

CJEU Rules on Obligation to Carry a Valid Identity Card when Traveling to Another Member State

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On 6 October 2021, the CJEU decided that a Member State may require its nationals, on pain of 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.

In the case at issue (C-35/20), Finnish national A took a round trip between Finland to Estonia on a pleasure boat in August 2015. During that trip, he crossed international waters between Finland and Estonia. Since A was travelling without his valid Finnish passport, he was unable to present it or any other travel document at the border check carried out in Helsinki on his return, even though his identity could be established with his driving licence. The Finnish public prosecutor charged A with a minor border offence: according to Finnish law, Finnish nationals must, on pain of criminal sanctions, carry a valid identity card or passport when they travel to another Member State or enter Finland by arriving from another Member State – by whatever means of transport and route.

The first instance court decided that A had committed an offence by crossing the Finnish border without being in possession of a travel document. No penalty was imposed on him, however, since the offence was minor. The fine that could be imposed on him under the Finnish Penal Code is not small, since the fine can be up to 20% of the offender's monthly net income (in the concrete case: over €95.000). The public prosecutor appealed before the Supreme Court of Finland, which asked the CJEU about the compatibility of Finnish law (in particular, the rules on criminal penalties) with the right of Union citizens to freedom of movement as laid down in Art. 21 TFEU..

The CJEU first interpreted Directive 2004/38/EC, which clarifies Art. 21 TFEU. With regard to the wording in Art. 4(1) of that Directive (“with a valid identity card or passport”), the CJEU found that a Member State may indeed require its nationals, on pain of 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. Regarding the question of punishability for not having carried an identity card or passport when travelling, the judges in Luxembourg acknowledged the autonomy of the EU Member States and conceded that it is up to them to impose a fine to penalise failure to comply with a formal requirement relating to the exercise of a right conferred by EU law. The sanction must, however, be in line with the principles of EU law: in particular, it must be proportionate to the seriousness of the infringement. Since the offence at issue was not serious, a heavy financial penalty, such as a fine amounting to 20% of the offender's average net monthly income, is therefore not proportionate to the seriousness of that offence.

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