



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 64/22

Luxembourg, 26 April 2022

Judgment in Joined Cases C-368/20

Landespolizeidirektion Steiermark and C-369/20 Bezirkshauptmannschaft Leibnitz (Maximum duration of internal border control)

Where there is a serious threat to its public policy or internal security, a Member State may reintroduce border control at its borders with other Member States, but without exceeding a maximum total duration of six months

It is only in the event of a new serious threat arising that it can be justified to apply such a measure afresh

In the context of the migration crisis, Austria reintroduced border control at its borders with Hungary and Slovenia from the middle of September 2015. That border control was reintroduced a number of times. For the period from 16 May 2016 to 10 November 2017, Austria relied upon four successive recommendations of the Council of the European Union. From 11 November 2017, Austria reintroduced border control for a number of successive six-month periods on its own initiative.

On account of that reintroduction of border control, NW was checked at the Spielfeld border crossing point when he was entering Austria from Slovenia in August and November 2019. Furthermore, a fine of € 36 was imposed upon him for refusing to present his passport.

Since NW took the view that those checks and the fine were contrary to EU law and in particular to the Schengen Borders Code, he brought proceedings before the Regional Administrative Court, Styria.

That court has doubts as to whether the Schengen Borders Code permits Austria to reintroduce border control on its own initiative beyond a maximum total duration of six months. It therefore decided to stay the proceedings and to refer a number of questions to the Court of Justice for a preliminary ruling.

By its judgment delivered today, the Court points out that the Schengen Borders Code lays down the principle that borders between the Member States may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out there. That concerns one of the main achievements of the European Union, namely the establishment of an area where persons may move freely, without internal borders. Accordingly, the reintroduction of internal border control must remain an exception and should only be effected as a measure of last resort.

Thus, first, **the Schengen Borders Code permits a Member State, where there is a serious threat to its public policy or internal security, to reintroduce border control temporarily at its borders with other Member States. However, the Court holds that such a measure, including all possible prolongations, cannot exceed a maximum total duration of six months.**

The EU legislature considered that a period of six months was sufficient for the Member State concerned to adopt, where appropriate in cooperation with other Member States, measures enabling such a threat to be met while maintaining, after that six-month period, the principle of free movement.

The Court makes clear, however, that **the Member State may apply such a measure afresh, even immediately after the six-month period has ended, where it is faced with a new serious**

threat affecting its public policy or internal security, which is distinct from the threat initially identified, a matter which must be assessed by reference to the specific circumstances and events.

Second, in exceptional circumstances putting the overall functioning of the Schengen area at risk, the Council may recommend one or more Member States to reintroduce internal border control, for a maximum duration of two years.

After the end of those two years as well, the Member State concerned may, where it is faced with a new serious threat to its public policy or internal security and all the conditions imposed by the Schengen Borders Code are met, immediately reintroduce border control for a maximum total duration of six months.

In the present instance, it seems that, from 10 November 2017, the date on which the last of the Council recommendations expired, **Austria did not demonstrate the existence of a new threat**, with the result that the two border control measures to which NW was subject would be incompatible with the Schengen Borders Code, but this is a matter which will be for the Regional Administrative Court, Styria, to determine.

In addition, the Court holds that **a person cannot be obliged, on pain of a penalty, to present a passport or identity card on entry from another Member State when the reintroduction of border control is contrary to the Schengen Borders Code**.

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.

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

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