

Bavarian Court: 2022 Border Check near German-Austrian Border Unlawful

Anna Pingen

The Bavarian Administrative Court (Bayerischer Verwaltungsgerichtshof [BayVGH], Germany) ruled on 17 March 2025 (Case No. 10 BV 24.700) that a border check carried out on a train near the German-Austrian border in June 2022 was not compliant with the Schengen Borders Code and thus unlawful.

The claimant, international law scholar *Stefan Salomon*, junior professor of European law at the University of Amsterdam, had previously brought a similar case concerning border checks in Austria before the Court of Justice of the European Union (CJEU) (Case C-368/20, *NW v Landespolizeidirektion Steiermark*). In this case, which concerned checks by Austria at its border to Slovenia, the CJEU ruled on 26 April 2022 that the Schengen Borders Code precludes border control at internal borders from being temporarily reintroduced by a Member State on the basis of a serious threat to its public policy or internal security if the duration of its reintroduction exceeds the maximum total duration of six months and no new threat exists that would justify applying afresh the periods provided for by the code (→ [euclid 2/2022, 89](#)).

Following this line of argument, the BayVGH held that the identity check, conducted by the German Federal Police on an ICE train near Passau, violated the Schengen Borders Code because the prolongation of the reintroduction of border controls in spring 2022 by German Minister of Interior, *Nancy Faeser*, lacked a sufficiently new factual basis, and a mere reassessment of an unchanged situation did not justify the measure.

While the lower administrative court in Munich had initially dismissed the claim as inadmissible, the higher administrative court (BayVGH) acknowledged a risk of recurrence and allowed the appeal. The judgment underscores the requirement that any reintroduction of internal border controls within the Schengen Area must be based on new circumstances.

Since taking office in early May 2025, the new German government under Chancellor *Friedrich Merz* has tightened border controls along the German borders, including to Austria, in order to target illegal asylum seekers. In its [press release](#), the BayVGH stressed that it only had to rule on the specific identity check carried out on the claimant on 11 June 2022 as part of the border controls carried out at that time, not on the general admissibility of internal border controls. Nonetheless, the ruling may contribute to the controversial discussion on whether the tightened border controls of the new German government are in line with EU law.

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