



Press and Information

Court of Justice of the European Union

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Judgment in Case C-254/11

Szabolcs-Szatmár-Bereg Megyei Rendőrkapitányság Záhony
Határrendészeti Kirendeltsége v Oskar Shomodi

The limitation of stays in the Schengen area to a maximum of three months over a six-month period for foreign nationals who are not subject to visa requirements does not apply to those who benefit from the local border traffic regime

For foreign nationals in possession of a local border traffic permit, the maximum duration of stay, laid down in the bilateral agreements between the Member States and neighboring third countries, must be calculated independently of earlier stays, provided that such persons have interrupted those stays by returning to their country of residence

Under the Convention implementing the Schengen Agreement¹, foreign nationals not subject to a visa requirement may move freely within the Schengen area for a maximum period of three months during the six months following the date of first entry.

A specific regulation² applies to foreign nationals who are resident in an area of a non-Member State which borders a Member State of the EU, namely an area that extends no more than 30 kilometres from the border. Cross-border workers may obtain a local border traffic permit which enables them to enter the neighbouring Member State and remain there for an uninterrupted period, the duration of which is determined by the two neighbouring States, but may not exceed three months. Holders of such a permit are not authorised to go beyond the border area of the Member State visited.

Hungary and the Ukraine concluded an agreement applying the local border traffic regulation to their common border. That agreement determines, inter alia, the maximum permissible duration of a stay in Hungary for Ukrainian beneficiaries of the local border traffic regime. That duration, which is laid down in Hungarian law, is fixed at the maximum period permitted by the regulation, namely three months if the stay is uninterrupted.

Mr Shomodi is a Ukrainian national who is in possession of a local border traffic permit which authorises him to enter the border area of Hungary. On 2 February 2010 he requested entry into Hungary at the Záhony border crossing. The Hungarian border police established that he had stayed in Hungarian territory for 105 days during the period from 3 September 2009 to 2 February 2010, entering that territory almost daily for several hours. Since Mr Shomodi had thus stayed for more than three months in the Schengen area during a six-month period, the Hungarian border police refused him entry into Hungarian territory on the basis of Hungarian national law, interpreted in the light of the the Convention implementing the Schengen Agreement.

Mr Shomodi brought an action against the decision of the border police before the Hungarian courts. In the appeal proceedings on a point of law before it, the Legfelsőbb Bírósága (Supreme Court, Hungary) asks the Court of Justice whether the agreement at issue which, as interpreted by the Hungarian authorities, limits the total length of a stay of a cross-border worker in the border

¹ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990 (OJ 2000 L 239, p. 19).

² Namely, Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ 2006 L 405, p. 1, and corrigendum OJ 2007 L 29, p. 3).

area of Hungary to three months over a six-month period is compatible with the local border traffic regulation.

In its judgment, the Court finds, first, that **the general rule in the Schengen *acquis*, which limits the stay of foreign nationals to three months over a six-month period, does not apply to local border traffic**. The Court points out that the three-month limit laid down in the local border traffic regulation relates only to ‘uninterrupted stays’, whereas the limitation resulting from the Schengen *acquis* does not relate to such stays. The Court notes that, although the Commission initially proposed, during the preparatory work of the regulation, an alignment of the calculation of the maximum stay with that laid down in the Schengen *acquis*, the EU legislature opted for a specific limitation in relation to uninterrupted stays. In the Court’s view, the fact that that limitation is, as in the Schengen *acquis*, limited to three months cannot cast doubt on its special nature in relation to the ordinary rules in place for third-country nationals who are not subject to visa requirements. It is not apparent from any provision of the regulation that those three months must fall within the same six-month period.

Moreover, by adopting the regulation on local border traffic, the EU legislature intended to put rules in place for local border traffic which are independent of, and distinct from, those of the Schengen *acquis*. The purpose of those rules is to enable the residents of the border areas concerned to cross the external land borders of the EU for legitimate economic, social, cultural or family reasons, and to do so easily – that is to say, without excessive administrative constraints – and frequently, even regularly.

Next, in relation to the concerns expressed by certain Member States in relation to the alleged negative consequences of such an autonomous interpretation of the regulation, the Court responds that the easing of border crossing is intended for *bona fide* border residents with legitimate and duly substantiated reasons for frequently crossing an external land border. In addition, the Member States remain free to impose penalties on those who abuse or fraudulently use their local border traffic permit.

Accordingly, the Court considers that **the holder of a local border traffic permit must be able to move freely within the border area for a period of three months if his stay is uninterrupted and to have a new right to a three-month stay each time that his stay is interrupted**.

Finally, the Court states that the stay of the holder of a local border traffic permit must be regarded as interrupted as soon as the person concerned crosses the border back into his State of residence in accordance with the conditions laid down in his permit, irrespective of the frequency of such crossings, even if they occur several times daily.

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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