



Court of Justice of the European Union

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Judgment in Case C-606/10

Association nationale d'assistance aux frontières pour les étrangers
(ANAFE) v Ministère de l'Intérieur, de l'Outre-mer, des Collectivités
territoriales et de l'Immigration

Press and Information

EU law does not preclude French rules which ban the re-entry into France of third-country nationals who are holders of a temporary residence permit in the absence of a re-entry visa

However, the national authorities who issue a re-entry visa to third country nationals may not restrict their entry into the Schengen area solely to points of entry to national territory

Regulation (EC) No 562/2006¹ or the 'Schengen Borders Code', is part of the more general context of an area of freedom, security and justice without internal borders. Under that regulation, the entry of third-country nationals into the Schengen area is subject to certain conditions. For stays not exceeding three months per six-month period from the date of first entering the territory of the Member States, such nationals must, in particular, be in possession of a valid travel document authorising them to cross the border (internal or external) of a Member State and of a valid visa, if the latter is required.

By way of derogation, third-country nationals who do not fulfil all the conditions laid down in the Schengen Borders Code but hold a residence permit or a 're-entry visa' issued by one of the Member States or, where required, both documents, are authorised to enter the territories of the other Member States for transit purposes so that they may reach the territory of the Member State which issued the residence permit or re-entry visa.

An action for annulment of a ministerial circular from 21 September 2009 was brought before the Conseil d'État (France) by the Association nationale d'assistance aux frontières pour les étrangers (ANAFE). That circular prohibits the re-entry into France of third-country nationals subject to a visa requirement who are holders of a temporary residence permit only, issued pending examination of a first application for a residence permit or of an asylum application, and who do not possess a re-entry visa issued by the consular authorities or, in exceptional cases the prefectural authorities. The circular goes on to state that a re-entry visa issued by the prefectural authorities authorises, as a general rule, the crossing of the Schengen area external borders only at points of entry into French territory. According to ANAFE, that circular is in breach of the principles of legal certainty and the protection of legitimate expectations in that it is immediately applicable and deprives third-country nationals who have left French territory of the right to return to France without having to apply for a visa, as they could legitimately have expected to do on the basis of earlier administrative practice.

The Conseil d'Etat referred those questions to the Court of Justice.

In its judgment delivered today, the Court states, first, that the possession of a residence permit issued by a Member State to a third-country national enables that person to enter and move freely in the Schengen area, to leave that area and to return to it without being required to obtain a visa. However, the Court states that a **temporary residence permit**, issued pending examination of a

¹ 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) (OJ 2006 L 105, p. 1), as amended by Regulation (EC) No 81/2009 of the European Parliament and of the Council of 14 January 2009 (OJ 2009 L 35, p. 56)

first application for a residence permit or pending examination of an application for asylum, is expressly excluded from the concept of residence permit under the regulation.

Further, the rules governing refusal of entry laid down in the Schengen Borders Code apply to any third-country national who wishes to enter a Member State by crossing an external border of the Schengen area. Accordingly, since that regulation dispensed with checks on persons at internal borders and moved border controls to the external borders of the Schengen area, its provisions on refusal of entry at external borders are in principle applicable to all cross-border movements by persons, even if the entry via the Schengen area external borders of one Member State is made only for the purposes of a stay in that Member State.

It follows that a third-country national who is in possession of a temporary residence permit issued by a Member State pending a decision on his (or her) application for residence or application for asylum and who leaves the territory of the State where he has made the application cannot return there on the strength of that temporary residence document alone. Consequently, where such a national arrives at the Schengen area borders, the authorities responsible for border controls must, pursuant to the regulation, refuse him entry into that territory unless he is covered by certain exceptions (humanitarian grounds, grounds of national interest or international obligations). Those controls must be carried out without prejudice to the rights of refugees and persons seeking international protection, in relation to, inter alia, non-refoulement.

Secondly, the Court interprets the concept of '**re-entry visa**'. A re-entry visa is a national authorisation which can be issued to a third-country national who holds neither a residence permit nor a visa or a visa with limited territorial validity, within the meaning of the Visa Code², and which allows him to leave a Member State for a specific purpose before then returning to the same State. While the national re-entry conditions are not defined by the Schengen Borders Code, it is however apparent from that code that a re-entry visa must authorise a third-country national to enter the territory of other Member States for transit purposes, so that he may reach the territory of the Member State which issued such a re-entry visa. Consequently, the **Schengen Borders Code must be interpreted as meaning that a Member State which issues to a third-country national a 're-entry visa' cannot restrict entry into the Schengen area solely to points of entry to its national territory.**

Lastly, **the principles of legal certainty and protection of legitimate expectations did not require the provision of transitional measures** for the benefit of third-country nationals who had left the territory of a Member State when they were holders of temporary residence permits issued pending examination of a first application for a residence permit or an application for asylum and wanted to return to that territory after the entry into force of the regulation. It is clear from the provisions of the Schengen Borders Code that a temporary residence permit does not bestow a right of re-entry into the Schengen area. Further, the Court states that that regulation was published in the Official Journal of the European Union on 13 April 2006, in other words six months before the date of its entry into force (13 October 2006), and accordingly the foreseeability of the rules to become applicable from that date was ensured.

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](#) of the judgment is published on the CURIA website on the day of delivery.

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² Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).