses has been increased, as the Belgian authorities consider that charging offenders for legal expenses is justified.

A new law of 20 July 2005 has once again partially amended this system of fines. The Commission is currently studying the new rules in order to decide what further action to take in the infringement proceedings.'

#### **4. Further Commission reply**, received on 25 January 2007.

'As explained in the initial reply concerning this petition, infringement proceedings against Belgium are under way in connection with the legislation on the collection and payment of fines.

A letter of formal notice was addressed to Belgium on 18 October 2002. In this letter, the Commission expressed the view that the legislation in question treated resident and non-resident offenders in a different, disproportionate manner, contrary to Article 12 of the EC Treaty.

The Commission disputed the fact that on the one hand, the fines imposed on non-residents

who paid up immediately were higher than those imposed on residents under the so-called settlement procedure, and on the other, that there was a surcharge for legal expenses on the sum to be paid by non-residents who did not pay up immediately and opted for a normal criminal prosecution.

Following an exchange of letters, an additional letter of formal notice was sent on 19 December 2003, in which the Commission concluded that the amendments made to the previous legislation by the *law of 7 February 2003 laying down various road safety provisions* did not alter its opinion that this legislation treated resident and non-resident offenders in a different, disproportionate manner, which was contrary to Article 12 of the EC Treaty.

The Belgian authorities replied by letter of 2 March 2004, informing the Commission of the entry into force on 1 March 2004 of *the law of 7 February 2003 laying down various road safety provisions*, of *the Royal Decree of 22 December 2003 concerning the collection and payment of fines in the recording of offences under the law on the road traffic police and its enforcement decisions* and of *the Royal Decree of 22 December 2003 designating serious infringements by degree of the general rules implementing the law on the road traffic police*. The Belgian authorities explained the system that was applicable since the legislative amendments had been made and considered the different treatment of non-residents to be justified.

By letter of 21 June 2005 the Commission sent a letter to the Belgian authorities after having discovered from the press that the legislation in question had again been amended and asking for explanations about the changes made. The Belgian authorities replied by letter of 17 August 2005 explaining the new system.

The new law of 20 July 2005 *amending the coordinated laws of 16 March 1968 concerning the road traffic police* has partially modified the system of fines which entered into force on 1 March 2004.

The different treatment of non-residents has now been abolished with regard to the amount of the fines applicable, whether they be on-the-spot fines or other types of fines, except in cases of 4th degree infringements in which the difference is justified and proportionate given that it is impossible to disqualify non-resident drivers from driving, making it impossible to use the same system for residents and non-residents.

However, as regards the Commission's second allegation, the rules concerning the payment of a deposit for non-residents have been left unchanged and the sum established for legal expenses has been increased, as the Belgian authorities consider that charging offenders for legal expenses is justified.

Under Article 6 of the Royal Decree of 22 December 2003 concerning the collection and payment of fines in the recording of offences under the law on the road traffic police, as amended by Article 4 of the Royal Decree of 30 September 2005, if the offender has no domicile or fixed address in Belgium and does not pay the proposed sum immediately, the sum to be deposited shall be increased by a flat rate of €110.

The amount required as a deposit is more than three times the amount payable in the case of immediate payment of a fine relating to a first-degree offence (the sum to be deposited is €160 instead of €50); the deposit is more than double the amount payable in the case of immediate payment of a fine relating to a second-degree offence (the sum to be deposited is €210 instead of €100); the deposit is almost double the amount payable in the case of immediate payment of a fine relating to a third-degree offence (the sum to be deposited is €260 instead of €150) and is more than a third higher than this amount in the case of payment of a fine relating to a fourth-degree offence (the sum to be deposited is €410 instead of €300).

The Commission believes that the amount required as a deposit also has the effect of encouraging non-resident offenders to pay the fine immediately without challenging it.

Accordingly, a second supplementary letter of formal notice was sent on 4 July 2006. This letter concluded that by retaining in Article 65 of the *coordinated laws of 16 March 1968 concerning the road traffic police* and Article 6 of the *Royal Decree of 22 December 2003 as amended by the Royal Decree of 30 September 2005* the different and disproportionate treatment of residents and non-residents, whereby only non-residents who dispute an offence are required to deposit a sum which is higher than the amount of the on-the-spot fine, subject to the seizure of their vehicle, the Kingdom of Belgium has not fulfilled its obligations under Article 12 of the EC Treaty.

The Belgian authorities replied by letter of 2 October 2006 and the Commission is currently considering their reply.'