

CASE TRANSLATION: FRANCE

Case citation:

n° 13DA00046 (not published at Recueil Lebon)

Name and level of the court:

Cour administrative d'appel de Douai, 1re chambre – formation à 3 (Douai Administrative Court of Appeal, section 1 – panel of 3)

Date of decision:

30 May 2013

Members of the Court:

M. Yeznikian, President

Lawyer for the prosecution:

M. Moreau

Lawyer for the defendant:

Mme Marie-Odile Le Roux

France; penalty points driver's license; approved digital device; procedure; digital evidence; electronic signature; biodynamic version of a manuscript signature; proof

Given the request, filed on 14 January 2013, presented for M. A ... B. ..., living ..., by lawyer C... D...; M. B ... asks the court to:

1) to overrule judgment No. 1,103,280 of 9 November 2012 by which the judge appointed by the President of the Administrative Court of Amiens rejected his claim concerning, on the one hand, the quashing of the decision dated 23 September 2011 invalidating his driving license and an order to return it, as well as of the decisions on the withdrawal of penalty points¹ as a result of offences committed on 5 and 17 March, 16 May and 13 October 2010, and on the other hand, to grant an injunction;

2) to annul the decisions on the withdrawal of penalty points resulting from the infringements on 5 March 2010, 17 March 2010, 16 May 2010 and 13 October 2010;

3) to annul on the ground of ultra vires the 48 SI decision dated 23 September 2011 issued by the Minister of the Interior, Overseas Territories, Territorial Communities and immigration;

4) to order the Minister of the Interior to restore his driving license with a credit of six points;

¹ In France, there are 12 points on the driving licence, and points are taken away for each infringement.

5) to impose on the State the duty to pay a sum of 2,500 euros under the article L. 761-1 of the Code of Administrative Justice.

Considering other documents in the present case; considering the Code of Criminal Procedure; considering the Highway Code; considering the Code of Administrative Justice; the parties having been regularly informed of the date of the hearing;

Having heard during the public hearing:

- the report by Mme Marie-Odile Le Roux, President and assessor;

As for the decisions on the withdrawal of penalty points taken following the infringements of 5 March 2010, 17 March 2010 and 16 May 2010:

1. Whereas the provisions of articles L. 223-1, L. 223-3 and R. 223-3 of the Highway Code that the administration can only legally take a decision on withdrawing points assigned to a driver's license as a result of an offence, the proof of which has been established, unless the offender has previously been given a document containing the information specified in articles L. 223-3 and R. 223-3 of the Highway Code, which constitute an essential guarantee for him to challenge the offence and to understand the consequences on the validity of his driving license;

whereas it is the responsibility of the administration to bring proof, by any means, that it fulfilled this requirement before the payment of the fixed penalty or the referral to the judicial authority;

2. Whereas the Minister produced a copy of the statement for each of the infringements of 5 March 2010, 17 March 2010 and 16 May 2010;

whereas these statements have been signed without

reservation by the offender, and they include the information required by the provisions of articles L. 223-3 and R. 223-3 of the Highway Code;

whereas, as a consequence, the plea in law of lack of prior information must be rejected;

As for the decision on the withdrawal of penalty points taken as a result of the infringement on 13 October 2010,

3. Whereas under article R. 49-1 of the Code of Criminal Procedure:

‘(...) When the offence is observed by an enforcement officer in circumstances that do not allow an immediate release of these documents, the notification of the offence and a payment card can also be sent to the offender or the holder of the registration certificate.

II.- Without prejudice to article R. 249-9, the statement of offence can be prepared using a secured device, the features of which are determined by a decree of the Minister of Justice, allowing the use of a handwritten signature stored in a digital form’;

whereas under the article 37-15 of the same Code, as it is in force at the date of this judgment:

‘Where, in accordance with the third paragraph of section I of article R. 49-1, and the last paragraph of article R. 49-10, the offence is observed by an enforcement officer in circumstances that do not allow the immediate release of the notification of the offence and the payment card, particularly when the statement is issued by a device proscribed in article A. 37-19, the documents are sent by postal mail to the offender’s home or, when his identity could not be established, to the holder of the registration certificate:

the offence notification

a payment notice

a form to contest the infringement on a separate sheet, if the information on how to challenge and appeal are not included in the offence notification.

The features of these documents are determined by articles 37-16 to 37-18 (...)’

whereas under Article A37-19 of the same Code:

‘The secured electronic device allowing to write the statement of observed offence of the infringement by using a handwritten signature stored in digital form,

provided by in II of the article R. 49-1, must meet the following specifications:

- each statement is accompanied by a handwritten signature of the agent issued using a stylus on the touch screen of the device, which is then stored in a digital form;

- the offender may be offered the opportunity to sign the statement in the same way on the screen which presents him with a non-editable summary of the information relating to the offence raised against him, by which he recognizes having been given such information.

The lack of the offender’s signature on the statement, however, is not a cause of nullity of the procedure.

When this article is being applied in accordance with the third paragraph of I of the article R. 49, no document is given to the offender.’

4. As a consequence of the application of these provisions, where an offence has resulted in the establishment of an electronic statement of offence, the notification of infringement is sent to the offender’s home or that of the holder of the registration certificate and the payment of the fine is only made after receipt of this notification;

5. Whereas even though the Minister of the Interior presents a duplicate of the electronic statement issued against M. B ... following the infringement observed on 13 October 2010 and, contrary to what the applicant claims, signed by him, it [the minister] does not file the copy of the notification of the offence of the Highway Code addressed to the offender, but an anonymous copy of the notification of the offence of the Highway Code showing that the payment of the fixed fine, regardless of the method selected by the offender, can only be done through the enclosed payment card;

whereas the files in the case show that even though an electronic statement informs the offender of the number of penalty points he is likely to lose as a result of the offence, it does not mention of the existence of an automated processing of the points nor of the possibility for the applicant to exercise a right of access;

whereas the information required by the provisions of articles L. 223-3 and R. 223-3 of the Highway Code has not been fully brought to his attention;

whereas the full summary of information produced by

the Minister only makes mention of the fact that M. B ... has not paid the fixed penalty and that an enforceable order for an increased fixed fine has been issued;

whereas, in these circumstances, the Minister, who bears the burden of proof, does not present evidence that the applicant actually received the notification of the offence, and that therefore he was aware of the information contained in this document relating to the consequences that the payment of the fixed penalty would have on the total of his driving license points;

whereas M. B ... is justified in claiming that in the contested sentence, that the judge appointed by the Administrative Court has wrongly rejected his claim for annulment of the decision to withdraw three points resulting from the infringement on 13 October 2010;

As for the 48 SI decision:

6. Whereas, following the annulment at point 5 and taking into account other decisions of the withdrawal of points lawfully issued as of the date of the 48 SI decision under appeal, the balance of points assigned to M. B...’s driving license was three points;

As a result, M. B ... is justified to maintain that in the sentence under appeal, the judge appointed by the Administrative Court has wrongly rejected his claim for annulment of the 48 IF decision of 23 September 2011;

As for the claim for an injunction:

7. Whereas, subject to deduction of points that would have occurred since 23 September 2011, this judgment means that the Minister of the Interior restores the license of M. B ... completed by three points;

whereas it is appropriate to order this restitution;

As for the claim made under the article L. 761-1 of the Code of Administrative Justice:

8. Whereas that there is no reason, under the given circumstances, to charge the State the amount that M. B. ... requests based on the application of article L. 761-1 of the Code of Administrative Justice,

DECIDES:

Article 1: Judgment No. 1,103,280 of 9 November 2012 issued by the magistrate appointed by the President of the Administrative Court of Amiens is

cancelled as it rejected the claims presented by M. B... by which he asked for the annulment of the decision to withdraw three points following the infringement on 13 October 2010, as well as of the decision 48 SI of 23 September 2011 of the Minister of the Interior, Overseas Territories, Territorial Communities and immigration, by which the driving license of the person concerned has been invalidated.

Article 2: The decision to withdraw three points from M. B ...’s driving license, following offence dated 13 October 2010 and the decision 48 SI of 23 September 2011 of the Minister of the Interior, Overseas Territories, Territorial Communities and immigration, are cancelled.

Article 3: It is ordered the Minister of the Interior to return the driving license credited with three points to M. B

Article 4: The remainder of the claims of the application is rejected.

Article 5: This judgment shall be notified to M. A ... B ... and the Minister of the Interior.

With thanks to **Thibaut Le Guilly** for his help with this translation.

Thibaut Le Guilly is a PhD student at the department of computer science at Aalborg University, currently a visiting researcher at Hosei University. His main area of research is in the dependability of intelligent environments. Other interests include formal methods and software engineering.

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