

Judgment of the Court (Fifth Chamber) of 6 October 2021 (request for a preliminary ruling from the Korkein oikeus — Finland) — Criminal proceedings against A

(Case C-35/20) ⁽¹⁾

(Reference for a preliminary ruling — Citizenship of the Union — Right of Union citizens to move freely within the territories of the Member States — Article 21 TFEU — Directive 2004/38/EC — Articles 4 and 5 — Obligation to carry an identity card or a passport — Regulation (EC) No 562/2006 (Schengen Borders Code) — Annex VI — Crossing the maritime border of a Member State on board a pleasure boat — Rules on sanctions applicable when moving between Member States without an identity card or passport — Rules on daily fines in criminal cases — Calculation of the fine based on the offender's average monthly income — Proportionality — Severity of the sanction in relation to the offence)

(2021/C 490/06)

Language of the case: Finnish

Referring court

Korkein oikeus

Party in the main proceedings

A

Intervening parties: Syyttäjä

Operative part of the judgment

1. The right of Union citizens to free movement provided for in Article 21 TFEU and defined by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must, having regard to the provisions on border crossing laid down by 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), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, be interpreted as not precluding national legislation by which a Member State obliges its nationals, on pain of criminal penalties, to carry a valid identity card or passport when travelling to another Member State, by whatever means of transport and by whatever route, provided that the detailed rules for those penalties comply with the general principles of EU law, including those of proportionality and non-discrimination;
2. The right of Union citizens to freedom of movement laid down in Article 21(1) TFEU, in the light of the provisions on the crossing of borders set out in Regulation No 562/2006, as amended by Regulation No 610/2013, must be interpreted as not precluding national legislation by which a Member State requires its nationals to carry a valid identity card or passport, on pain of criminal sanctions, when they enter its territory from another Member State, provided that that obligation does not make the right of entry conditional and that the detailed rules on penalties for failure to comply with that obligation comply with the general principles of EU law, including those of proportionality and non-discrimination. A journey to the Member State concerned from another Member State made on board a pleasure boat and through international waters is listed, under the conditions laid down in the second paragraph of point 3.2.5 of Annex VI to that regulation, among the cases in which the submission of such a document may be requested;
3. Article 21(1) TFEU and Articles 4 and 36 of Directive 2004/38, read in the light of Article 49(3) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding rules on criminal sanctions by which a Member State makes the crossing of its national border without a valid identity card or passport punishable by a fine which may, by way of example, amount to 20 % of the offender's net monthly income, where such a fine is not proportionate to the seriousness of the offence, which is of a minor nature.

⁽¹⁾ OJ C 103, 30.3.2020.