OPINION OF ADVOCATE GENERAL MAZÁK

delivered on 14 February 2008 [1]

1. In this reference for a preliminary ruling under Article 234 EC, the referring court seeks guidance on the interpretation of Article 18 EC and Article 27 of 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. [2]

2. The proceedings before the referring court concern a civil action brought by the Ministry of Administration and Home Affairs — Directorate General for Passports, Bucharest, ('the Ministry') on 11 January 2007 for an order imposing a restriction on Mr Gheorghe Jipa's freedom of movement abroad for a period of up to three years. The order was sought following Mr Jipa's repatriation to Romania on 26 November 2006 on foot of a Readmission Agreement concluded between, inter alia, Romania and Belgium.

1 — Original language: English.

2 — OJ 2004 L 158, p. 77.

I — Relevant Community law

3. Article 17 EC provides:

'1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.'

4. Article 18(1) EC provides that '[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'.

5. Article 1(a) of Directive 2004/38 provides that that directive lays down, inter alia, the conditions governing the exercise of the right

of free movement and residence within the territory of the Member States by Union citizens and their family members.

6. Article 3(1) of Directive 2004/38 provides:

'This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national …'

7. Article 4(1) of Directive 2004/38 entitled 'Right of exit' provides:

'1. Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport … shall have the right to leave the territory of a Member State to travel to another Member State.'

8. Article 27 of Directive 2004/38 entitled 'General principles' and which is found in Chapter VI — Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health, provides:

'1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens … on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted. …'

II — Relevant national law

9. Article 1 of the Agreement between the Government of Romania, of the first part, and the Governments of the Kingdom of Belgium, of the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, of the other part, on the readmission of persons who are in an illegal situation (the 'Readmission Agreement') and which was

approved by Romanian Government Decree No 825/1995 [3] provides:

'The Government of Romania shall readmit to its territory, at the request of the Government of Belgium, the Government of Luxembourg or the Government of the Netherlands, without any formality, any person who does not satisfy or no longer satisfies the conditions for entry or residence applicable to the territory of Belgium, of Luxembourg, or of the Netherlands, where it is established or presumed that the person concerned is a Romanian citizen.'

10. Article 3 of Law 248/2005 of 20 July 2005 (as amended), on the conditions for the free movement of Romanian citizens abroad [4] provides:

'(1) The exercise of the right of free movement abroad for Romanian citizens may be limited only temporarily in the cases and under the conditions provided for in the present Law; any such limitation shall take the form of a suspension of, or, as the case may be, a restriction on the exercise of that right

...

(3) Any restriction on the exercise of the right of free movement abroad shall consist of a temporary prohibition of travel in specified States, imposed by the competent Romanian authorities, in accordance with the conditions laid down by the present Law.'

11. Pursuant to Article 38 of Law 248/2005:

'A restriction on the exercise of the right of free movement abroad of Romanian citizens may be imposed for a period not exceeding three years, under the following conditions and only against:

(a) a person who has been repatriated by a State under a readmission agreement concluded between Romania and that State,

(b) a person whose presence in the territory of a State would, by reason of the activities which that person carries out or might carry out, seriously harm the interests of Romania or, as the case may be, bilateral relations between Romania and that State.'

3 — Published in *Monitorul Oficial* No 241 of 20 October 1995.

4 — Published in *Monitorul Oficial* No 682 of 29 July 2005, amended by Decree No 5 of 19 January 2006, published in *Monitorul Oficial* No 71 of 26 January 2006.

12. Article 39 of Law 248/2005 provides as follows:

'In the situation provided for in Article 38(a), the measure shall be adopted at the request of the Directorate General for Passports, in relation to the State from which the person has been repatriated, by the court in whose territorial jurisdiction he resides or, if that person resides abroad, Tribunalul Bucureşti.'

III — The main proceedings and the order for reference

13. It would appear from the order for reference that Mr Jipa left Romania to go to Belgium on 10 September 2006. He was repatriated to Romania on account of 'illegal residence' on 26 November 2006 by the Belgian authorities pursuant to the Readmission Agreement.

14. On 11 January 2007, the Ministry sought an order from the referring court to restrict Mr Jipa's freedom of movement to Belgium. The referring court notes in its order for reference that the Ministry has not clarified what is meant by the 'illegal residence' of Mr Jipa which led to his repatriation.

15. The referring court considers, inter alia, that the provisions of national law, in particular Articles 38 and 39 of Law 248/2005 and Government Decree No 825/1995, are contrary to Article 18 EC and Article 27 of Directive 2004/38. By decision dated 17 January 2007, the Tribunalul Dâmboviţa decided to stay the proceedings and to refer the following questions to the Court:

'1. Must Article 18 EC … be interpreted as meaning that the legislation in force in Romania (Articles 38 and 39 of Law 248/2005 on the conditions for the free movement of Romanian citizens abroad) places obstacles in the way of the free movement of persons?

2. (a) Do Articles 38 and 39 of Law 248/2005 … which prevent a person (who is a Romanian citizen and, now, a citizen of the Union) from moving freely in another State (in this case, a Member State of the European Union), constitute an obstacle to the free movement of persons upheld by Article 18 EC?

(b) May a Member State of the European Union (in this case Romania) place a limitation on the exercise of the right of freedom of movement of citizens within the territory of another Member State?

3. (a) Does the concept of "illegal residence" used in the national provisions of Government Decree [No 825/1995] approving the Agreement between the Government of Romania, of the first part, and the Governments of the Kingdom of Belgium, of the Grand Duchy of Luxembourg and of the Kingdom of the Netherlands, of the other part, on the readmission of persons who are in an illegal situation (the provision on the basis of which the readmission of the defendant was ordered, his situation being that of "illegal residence") fall within the grounds of "public policy" or "public security" provided for in Article 27 of Directive 2004/38/EC, so that a restriction on the freedom of movement of such a person may be imposed?

(b) If the foregoing question is answered in the affirmative, must Article 27 of Directive 2004/38/EC … be interpreted as meaning that the Member States may impose restrictions on the freedom of movement and residence of a citizen of the Union on grounds of "public policy" and "public security" automatically, without that person's "personal conduct" being examined?'

16. In its decision dated 17 January 2007, the referring court also requested the Court to give a ruling on the questions referred under an expedited procedure.

17. By order dated 3 April 2007, the President of the Court rejected the request by the referring court for an expedited procedure.

18. The Romanian and Greek Governments and the Commission submitted written observations. No hearing was requested or held.

IV — Main arguments of the parties

19. The Romanian Government considers that the reference from the national court is admissible despite the fact that Mr Jipa's repatriation took place prior to Romania's accession to the European Union (EU) on 1 January 2007. As the action by the Ministry to limit Mr Jipa's freedom of movement was brought on 11 January 2007 and thus after Romania's accession to the EU, Mr Jipa enjoys the right to freedom of movement which may only be limited in accordance with the EC Treaty and the measures adopted to give it effect. The Romanian Government also maintains that the Court is competent to deal with the present matter given that there is a risk of Mr Jipa's freedom of movement being limited pursuant to Article 38(a) of Law 248/2005. The Romanian and Greek Governments note that the fact that Mr Jipa has not exercised his right to freedom of movement under the EC Treaty is irrelevant. Romania

adds that the Court held in the *Schempp* case [5] that the situation of a national of a Member State who has not made use of the right to freedom of movement cannot, for that reason alone, be assimilated to a purely internal situation.

20. The Romanian Government considers that the readmission agreements concluded by it with other Member States of the EU and the provisions of its national law adopted pursuant to those agreements must be interpreted in the light of the relevant Community law. It therefore considers that Article 18 EC must be interpreted so as to preclude the provisions of Articles 38 and 39 of Law 248/2005 which restrict the freedom of movement of persons.

21. According to Romania, Article 27 of Directive 2004/38 is not applicable in the present case. Romania maintains that it follows from, inter alia, the general scheme of Chapter VI (Articles 27 to 33) of Directive 2004/38 and the fact that the limitations foreseen by Article 27 of Directive 2004/38 are exceptions to the principle of freedom of movement and must thus be interpreted strictly, that only the host Member State, and not the Member State of origin, may restrict the freedom of movement of citizens pursuant to Article 27 of Directive 2004/38 on grounds of public policy, public security or public health. It is the host Member State that is the best placed to evaluate whether a citizen of another Member State threatens its public order or public security.

22. As regards the possibility for the Member State of origin to limit the freedom of movement of one of its own nationals on grounds of a threat to its own public order, the Romanian Government maintains that in accordance with the Romanian Constitution and Penal Code, such a limitation is only permitted in cases relating to offences in respect of which a life sentence or a custodial sentence may be imposed, in order to ensure that the criminal process follows its correct course or to prevent the accused absconding. Such situations are however purely internal matters and are not matters of Community law.

23. In the event however that the Court considers that Article 27 of Directive 2004/38 is applicable in the present case, Romania considers that in accordance with the settled case-law of the Court, [6] Mr Jipa's 'illegal residence' does not pose a threat to public order or public security pursuant to Community law. Moreover, pursuant to Article 27(2) of Directive 2004/38 and the case-law of the Court, [7] limitations on the freedom of movement may only be imposed after an examination of an individual's conduct and may never be imposed automatically.

5 — C-403/03 [2005] ECR I-6421, paragraph 22.

6 — Case C-215/03 *Oulane* [2005] ECR I-1215, paragraph 44; Case C-459/99 *MRAX* [2002] ECR I-6591, paragraphs 78 and 90; Case 48/75 *Royer* [1976] ECR 497, paragraph 51; Case 157/79 *Pieck* [1980] ECR 2171, paragraphs 18 and 19; and Case C-265/88 *Messner* [1989] ECR 4209, paragraph 14.

7 — Joined Cases 115/81 and 116/81 *Adoui and Cornuaille* [1982] ECR 1665, paragraphs 8 and 11, and Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 35.

24. The Hellenic Republic maintains that Articles 38 and 39 of Law 248/2005 constitute an obstacle to the freedom of movement of citizens of the Union pursuant to Article 18 EC and Directive 2004/38. The Greek Government considers that it has not been demonstrated that Mr Jipa's personal conduct warrants the imposition of restrictions on his freedom of movement. That government notes that the measures envisaged by the Romanian legislation are general measures which are imposed whenever a repatriation takes place on foot of a bilateral readmission agreement. The Hellenic Republic also considers that the Romanian legislation is contrary to Article 2 of Protocol IV to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ('Protocol IV') which provides that no restrictions may be placed on the exercise of the right to leave a country, including one's own, other than for specific reasons of, inter alia, national security or public order.

25. The Commission considers that since Romania's accession to the EU on 1 January 2007, Mr Jipa is a citizen of the Union and has the right from that date pursuant to Article 18 EC to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the EC Treaty and Directive 2004/38. The right of a citizen of the Union to leave the territory of a Member State and to travel to another Member State is further elaborated in Article 4 of Directive 2004/38.

26. The Commission maintains that despite the wording of the title to Chapter VI of Directive 2004/38, that chapter, which refers to restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health, also covers, at least in certain circumstances, restrictions imposed by a Member State on the right of its own citizens to leave their national territory and travel to another Member State. The Commission maintains that Article 27 of Directive 2004/38 applies in circumstances such as those prevailing in the proceedings before the referring court, where the national authorities are seeking to limit the freedom of movement of one of their nationals in order to prevent that person from returning for a certain period of time to the Member State from which he was repatriated due to his irregular residence. Moreover, in accordance with Articles 27 to 31 of Directive 2004/38 and the general scheme of that directive, a measure restricting a citizen's right to freedom of movement may only be adopted by the Member State whose public order or public security is directly threatened. The Commission therefore considers that in accordance with Article 18 EC and the provisions of Chapter VI of Directive 2004/38, a decision to restrict the freedom of movement of a citizen of the Union may not be adopted by a Member State on foot of a simple request from another Member State from which that citizen was expelled unless the Member State adopting such a decision establishes that the behaviour of the person concerned constitutes a threat to public order or public security as defined in Article 27 of that directive.

27. The Commission also maintains that the reference to Mr Jipa's 'illegal residence' in the order for reference from the national court is extremely vague. It therefore cannot be established whether his 'illegal residence' falls within the concepts of public order, public security or public health as laid down in Directive 2004/38. The Commission thus

considers that a Member State may not limit the freedom of movement of a citizen of the Union pursuant to Article 27 of Directive 2004/38 where it bases that limitation exclusively on a finding by another Member State that the person concerned was in an illegal situation while residing on the latter's territory.

V — Assessment

A — *Article 18(1) EC and Article 4 of Directive 2004/38*

28. By its first question and the first part of its second question, the national court seeks essentially clarification on whether Article 18 EC precludes measures such as Articles 38 and 39 of Law 248/2005 which provide for the placing of limitations, in certain circumstances, on the exercise of the right of freedom of movement abroad of Romanian citizens for up to three years.

29. In accordance with the order for reference, the Ministry sought an order from the referring court limiting Mr Jipa's movement to Belgium, the Member State from which he was repatriated on 27 November 2006, for a period of up to three years. Moreover, it would appear from the order for reference that in accordance with the national legislation in question, limitations may be imposed on the freedom of movement abroad of a Romanian citizen where that person has been repatriated to Romania on foot of a readmission agreement or where their presence in the territory of a State other than Romania could seriously harm the interests of Romania or bilateral relations between Romania and that State.

30. Under Article 17(1) EC, every person holding the nationality of a Member State is a citizen of the Union. It is settled case-law of the Court that Union citizenship is destined to be the fundamental status of nationals of the Member States. [8] Following Romania's accession to the European Union on 1 January 2007, Mr Jipa enjoys the status of citizen of the Union pursuant to Article 17(1) EC and may therefore, from that date, rely on the rights conferred by that status, including against his Member State of origin. [9]

31. In the *Baumbast and R* case, the Court held that the applicant in that case, as a national of a Member State, and consequently a citizen of the Union, had the right to rely directly on Article 18(1) EC. [10] In my view, the right to move freely within the

8 — See, in particular, Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 82, and Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31.

9 — Joined Cases C-11/06 and C-12/06 *Morgan and Bucher* [2007] ECR I-9161, paragraph 22, and Case C-192/05 *Tas-Hagen and Tas* [2006] ECR I-10451, paragraphs 19, 30 and 31.

10 — Cited in footnote 8, paragraph 84.

territory of the Member States pursuant to Article 18(1) EC is conferred directly on every citizen of the Union by the clear and precise terms of that provision of the EC Treaty, subject however to the limitations and conditions laid down by the EC Treaty and by the measures adopted to give it effect. Citizens of the Union thus have the right, which they derive directly from Article 18(1) EC, to leave the territory of a Member State, including their Member State of origin, to enter the territory of another Member State.

32. Moreover, while citizenship of the Union, established by Article 17 EC, is not intended to extend the scope ratione materiae of the Treaty to internal national situations which have no link with Community law, [11] it must be observed, as was submitted by the Romanian and Greek Governments, that the fact that Mr Jipa has not made use of his right of freedom of movement cannot, for that reason alone, assimilate his situation to a purely internal situation. [12]

33. It would appear from the order for reference that the proceedings before the national court arose following Mr Jipa's repatriation to Romania from Belgium, pursuant to the Readmission Agreement, due to his 'illegal residence' in Belgium. The referring court itself pointed out, in its order for reference, that the Ministry has not clarified what is meant by the Mr Jipa's 'illegal residence'. It should be noted however that the Romanian Government indicated that the circumstances surrounding Mr Jipa's 'illegal residence' in Belgium are not a matter of criminal law.

34. Given the fact firstly, that Mr Jipa from the 1 January 2007 enjoys the fundamental status of citizen of the Union, secondly, that the Ministry is seeking an order from the referring court in civil proceedings limiting Mr Jipa's right to travel to another Member State and thirdly, that aside from the limited information provided by the referring court in relation to Mr Jipa's repatriation from Belgium on foot of the Readmission Agreement and his 'illegal residence' in Belgium, I consider that there are no grounds on which the Court could consider that the limitations which may be imposed on Mr Jipa by the referring court on travelling to Belgium pursuant, inter alia, to Articles 38 and 39 of Law 248/2005 relate to a purely internal situation. I therefore consider that the present case has a direct link with Community law.

35. In my view, the limitations which may be imposed by the referring court on Mr Jipa from leaving his Member State of origin in order to enter the territory of another Member State constitute an obstacle to the right of freedom of movement provided by Article 18(1) EC. The right to move freely within the territory of the Member States guaranteed by Article 18(1) EC would be

11 — Joined Cases C-64/96 and C-65/96 *Uecker and Jacquet* [1997] ECR I-3171, paragraph 23.

12 — See in that respect, Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 19.

rendered meaningless if the Member State of origin could, without valid justification, prohibit its own nationals from leaving its territory to enter the territory of another Member State. [13]

36. The national rules in question in the present proceedings must, in my view, also be assessed in the light of Article 4 of Directive 2004/38 [14] which regulates the right of Union citizens to leave the territory of a Member State to travel to another Member State.

37. In accordance with Article 4(1) of Directive 2004/38, all Union citizens with a valid identity card or passport have the right to leave the territory of a Member State to travel to another Member State. In my view, Article 4(1) of Directive 2004/38 is very broad in its scope as it grants citizens of the Union who are in possession of a valid identity card or passport the right to leave the territory of all Member States, including their Member State of origin [15] to travel to another Member State. Moreover, pursuant to Article 4(2) of Directive 2004/38, no exit visa or equivalent formality may be imposed on citizens of the Union and the Member States must, pursuant to Article 4(3), issue to their own nationals, and renew, an identity card or passport stating their nationality.

38. I therefore consider that in the absence of valid justification, Article 18(1) EC and Article 4 of Directive 2004/38 preclude national legislation such as that at issue in the present proceedings which provides

13 — See by analogy, Case C-224/02 *Pusa* [2004] ECR I-5763, paragraph 20. See also in the context of freedom of establishment, Case C-438/05 *International Transport Workers' Federation and Finnish Seamen's Union* [2007] ECR I-10779, paragraph 69, Case 81/87 *Daily Mail and General Trust* [1988] ECR 5483, paragraph 16. See also in the context of freedom of movement for persons and freedom of establishment, Case C-370/90 *Singh* [1992] ECR I-4265, paragraph 23. In the *Bosman* case (C-415/93 [1995] ECR I-4921) the Court stated that '[t]he rights guaranteed by Article [43] et seq. of the Treaty would be rendered meaningless if the Member State of origin could prohibit undertakings from leaving in order to establish themselves in another Member State. The same considerations apply, in relation to Article [39] of the Treaty, with regard to rules which impede the freedom of movement of nationals of one Member State wishing to engage in gainful employment in another Member State' (see paragraph 97).

14 — With its accession to the EU on 1 January 2007, Romania is bound by the provisions of the EC Treaty on the rights of citizens of the Union and the legislative provisions and case-law thereon, subject to the transitional arrangements adopted on the matter. It would appear from Article 20 of and Annex VII to the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union (OJ 2005 L 157 p. 29), that Romania is bound from the date of its accession to the EU by the provisions of Directive 2004/38 save where those provisions concern, inter alia, access to the labour markets of Member States by Romanian nationals. In that regard, a number of transitional arrangements have been adopted in respect of Romania concerning the application of Articles 1 to 6 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475). As Mr Jipa's rights as a worker are not in question before the referring court, the abovementioned transitional arrangements concerning Regulation No 1612/68 are not relevant in the context of the present case. Article 4 of Directive 2004/38, which concerns the rights of citizens of the Union in general, rather than citizens of the Union who are workers, is unaffected by the abovementioned transitional arrangements and applies in full to Romanian nationals from 1 January 2007.

15 — See also Article 2(2) of Protocol IV which provides that '[e]veryone shall be free to leave any country, including his own'. Protocol IV entered into force on 2 May 1968 and has been signed by all the Member States, save the Hellenic Republic. It should be recalled however that the Greek Government in pleadings at point 24 above specifically relied on Article 2(2) and (3) of Protocol IV.

for restrictions to be placed on the right of Union citizens to leave their Member State of origin in order to travel to another Member State.

B — *Article 27 of Directive 2004/38*

39. By the second part of its second question and the first part of its third question, the national court seeks essentially clarification on whether the 'illegal residence' of a Romanian national in another Member State of the Union who was repatriated on foot of the Readmission Agreement, falls within the terms 'public policy' or 'public security' provided for in Article 27 of Directive 2004/38 so that a restriction may be imposed by Romania on that person's freedom of movement within the territory of another Member State.

40. Pursuant to Article 18(1) EC, limitations and conditions may be imposed on the right to move and reside freely within the territory of the Member States pursuant to the EC Treaty and the measures adopted to give it effect. In my view, the provisions of Chapter VI of Directive 2004/38, which is entitled 'Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health', regulate the circumstances in which Member States may restrict the right of Union citizens to move and reside freely within the territory of the Member States. While the title to Chapter VI of Directive 2004/38 does not specifically refer to the right to leave, and indeed many of the provisions of that chapter address questions relating to the right of entry [16] and the right of residence, [17] it is clear from the wording of Article 27(1) and the 22nd recital in the preamble to that directive that Chapter VI thereof regulates restrictions on the 'freedom of movement of Union citizens', a matter which undoubtedly relates to both the right to leave the territory of a Member State to travel to another Member State and the right to enter another Member State.

41. In my view, Article 27(2) of Directive 2004/38, which reproduces much of the contents of Article 3 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health [18] must be interpreted, inter alia, in the light of the case-law of the Court on Article 3 of Directive 64/221. In that regard, the Court has consistently held, in relation to workers, that the principle of freedom of movement must be given a broad interpre-

16 — See Article 5 of Directive 2004/38 on the right of entry.

17 — See Chapter III of Directive 2004/38 on the right of residence.

18 — OJ, English Special Edition 1963-1964(I), p. 117. Directive 64/221 was repealed by Directive 2004/38 with effect from 30 April 2006. See Article 38(2) of Directive 2004/38.

tation and that derogations from that principle must be interpreted strictly. In addition, the Court has held that a particularly restrictive interpretation of the derogations from that freedom is required by virtue of a person's status as a citizen of the Union. [19] The Court has nevertheless also held that the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within the limits imposed by the Treaty. [20]

42. According to Article 27(2) of Directive 2004/38, 'measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned'. [21] It is clear, not only from the terms of Article 27(2) of Directive 2004/38, but also the settled case-law of the Court, that restrictions imposed on grounds of public policy and for the maintenance of public security cannot be based on grounds extraneous to the individual case or on considerations of general prevention. [22] In addition, Article 27(2) of Directive 2004/38 provides that previous criminal convictions shall not in themselves constitute grounds for adopting such restrictions. [23] According to settled case-law, reliance by a national authority on the concept of public policy presupposes the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society. [24]

43. In my view, a Member State may not limit the right granted to a Union citizen to leave his Member State of origin to travel to another Member State on grounds of public policy or public security merely on the basis that he was repatriated from another Member State due to his 'illegal residence' in the latter. I consider that it follows from the ruling of the Court in *Commission* v *Spain* [25] that a Member State, when limiting the rights granted to Union citizens pursuant to Article 18(1) EC, cannot rely on general non-specific assertions made, in relation to the conduct of a Union citizen, by another Member State. A Member State when limiting the fundamental freedoms of Union citizens must itself verify and confirm whether the exercise of those freedoms poses a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society.

44. In the present case nothing in the facts, as presented by the referring court, would

19 — Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, paragraphs 64 and 65.

20 — Case 41/74 *van Duyn* [1974] ECR 1337, paragraph 18.

21 — In accordance with the principle of proportionality, national measures adopted on grounds of public policy or public security must be necessary and appropriate to attain the objective pursued. See, to that effect, *Baumbast and R*, cited in footnote 8, paragraph 91.

22 — See Case 67/74 *Bonsignore* [1975] ECR 297, paragraph 6, and Case 36/75 *Rutili* [1975] ECR 1219, paragraph 29.

23 — See, in particular, Case C-348/96 *Calfa* [1999] ECR I-11, paragraphs 22 to 24.

24 — See Case C-503/03 *Commission* v *Spain* [2006] ECR I-1097, paragraph 46; *Orfanopoulos and Oliveri*, cited in footnote 19, paragraph 66; *Bouchereau*, cited in footnote 7, paragraph 35; and *Rutili*, cited in footnote 22, paragraph 28.

25 — Cited in footnote 24.

tend to indicate that Mr Jipa's personal behaviour, present or past, give cause to fear that he might constitute a danger to the fundamental interests of society thereby necessitating the adoption of a measure by Romania limiting his right to freedom of movement pursuant to Article 18(1) EC on grounds of public policy or public security. Indeed, subject to verification by the referring court, it would appear from the order for reference and from the submissions of the Romanian Government that the Ministry regularly seeks from the Romanian courts, even following the accession of that Member State to the EU, on foot of the national provisions in question, orders limiting the right of Romanian citizens to leave that Member State and to travel to another Member State where those citizens have been repatriated on foot of a readmission agreement.

45. I therefore consider that, in the absence of a specific finding by a Member State in relation to one of its own nationals, adopted in compliance with the principle of proportionality and based exclusively on the personal conduct of the individual concerned, that the exercise by him of his right pursuant to Article 18(1) EC and Article 4 of Directive 2004/38 to leave his own Member State to travel to another Member State may pose a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society, the Member State of origin may not impose, on grounds of 'public policy' or 'public security' as provided by Article 27 of that directive, restrictions on the freedom of movement of that person.

C — *Personal conduct*

46. By the second part of its third question, the national court seeks clarification on whether a Member State may automatically impose pursuant to Article 27 of Directive 2004/38 restrictions on the freedom of movement and residence of a citizen of the Union on grounds of 'public policy' and 'public security', without that person's 'personal conduct' being examined.

47. In my view, in the light of the reasoning outlined in points 40 to 44 above, a Member State may not automatically impose, pursuant to Article 27 of Directive 2004/38, restrictions on the freedom of movement and residence of a citizen of the Union on grounds of public policy and public security. In accordance with Article 27(2) of Directive 2004/38, Member States must, when imposing such restrictions and as a minimum sine qua non, examine the personal conduct of the person in question. Moreover, Article 27(2) of Directive 2004/38 unequivocally states that measures taken on grounds of public policy or public security shall be based exclusively on the personal conduct of the individual concerned.

48. I consider therefore that failure by a Member State to examine the personal conduct of a person when restricting, on grounds of public policy or public security, his right to move and reside freely in the territory of the Member States invalidates any justification of the restriction in question.

VI — Conclusion

49. I consider accordingly, that the Court should answer the questions referred by the Tribunalul Dâmbovița, as follows:

(1) Article 18(1) EC and Article 4 of 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 preclude, in circumstances such as those in the case before the referring court, national legislation such as that at issue in the present proceedings which provides for restrictions to be placed on the right of Union citizens to leave their Member State of origin in order to travel to another Member State.

(2) In the absence of a specific finding by a Member State in relation to one of its own nationals, adopted in compliance with the principle of proportionality and based exclusively on the personal conduct of the individual concerned, that the exercise by him of his right pursuant to Article 18(1) EC and Article 4 of Directive 2004/38 to leave his own Member State to travel to another Member State may pose a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society, the Member State of origin may not impose, on grounds of 'public policy' or 'public security' as provided by Article 27 of that directive, restrictions on the freedom of movement of that person.

(3) Failure by a Member State to examine the personal conduct of a person when restricting, on grounds of public policy or public security, his right to move and reside freely in the territory of the Member States invalidates any justification of the restriction in question.