



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 172/21
Luxembourg, 6 October 2021

Judgment in Case C-35/20
A (Border Crossing in a Pleasure Boat)

A Member State may require its nationals to carry a valid identity card or passport when travelling to another Member State, irrespective of the means of transport used and the itinerary, subject to sanctions.

While EU law does not preclude the imposition of a criminal penalty, it does preclude disproportionate penalties, such as a fine amounting to 20% of the offender's average net monthly income.

A, a Finnish national, made a round trip between Finland and Estonia in August 2015 on a pleasure boat. During that trip, he crossed the international waters between Finland and Estonia. He was the holder of a valid Finnish passport, but did not have it with him during that trip. As a result, during a border check in Helsinki on his return, A was unable to produce his passport or any other travel document, although his identity could be established on the basis of his driving licence.

The syyttäjä (prosecutor, Finland) prosecuted A for a minor border offence. Under Finnish law, Finnish nationals must carry a valid identity card or passport when travelling to another Member State by any means of transport and by any route, or when entering Finland from another Member State, on pain of criminal sanctions.

At first instance, A was found to have committed an offence by crossing the Finnish border without a travel document. However, no penalty was imposed on him, as the offence was minor and the amount of the fine that could be imposed on him under the Finnish criminal law regime, based on his average monthly income, was excessive, the total amount of the fine being EUR 95 250.

When the prosecutor's appeal against that decision was unsuccessful, the prosecutor brought an appeal before the Korkein oikeus (Supreme Court, Finland). The latter court then decided to ask the Court of Justice whether the Finnish legislation at issue in this case, and in particular the rules on criminal penalties under which crossing the national border without a valid identity card or passport is punishable by a fine of up to 20% of the offender's net monthly income, is compatible with the right of citizens of the Union to freedom of movement provided for in Article 21 TFEU.¹

Assessment of the Court

In its judgment, the Court clarifies, first of all, the conditions under which an obligation to carry an identity card or passport may be imposed, on pain of sanctions, possibly of a criminal nature, when travelling to a Member State other than that of which the person concerned is a national.

In that regard, the Court notes, first, that the words 'with a valid identity card or passport' used in Directive 2004/38,² clarifying Article 21 TFEU, mean that the exercise by nationals of one Member State of their right to travel to another Member State is subject to the condition that they carry one

¹ Having regard to the provisions on border crossing set out in Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

² Article 4(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

of those two valid documents. The purpose of that formality linked to free movement³ is to facilitate the exercise of the right to free movement by ensuring that any person benefiting from that right can be easily identified as such in the context of a possible check. Consequently, a Member State which obliges its nationals to carry one of the documents referred to when they cross the national border to move to another Member State contributes to compliance with that formality.

Secondly, with regard to the sanctions that may be imposed on a Union citizen who fails to comply with that formality, the Court states, with reference to the autonomy of the Member States in that respect, that the Member States may provide for sanctions, if necessary of a criminal nature, provided that they comply, in particular, with the principles of proportionality and non-discrimination.

The Court therefore concludes **that the right of citizens of the Union to freedom of movement does not preclude national legislation by which a Member State requires its nationals, on pain of criminal sanctions, to carry a valid identity card or passport when travelling to another Member State**, irrespective of the means of transport used and the route taken. However, the modalities of those sanctions must comply with the general principles of Union law, including those of proportionality and non-discrimination.

The Court also reached the same conclusion as regards the requirement to carry an identity card or passport when a national of a Member State enters its territory from another Member State. However, the Court specifies that, while the presentation of an identity card or passport may be requested when a national of a Member State returns to the territory of that State, the obligation to be in possession of such a document cannot be a condition for the right of entry.

Finally, the Court examines whether Article 21(1) TFEU and Directive 2004/38, read in the light of the principle of proportionality of sanctions laid down in the Charter of Fundamental Rights of the European Union,⁴ preclude rules on criminal sanctions such as those laid down under Finnish law for crossing the national border without a valid identity card or passport.

In that regard, the Court observes that, while it is open to Member States to impose a fine in order to penalise a breach of a formal requirement relating to the exercise of a right conferred by Union law, **that fine must be proportionate to the seriousness of the offence**. Where, as in the present case, the obligation to carry a valid identity card or passport is disregarded by a beneficiary of the right to freedom of movement, who is the holder of such a document but has merely failed to carry it when travelling, the offence is not serious. Therefore, **a heavy financial penalty, such as a fine amounting to 20% of the amount of the offender's average net monthly income, is not proportionate to the seriousness of the offence**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

³ Recital 7 of Directive 2004/38.

⁴ Article 49(3) of the Charter of Fundamental Rights of the European Union.