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Court of Justice of the European Union

PRESS RELEASE No 200/18

Luxembourg, 13 December 2018

Judgment in Cases C-412/17 and C-474/17
Bundesrepublik Deutschland v Touring Tours und Travel GmbH and
Sociedad de Transportes SA

The Schengen Borders Code precludes Germany from requiring coach transport operators of cross-border services to check the passports and residence permits of passengers before entering or leaving German territory

Such checks have an effect equivalent to border checks and are therefore prohibited

Under German law, any coach transport undertaking providing a regular cross-border service within the Schengen area to Germany must check the passports and residence permits of passengers before they cross the German border. The purpose of those checks is to prevent the transport of third-country nationals not in possession of those travel documents to German territory. For the purposes of complying with that obligation to carry out checks, the police authorities may issue orders prohibiting such transport, accompanied by a threat of a recurring fine, against transport undertakings which have been found to have conveyed to German territory third-country nationals who were not in possession of those travel documents.

Touring Tours und Travel and Sociedad de Transportes are coach travel operators established, respectively, in Germany and in Spain, operating regular services to Germany, which cross the German-Netherlands and German-Belgian borders. Having decided that those undertakings had transported to Germany a large number of third-country nationals who were not in possession of the requisite travel documents, the Bundespolizeipräsidium (Directorate of the Federal Police, Germany), in 2014, after sending a warning, issued an order prohibiting them, subject to the imposition of a recurring fine, from transporting third-country nationals not in possession of the requisite passport or residence permit to German territory.

Both coach transport operators brought actions against those prohibition orders before the German courts. Uncertain as to the compatibility of the obligation to carry out the checks at issue with the abolition of internal border controls in the Schengen area, the Bundesverwaltungsgericht (Federal Administrative Court, Germany) referred the matter to the Court of Justice.

In today's judgment, the Court finds that the Schengen Borders Code¹ (in the version applicable in 2014²) precludes³ the obligation to carry out checks at issue imposed on coach travel operators traveling to Germany and the issuing of orders prohibiting, subject to the

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 (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1).

² Regulation No 562/2006, applicable at the time of the relevant facts in the main proceedings, was repealed and replaced by Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1).

³ The Court states that it did not examine Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ 2002 L 328, p. 17), or Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ 2002 L 328, p. 1), or Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ 2001 L 187, p.45) which the Federal Republic of Germany relied on in order to claim that EU law requires Member States to impose obligations on passenger carriers to carry out checks such as those at issue and to impose appropriate sanctions. The Bundesverwaltungsgericht expressly stated that it did not need clarification regarding the possible effect of those provisions.

imposition of a recurring fine, operators which infringed that obligation from providing any further transport services under the same conditions.

Since the checks at issue are carried out when the travellers board the coach at the start of the cross-border journey, they constitute checks within the territory of a Member State, which are prohibited where they have an effect equivalent to border checks.

According to the Court, the checks at issue have such an effect and are therefore prohibited.

The sole purpose of those checks is to ensure that the persons on board the coach who intend to cross the German border are actually permitted to enter German territory. Thus, the purpose of those checks is to prevent passengers from entering German territory if they do not have the requisite travel documents, which is the same as the purpose of the checks carried out by the border police in connection with the crossing of external borders. The triggering event is precisely the crossing of an internal border.

Moreover, the obligation to carry out checks is of a general character, covering all cross-border services, irrespective of the conduct of the persons concerned or of circumstances giving rise to a risk to public order. In addition, the checks on travel documents must be carried out systematically on all persons travelling on all cross-border coach services. By contrast, the obligation to carry out checks at issue does not cover coach transport services which are confined to German territory alone, even though they may be of a distance equal to, or even greater than, the cross-border services to which that obligation to carry out checks applies.

Since the obligation to carry out checks as such is contrary to the Schengen Borders Code, that code also precludes sanctions for infringement of that obligation through the issuing of orders prohibiting transport, together with a threat to impose a recurring fine.

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 EU 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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