



Reports of Cases

Case C-606/10

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

(Reference for a preliminary ruling from the Conseil d'État (France))

(Regulation (EC) No 562/2006 — Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) — Article 13 — Third-country nationals holding a temporary residence permit — National legislation banning the re-entry of those nationals into the territory of the Member State which issued the temporary residence permit in the absence of a re-entry visa — Meaning of 're-entry visa' — Earlier administrative practice authorising re-entry without re-entry visa — Need for transitional measures — Absence)

Summary of the Judgment

1. *Border controls, asylum and immigration — Community code on movement across borders — Rules relating to refusal of entry to third-country nationals — Scope — Third-country nationals subject to the requirement to obtain a visa, with a temporary residence permit issued by a Member State, wishing to return there via the Schengen area external borders*

(European Parliament and Council Regulation No 562/2006, as amended by Regulation No 81/2009, Art. 13)

2. *Border controls, asylum and immigration — Community code on movement across borders — Conditions of entry for third-country nationals — Meaning of 're-entry visa'*

(European Parliament and Council Regulation No 562/2006, as amended by Regulations 81/2009, Art. 5(4)(a) and No 810/2009, Art. 2)

3. *Border controls, asylum and immigration — Community code on movement across borders — Conditions of entry for third-country nationals — Re-entry visa limiting entry solely to points of entry to its national territory — Not permissible*

(European Parliament and Council Regulation No 562/2006, as amended by Regulation No 81/2009, Art. 5(4)(a))

4. *Acts of the institutions — Regulations — Community code on movement across borders — Prohibition on third-country nationals with a temporary residence permit who have left the territory of a Member State returning there after entry into force of that code — No transitional measures — Infringement of the principles of legal certainty and the protection of legitimate expectations — None*

(European Parliament and Council Regulation No 562/2006, as amended by Regulation No 81/2009)

1. The rules relating to the refusal of entry to third-country nationals laid down in Article 13 of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation No 81/2009, are also applicable to third-country nationals subject to the requirement to obtain a visa who wish to return via the Schengen area external borders to the Member State which issued them with a temporary residence permit but not to enter for that purpose the territory of another Member State.

(see para. 41, operative part 1)

2. A re-entry visa within the meaning of Article 5(4)(a) of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation No 81/2009 is an authorisation which can be issued by a Member State to a third-country national who does not hold either a residence permit or a visa or a visa with limited territorial validity within the meaning of the Visa Code and which allows him to leave that Member State for a specific purpose before then returning to the same State.

It follows from the definitions in Article 2 of Regulation No 810/2009 establishing a Community Code on Visas (Visa Code) that a 're-entry visa' within the meaning of Article 5(4)(a) of Regulation No 562/2006 is not a 'visa' within the meaning of that Code and is also not a 'visa with limited territorial validity' as defined in Article 2(4) of the Visa Code.

(see paras 49, 51, 52)

3. Article 5(4)(a) of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation No 81/2009, must be interpreted as meaning that a Member State which issues to a third-country national a re-entry visa within the meaning of that provision cannot limit entry into the Schengen area solely to points of entry to its national territory.

(see para. 56, operative part 2)

4. The principles of legal certainty and protection of legitimate expectations do not require the provision of transitional measures for the benefit of third-country nationals who have left the territory of a Member State when they are holders of temporary residence permits issued pending examination of a first application for a residence permit or an application for asylum and want to return to that territory after the entry into force of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation No 81/2009.

(see para. 83, operative part 3)