

Case C-280/22**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

25 April 2022

Referring court:

Raad van State (Belgium)

Date of the decision to refer:

8 April 2022

Applicants:

1. VZW KINDERRECHTENCALITIE VLAANDEREN
2. VZW LIGA VOOR MENSENRECHTEN

Defendant:

Belgian State

Subject matter of the main proceedings

The action seeks the annulment of the Royal Decree of 10 December 2019 amending the Royal Decree of 25 March 2003 on identity cards and the Royal Decree of 19 April 2014 on identity cards issued by consular posts.

Subject matter and legal basis of the request

The reference concerns the validity of Article 3(5) and (6) and Article 14 of Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement, read in conjunction with Commission Implementing Decision C(2018) 7767 of 30 November 2018 laying down the technical specifications for the uniform format for residence permits for third country nationals and repealing Decision C(2002) 3069. The legal basis of the request is point (b) of the first paragraph of Article 267 TFEU.

Question referred for a preliminary ruling

Are Article 3(5) and (6) and Article 14 of Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement, read in conjunction with Commission Implementing Decision C(2018) 7767 of 30 November 2018 laying down the technical specifications for the uniform format for residence permits for third country nationals and repealing Decision C(2002)3069, valid and compatible with Article 16 TFEU and – as regards Article 3(5) and (6) – with Article 21 TFEU, as well as with Articles 7, 8 and 52 of the Charter of Fundamental Rights of the European Union, in conjunction with:

- Articles 1, 2, 3, 4, 5, 6, 9, 25, 32, 35 and 36 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC,

- Articles 1, 2, 3, 4, 8, 9, 10, 27 and 28 of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA,

- Articles 1, 2, 3, 4, 5, 10, 28 and 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC,

in so far as Article 3(5) and (6) of Regulation (EU) 2019/1157 requires two fingerprints of the holder of the card to be stored in interoperable digital formats on a storage medium included on the identity card,

and in so far as Article 3(5) and (6) and Article 14 of Regulation (EU) 2019/1157, read in conjunction with Annex III to the aforementioned Commission Implementing Decision C(2018) 7767 of 30 November 2018, require the fingerprint data on the identity cards and residence documents referred to in points (a) and (c) of Article 2 of that regulation to be stored in the form of a digital image of the fingerprints on an electronic microprocessor chip which uses RFID and can be read wirelessly/in contactless form?

Provisions of European Union law relied on

Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement ('Regulation 2019/1157'), in particular Article 3(5) and (6) and Article 14

Commission Implementing Decision C(2018) 7767 laying down the technical specifications for the uniform format for residence permits for third country nationals and repealing Decision C(2002)3069

European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), in particular Article 8

Charter of Fundamental Rights of the European Union ('the Charter'), in particular Articles 7, 8 and 52

Convention on the Rights of the Child, in particular Articles 3, 8 and 16

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ('Regulation 2016/679'), in particular Articles 1, 2, 3, 4, 5, 9, 25, 32, 35 and 36

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA ('Directive 2016/680'), in particular Articles 1, 2, 3, 4, 5, 8, 9, 10, 27, 28 and 29

Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('Regulation 2018/1725'), in particular Articles 1, 3, 4, 5, 10 and 42

Provisions of national law relied on

the Law of 25 November 2018 laying down various provisions relating to the national register and population registers ('the Law of 25 November 2018'), in particular Article 27

the Law of 19 July 1991 on population registers, identity cards, cards for foreign nationals and residence documents ('the Law of 19 July 1991'), in particular Article 6

the Royal Decree of 10 December 2019 amending the Royal Decree of 25 March 2003 on identity cards and the Royal Decree of 19 April 2014 on identity cards issued by consular posts ('the contested royal decree'), in particular Articles 4 and 5

the Royal Decree of 25 March 2003 on identity cards

the Constitution, in particular Articles 10, 11, 22, 22bis, 33, 37, 105, 108 and 159

the Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data ('the Law of 30 July 2018'), in particular Articles 2, 4, 5, 26, 27, 28, 30, 31, 32, 33, 34, 58, 59 and 60

National case-law relied on

Constitutional Court, judgment No 2/2021 of 14 January 2021

European Union case-law relied on

Judgment of 6 December 2005, *Gaston Schul Douane-expediteur*, C-461/03, EU:C:2005:742

Case C-61/22, currently pending before the Court of Justice

Succinct presentation of the facts and procedure in the main proceedings

- 1 The action, brought on 18 February 2020, seeks the annulment of the contested royal decree.
- 2 Regulation 2019/1157 provides that identity cards must include a highly secure storage medium which shall contain a facial image of the holder of the card and two fingerprints in interoperable digital formats. For the capture of biometric identifiers, Member States shall apply the technical specifications as established by Commission Implementing Decision C(2018) 7767 (Article 3(5)). The storage medium must have sufficient capacity and capability to guarantee the integrity, authenticity and confidentiality of the data, which are accessible in contactless form. Member States shall exchange the information necessary to authenticate the storage medium and to access and verify the biometric data (Article 3(6)). The Commission shall establish additional technical specifications in order to ensure, where appropriate, that identity cards and residence documents comply with future security standards (Article 14). Regulation 2019/1157 has been in force since 2 August 2021 (Article 16).

- 3 The Law of 25 November 2018 amended the Law of 19 July 1991. In particular, Article 27 of the Law of 25 November 2018 amended Article 6 of the Law of 19 July 1991. The third subparagraph of Article 6(2) was thus amended to include the requirement that the identity card and the card for foreign nationals also contain the following electronically readable personal data: digital images of the left and right index fingers of the holder or, if the index finger is injured, missing or unsuitable, of another finger of each hand. The King shall determine the conditions and detailed rules for capturing digital images of the fingerprints. Article 27 of the Law of 25 November 2018 has been the subject of five actions for annulment before the Constitutional Court, including an action brought by the second applicant. Those actions were dismissed by judgment No 2/2021 of 14 January 2021.
- 4 The contested royal decree implements Regulation 2019/1157 and the Law of 25 November 2018. Article 4 of the contested royal decree amends Article 3 of the Royal Decree of 25 March 2003. Article 3(1) states that the identity card shall contain two electronic chips and a two-dimensional barcode. A new Article 3(5) provides, inter alia, that fingerprints are to be digitised by ad hoc sensors on the initiative of the municipal administration and that the digital images of those prints are to be securely transmitted by the offices of the national register to the producer of the identity card for electronic integration therein. Article 5 of the contested royal decree provides for the insertion in the Royal Decree of 25 March 2003 of Article 3/1, reading as follows: *‘Article 3/1. When the holder of an identity card or card for foreign nationals reports to the municipal administration, first to have the basic document drawn up in accordance with Article 3(3) and then to collect that card, the municipal official shall check, before issuing the card, that the person present at the counter is indeed the holder of the card, in particular by visually comparing their face with the photograph and by comparing the person’s fingerprints with those on the card in so far as they have been recorded on it. In the event of doubt as to the identity of the holder of the card, the card shall not be issued until the identity of the holder has been established with certainty.’*

The essential arguments of the parties in the main proceedings

- 5 By their two pleas, which are directed against Article 4 of the contested royal decree and, as regards the first plea, against Article 5 thereof, the applicants allege infringement of Article 8 ECHR, Articles 7, 8 and 52 of the Charter, Articles 3, 8 and 16 of the Convention on the Rights of the Child, Articles 10, 11, 22, 22bis, 33, 37, 105, 108 and 159 of the Constitution, Articles 1, 2, 3, 4, 5, 9, 25, 32, 35 and 36 of Regulation 2016/679, Articles 1, 2, 3, 4, 5, 8, 9, 10, 27, 28 and 29 of Directive 2016/680, Articles 2, 4, 5, 26, 27, 28, 30, 31, 32, 33, 34, 58, 59 and 60 of the Law of 30 July 2018, Articles 1, 3, 4, 5, 10 and 42 of Regulation 2018/1725, and of essential procedural requirements or of procedural requirements prescribed on pain of nullity, ‘in particular the absence of the legally required basis for the contested decree’.

- 6 By their first plea, the applicants contend, in essence, that, although the contested royal decree is based on Regulation 2019/1157 (first part) and Article 6 of the Law of 25 November 2018 (second part), those instruments do not constitute a sound legal basis for the contested decree. They argue that both Regulation 2019/1157 and Article 6 of the Law of 25 November 2018 constitute a disproportionate interference ‘with the right to privacy’. By their second plea, the applicants also contend, in essence, that, although the contested royal decree is based on Regulation 2019/1157, that regulation does not constitute a sound legal basis for the contested decree. According to the applicants, that regulation infringes the right to privacy by failing to guarantee the integrity and confidentiality of the processed fingerprint data.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 7 The first and second pleas are based on the invalidity of Regulation 2019/1157, which would deprive the contested royal decree of a legal basis.
- 8 Since it is, in principle, for the Court of Justice of the European Union, and not the national courts, to rule on the invalidity of Union acts, the referring court refers the question set out above to the Court of Justice.
- 9 The referring court observes that the applicants have drawn attention to the similarity of the question referred for a preliminary ruling in Case C-61/22, which is currently pending before the Court of Justice.