



## Reports of Cases

### Case C-9/16

#### **Criminal proceedings against A**

(Request for a preliminary ruling from the Amtsgericht Kehl)

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 562/2006 — Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) — Articles 20 and 21 — Crossing internal borders — Checks within the territory — National legislation authorising checks to establish the identity of persons apprehended within 30 kilometres of the common border with other States parties to the Convention implementing the Schengen Agreement — Possibility of checks irrespective of the behaviour of the person concerned or of the existence of specific circumstances — National legislation permitting certain controls on persons on the premises of railway stations)

Summary — Judgment of the Court (First Chamber), 21 June 2017

1. *Border controls, asylum and immigration — Community code on movement across borders — Abolition of border control at internal borders — Checks within the territory — National legislation conferring on the police authorities the power to check the identity of any person within an area of 30 kilometres from the land border of the Member State concerned with States parties to the Convention implementing the Schengen Agreement — Unlawful — Conditions*

(Art. 67(2) TFEU; European Parliament and Council Regulation No 562/2006, Arts 20 and 21)

2. *Border controls, asylum and immigration — Community code on movement across borders — Abolition of border control at internal borders — Checks within the territory — National legislation conferring on the police authorities the power to carry out certain controls on board trains and on the premises of railways — Lawfulness — Conditions*

(Art. 67(2) TFEU; European Parliament and Council Regulation No 562/2006, Arts 20 and 21)

1. Article 67(2) TFEU and Articles 20 and 21 of 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, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which confers on the police authorities of the Member State in question the power to check the identity of any person, within an area of 30 kilometres from that Member State's land border with other States parties to the 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

(Luxembourg) on 19 June 1990, with a view to preventing or terminating unlawful entry into or residence in the territory of that Member State or preventing certain criminal offences which undermine the security of the border, irrespective of the behaviour of the person concerned and of the existence of specific circumstances, unless that legislation lays down the necessary framework for that power ensuring that the practical exercise of it cannot have an effect equivalent to that of border checks, which is for the referring court to verify.

In the absence of such a framework in the national legislation, it cannot be considered that those checks, first, are selective and thus not systematic like border checks and, second, are police measures applied on the basis of spot-checks, as required by Article 21(a)(iii) and (iv) of Regulation No 562/2006. Last, the framework required must be sufficiently clear and precise to enable the need for the checks and the checks actually authorised themselves to be checked (judgment of 19 July 2012, *Adil*, C-278/12 PPU, EU:C:2012:508, paragraph 76).

(see paras 41, 62, 63, operative part 1)

2. Article 67(2) TFEU and Articles 20 and 21 of Regulation No 562/2006, as amended by Regulation No 610/2013, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which permits the police authorities of the Member State in question to carry out, on board trains and on the premises of the railways of that Member State, identity or border crossing document checks on any person, and briefly to stop and question any person for that purpose, if those checks are based on knowledge of the situation or border police experience, provided that the exercise of those checks is subject under national law to detailed rules and limitations determining the intensity, frequency and selectivity of the checks, which is for the referring court to verify.

Thus, it is only if such a framework is found to exist in the German legislation that it may be considered that those checks, first, are selective and thus not systematic like border checks and, second, are police measures applied on the basis of spot-checks, as required by Article 21(a)(iii) and (iv) of Regulation No 562/2006.

(see paras 74, 75, operative part 2)