



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-291/12  
Michael Schwarz v Stadt Bochum

## **Including fingerprints in passports is lawful**

*Although the taking and storing of fingerprints in passports constitutes an infringement of the rights to respect for private life and the protection of personal data, such measures are nonetheless justified for the purpose of preventing any fraudulent use of passports*

Regulation No 2252/2004<sup>1</sup> provides that passports<sup>2</sup> are to include a highly secure storage medium which must contain, besides a facial image, two fingerprints. Those fingerprints may be used only for verifying the authenticity of a passport and the identity of its holder.

Mr Schwarz applied to the Stadt Bochum (city of Bochum, Germany) for a passport, but refused at that time to have his fingerprints taken. After the city rejected his application, Mr Schwarz brought an action before the Verwaltungsgericht Gelsenkirchen (Administrative Court, Gelsenkirchen, Germany) in which he requested that the city be ordered to issue him with a passport without taking his fingerprints.

In that context, the Administrative Court seeks to establish **whether the regulation is valid, particularly in light of the Charter of Fundamental Rights of the European Union, in so far as it obliges any person applying for a passport to provide fingerprints and provides for those fingerprints to be stored in that passport.**

By today's judgment, **the Court of Justice answers that question in the affirmative.**

Although the taking and storing of fingerprints in passports constitutes an infringement of the rights to respect for private life and the protection of personal data, those measures are in any event justified by the aim of protecting against any fraudulent use of passports.

In that regard, the Court finds that the contested measures pursue, in particular, the general interest objective of preventing illegal entry into the EU. To that end, they are intended to prevent both the falsification of passports and the fraudulent use thereof.

First of all, it is not apparent from the evidence available to the Court, nor has it been claimed, that those measures do not respect the essence of the fundamental rights at issue.

Next, the Court finds that the contested measures are appropriate for attaining the aim of **protecting against the fraudulent use of passports**, by significantly reducing the likelihood that, owing to an error, unauthorised persons will be allowed to enter the EU.

Lastly, the contested measures do not go beyond what is necessary to achieve the above aim.

The Court has not been made aware of any measure which would be sufficiently effective and less of a threat than **the taking of fingerprints**. The Court observes in particular that iris-recognition

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<sup>1</sup> Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1), as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009 (OJ 2009 L 142, p. 1; corrigendum: OJ 2009 L 188, p. 127).

<sup>2</sup> And travel documents.

technology is not yet as advanced as fingerprint-recognition technology and that, owing to the significantly higher costs currently involved in using the former technology, it is less suitable for general use.

With regard to **the processing of fingerprints**, the Court notes that fingerprints play a particular role in the field of identifying persons in general. Thus, comparing fingerprints taken in a particular place with those stored in a database makes it possible to establish whether a certain person is in that particular place, whether in the context of a criminal investigation or in order to monitor that person indirectly.

However, the Court also notes that the regulation explicitly states that fingerprints may be used only for verifying the authenticity of a passport and the identity of its holder. Moreover, the regulation does not provide for the storage of fingerprints except within the passport itself, which belongs to the holder alone. The regulation not providing for any other form or method of storing those fingerprints, it cannot in and of itself be interpreted as providing a legal basis for the centralised storage of data collected thereunder or for the use of such data for purposes other than that of preventing illegal entry into the EU.

Furthermore, the Court finds that the regulation was adopted on an appropriate legal basis and that the procedure leading to the adoption of the measures applicable in the present case is not vitiated by any defect, since the Parliament was fully involved in that procedure in its role as co-legislator<sup>3</sup>.

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**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 European Union 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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<sup>3</sup> In any event during the adoption of Regulation No 444/2009, which has replaced the wording of the contested provision of Regulation No 2252/2004 and which is applicable in the present case.