JUDGMENT OF THE COURT (Fourth Chamber)

17 November 2011 *

In Case C-434/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Bulgaria), made by decision of 24 August 2010, received at the Court on 6 September 2010, in the proceedings

Petar Aladzhov

v

Zamestnik direktor na Stolichna direktsia na vatreshnite raboti kam Ministerstvo na vatreshnite raboti,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, A. Prechal, K. Schiemann, C. Toader and E. Jarašiūnas, Judges,

* Language of the case: Bulgarian.

Advocate General: P. Mengozzi,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Aladzhov, by M. Hristov, avocat,

— the European Commission, by D. Maidani and V. Savov, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 September 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 27(1) and (2) 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 (OJ 2004 L 158, p. 77; corrigenda at OJ 2004 L 229, p. 35, OJ 2005 L 30, p. 27, and OJ 2005 L 197, p. 34).

2 The reference has been made in proceedings between Mr Aladzhov, a Bulgarian national who is a joint manager of the company Yu.B.N. Kargo, and the Zamestnik direktor na Stolichna direktsia na vatreshnite raboti kam Ministerstvo na vatreshnite raboti (Deputy Director of the Sofia Directorate of the Ministry for the Interior, 'the Deputy Director'), in relation to the latter's decision to prohibit Mr Aladzhov from leaving the national territory until such time as the tax debt owed to the Bulgarian State by that company is paid or a security covering full payment of that debt is provided.

Legal context

European Union law

Directive 2004/38

3 Article 3(1) of Directive 2004/38 provides that that directive is to apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members.

4 Article 4(1) of that directive provides:

'Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State.'

5 Article 27(1) and (2) of that directive provides:

'1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, 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.'

National law

Constitution of the Republic of Bulgaria

6 Under Article 35(1) of the Constitution of the Republic of Bulgaria:

'Everyone shall be free to choose his place of residence and shall have the right to freedom of movement within national territory and to leave that territory. That right may be restricted only by virtue of law for the protection of national security, public health and the rights and freedoms of other citizens.'

Law on Bulgarian identity documents

7 Article 23(2) and (3) of the Law on Bulgarian identity documents (Zakon za balgarskite litschni dokumenti, DV No 93 of 11 August 1998), as amended in 2006 (DV No 105) ('the ZBLD'), provides:

'2. Every Bulgarian citizen shall have the right to leave and return to the country with an identity card via the internal borders of the Republic of Bulgaria with the Member States of the European Union and in the situations provided for under international agreements.

3. No restrictions shall be placed on the right under paragraph 2 other than such as are in accordance with law and have as their objective the protection of national security, public policy, public health or the rights and freedoms of other citizens.'

8 Article 75 of the ZBLD provides:

'Permission to leave the country shall not be granted to:

...

5. persons in relation to whom an application has been made for a prohibition under Article 182(2)(2)(a) and Article 221(6)(1)(a) and (b) of the Code of taxation and social insurance procedure.'

Code of taxation and social insurance procedure

9 Article 182 of the Code of taxation and social insurance procedure (Danachno-osiguritelen protsesualen kodeks, DV No 105 of 29 December 2005) as amended in 2010 (DV No 15 of 23 February 2010), provides:

'1. If the liability is not settled in the prescribed period, the authority which has established the debt, before taking measures for enforced recovery, shall give formal notice to the debtor requesting payment of the debt within seven days. For purposes of service of the letter of formal notice by the authority which has established the debt, the relevant provisions of Chapter 6 are applicable. In respect of debts established by the National Public Revenue Agency, the letter of formal notice shall be dispatched by the public enforcement agent.

2. (a) Concurrently with the letter of formal notice provided for in paragraph 1 or subsequently to that letter, the authority concerned in paragraph 1 may, where the amount of the debt exceeds BGN 5 000 and in the absence of any security for an amount equal to the principal plus interest..., request the authorities of the Ministry for the Interior not to allow the debtor and members of its surveillance or managing bodies to leave the country, but also to withdraw from them or not to issue to them a passport or other comparable document permitting the crossing of national borders.

...

4. The measures referred to in paragraph 2 may, at the discretion of the competent authority, be adopted simultaneously or separately having regard to the amount of the debt or the conduct of the debtor until the debt is finally extinguished.'

10 Article 221(6) of that code provides:

'In cases where the measures referred to in Article 182(2)(2) or Article 182(4) are not adopted by the competent authority, the public enforcement agent may, where the amount of the debt exceeds BGN 5 000 and in the absence of any security for an amount equal to the principal plus interest:

1. request the authorities of the Ministry for the Interior:

(a) to prohibit the debtor and members of its surveillance or managing bodies from leaving the country;

(b) to withdraw or not to issue a passport or other comparable document permitting the crossing of national borders.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 Mr Aladzhov, a Bulgarian national, is one of three managers of the company Yu.B.N. Kargo.

12 By a tax notice of 10 October 1995, a recovery order of 20 August 1999, a letter of formal notice of 10 April 2000 and a communication of 26 September 2001, the Bulgarian State attempted without success to obtain from that company the recovery of a tax debt amounting in total to BGN 44 449 (around EUR 22 000), corresponding to value added tax and customs duties payable by that company and to the interest thereon.

13 The referring court states that that debt was not time-barred and that attachments of company bank accounts and motor vehicles, carried out on 19 June 2009, did not achieve payment of the sum claimed, since the accounts were not in funds and the vehicles could not be located.

14 Consequently, following a request made on 30 July 2009 by the National Public Revenue Agency, in accordance with Article 221(6)(1)(a) and (b) of the Code of taxation and social insurance procedure, on 25 November 2009 the Deputy Director adopted a measure on the basis of Article 75(5) of the ZBLD which prohibited Mr Aladzhov from leaving the country, until the debt owed to the State was paid or until a security covering its full payment was provided. The referring court states that the adoption of that measure by the Deputy Director was mandatory.

15 Before the referring court, Mr Aladzhov claimed that that decision should be annulled, and argued that, since he was also a sales director of another company, Bultrako AD, the official importer of Hondas in Bulgaria, the prohibition on leaving the country severely restricted the pursuit of his occupation, which requires that he travel abroad on many occasions.

16 The referring court observed that Mr Aladzhov, as a citizen of the Union, could rely on the rights pertaining to that status, including against his Member State of origin, and in particular on the right to freedom of movement under Articles 20 TFEU and 21 TFEU and Article 45(1) of the Charter of Fundamental Rights of the European Union. The court noted that that right is, however, not unconditional but may be subject to the limitations and conditions imposed by the FEU Treaty or by the measures adopted to give it effect.

17 The referring court also observed that, while Article 27(1) of Directive 2004/38 provides that restrictions on the freedom of movement of European Union citizens may be adopted on grounds of public policy, the Constitution of the Republic of Bulgaria does not provide for such a ground for restricting the freedom of movement of Bulgarian citizens. On the other hand, that Constitution includes a ground based on the protection of the rights and freedoms of other citizens, which is not envisaged by Directive 2004/38.

18 The referring court also stated that the decision at issue was not taken on the basis of the legislation which transposed Directive 2004/38 into Bulgarian law, but on the basis of other legislation.

19 Further, the referring court held that, according to the Court's case-law, measures restricting the freedom of movement of citizens of the Union must be justified by a real, present and sufficiently serious threat affecting one of the fundamental interests of society and that they must be necessary and proportionate. In that regard, the

referring court also noted that the European Court of Human Rights has already ruled that the objective of effective recovery of tax liabilities can be a legitimate ground for restricting the freedom of movement guaranteed by Article 2 of Protocol No 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (see the judgment of 23 May 2006 in *Riener v. Bulgaria* (No 46343/99)).

20 The referring court also stated that although Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ 2008 L 150, p. 28) and Commission Regulation (EC) No 1179/2008 of 28 November 2008 laying down detailed rules for implementing certain provisions of Directive 2008/55 (OJ 2008 L 319, p. 21) provide for a system for mutual assistance between Member States for the recovery of claims, it was not apparent from the court file that measures had been implemented within that system in order to recover the debt at issue.

21 Lastly, the referring court observed that the provisions of national law relating to the adoption of such a measure imposing a prohibition on leaving the country did not require the administrative authority to assess the effect of the measure on the occupation of the person concerned or on the business of the debtor company, and therefore on its capacity to repay the debt.

22 It is in those circumstances that the Administrativen sad Sofia-grad (Administrative Court, Sofia) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Must the prohibition on leaving the territory of a Member State of the European Union which has been imposed on a national of that State, as the manager of a commercial company registered under the law of the State concerned, on account

of an unpaid debt owed to the public authorities by that company be regarded as falling within the scope of the ground of protection of "public policy" provided for in Article 27(1) of Directive 2004/38 … in the circumstances of the main proceedings and where the following circumstances also obtain:

— the constitution of that Member State makes no provision for restricting the freedom of movement of natural persons for the purpose of protecting "public policy";

— the ground of "public policy" as a basis for imposing the aforementioned prohibition is contained in national legislation which was adopted in order to transpose another legislative act of the European Union;

— the ground of "public policy" within the meaning of the aforementioned provision of the directive also includes the ground of "protection of the rights of other citizens", where a measure is adopted to secure the budgetary revenue of the Member State by means of the settlement of debts owed to a public authority?

(2) In the circumstances of the main proceedings, does it follow from the limitations and conditions laid down in respect of the exercise of freedom of movement for European Union citizens and from the measures adopted in accordance with European Union law to give them effect that national legislation under which the Member State imposes on one of its nationals, in his capacity as manager of a commercial company registered under the law of the Member State concerned, an administrative coercive measure in the form of a "prohibition on leaving the country", on account of unpaid debts owed to that State by that company which

are classified as "considerable" under its law is permissible, where the procedure for mutual assistance between the Member States under … Directive 2008/55 … and Regulation … No 1179/2008 … may be applied for the purpose of settling the debt?

(3) In the circumstances of the main proceedings, are the principle of proportionality and the limitations and conditions laid down in respect of the exercise of freedom of movement for European Union citizens and the measures adopted in accordance with European Union law to give them effect, and in particular the criteria contained in Article 27(1) and (2) of Directive 2004/38 … to be interpreted as meaning that, where a commercial company registered under the law of a Member State owes a debt to a public authority classified as a "considerable debt" under the law of that State, they allow a natural person who is the manager of the company concerned to be prohibited from leaving that Member State where the following circumstances obtain:

— the existence of a "considerable" debt owed to a public authority is regarded as a genuine, present and sufficiently serious threat affecting a fundamental interest of society, in the light of which the legislature has considered it necessary to introduce the specific measure of a "prohibition on leaving the country";

— no provision is made for an assessment of circumstances connected with the personal conduct of the manager or with an infringement of his fundamental rights, such as his right to pursue an occupation involving travelling abroad under a separate employment relationship;

— no account is taken of the consequences for the commercial activities of the debtor company and the possibilities of paying the debt to the State after the prohibition has been imposed;

— the prohibition is imposed on the basis of an application which is mandatory if it certifies that a "considerable" debt is owed to the State by a specific commercial company, that the debt is not secured to an extent sufficient to cover the principal and the interest, and that the person against whom the imposition of the prohibition is applied for is a manager of that commercial company;

— the prohibition lasts until such time as the debt to the State is fully settled or secured, but no provision is made for a review of that prohibition on application by the addressee to the authority which imposed the prohibition or for account to be taken of the limitation period applicable to repayment of the debt?'

Consideration of the questions referred

The first question

23 By its first question, the referring court seeks, in essence, to ascertain whether European Union law precludes the adoption of a legislative provision by a Member State which permits an administrative authority to prohibit a national of that State from leaving it on the ground that a tax liability of the company of which he is one of the managers has not been settled.

24 In order to give a useful answer to that question it must be noted that, as a Bulgarian national, Mr Aladzhov enjoys the status of a citizen of the Union under Article 20 TFEU and may therefore rely on the rights pertaining to that status, including against his Member State of origin, and in particular the right conferred by Article 21 TFEU to move and reside freely within the territory of the Member States (see, inter alia, Case C-33/07 *Jipa* [2008] ECR I-5157, paragraph 17, and Case C-434/09 *McCarthy* [2011] ECR I-3375, paragraph 48).

25 The right of freedom of movement includes both the right for citizens of the European Union to enter a Member State other than the one of origin and the corresponding right to leave the State of origin. As the Court has already had occasion to state, the fundamental freedoms guaranteed by the Treaty would be rendered meaningless if the Member State of origin could, without valid justification, prohibit its own nationals from leaving its territory in order to enter the territory of another Member State (see *Jipa*, paragraph 18).

26 Moreover, Article 4(1) of Directive 2004/38 expressly provides that 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.

27 It follows that a situation such as that of Mr Aladzhov, who seeks to travel from the Member State of which he is a national to another Member State, is covered by the right of citizens of the Union to move and reside freely in the Member States.

28 However, the right of free movement of Union citizens is not unconditional but may be subject to the limitations and conditions imposed by the Treaty and by the measures adopted to give it effect (see, inter alia, *Jipa*, paragraph 21 and case-law cited).

29 Those limitations and conditions stem, in particular, from Article 27(1) of Directive 2004/38, which allows Member States to restrict the freedom of movement of Union citizens or their family members on grounds of public policy, public security or public health. However, those grounds cannot, according to the same article, be invoked 'to serve economic ends'.

30 Accordingly, if European Union law is not to preclude such a national measure as that which has prevented Mr Aladzhov from leaving the national territory, which indisputably was not adopted on grounds of public security or public health, it must be shown that it was adopted on grounds of public policy, subject to the further condition that those grounds were not invoked to serve economic ends.

31 In that regard, the referring court states that the national legislation transposing Directive 2004/38 is not applicable to citizens of the Republic of Bulgaria.

32 However, that fact cannot, in any event, have the effect of preventing a national court from giving full effect to the rules of European Union law which, as stated in paragraph 27 of this judgment, are applicable in the main proceedings, and more particularly to Article 27 of Directive 2004/38. Accordingly, it is the duty of the court seised to refuse, if necessary, to apply any provision of national legislation which is in conflict with European Union law, in particular by annulling an individual administrative decision adopted on the basis of such a provision (see, to that effect, inter alia, Case C-173/09 *Elchinov* [2010] ECR I-8889, paragraph 31 and case-law cited). Further, the provisions of that article, which are unconditional and sufficiently precise, may be relied on by an individual vis-à-vis the Member State of which he is a national (see, by analogy, Case 41/74 *van Duyn* [1974] ECR 1337, paragraphs 9 to 15).

33 Further, it is also of no relevance that, as stated by the referring court, the Constitution of the Republic of Bulgaria, as regards justification for restricting the freedom

of movement of Bulgarian citizens, does not rely on grounds of public policy, public security or public health but adopts, in particular, a ground relating to the protection of the rights and freedoms of other citizens, on the basis of which the ZBLD was adopted. All that matters is whether the restriction on the freedom of movement of a Bulgarian national which is imposed in order to secure the recovery, as in the main proceedings, of a tax liability and which is justified, according to national law, in the interests of protecting the rights of other citizens, is based on a ground which can be regarded as within the scope of a ground of public policy, within the meaning of European Union law.

34 The Court has always emphasised that while Member States essentially retain the freedom to determine the requirements of public policy and public security in accordance with their national needs, which can vary from one Member State to another and from one era to another, the fact still remains that, in the European Union context and particularly as justification for a derogation from the fundamental principle of free movement of persons, those requirements must be interpreted strictly, so that their scope cannot be determined unilaterally by each Member State without any control by the institutions of the European Union (see, inter alia, *Jipa*, paragraph 23).

35 The Court has thus stated that the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (see, inter alia, *Jipa*, paragraph 23 and case-law cited).

36 The referring court refers in that regard to the public interest involved in the responsibility of the public authorities to ensure budgetary revenue and to the objective of protection of the rights of other citizens which is pursued by the recovery of debts owed to a public authority. The referring court also argues that the non-payment of the tax liability of the debtor company in the main proceedings is a threat to a higher interest of society.

37 Admittedly, the possibility cannot be ruled out as a matter of principle, as has moreover been recognised by the European Court of Human Rights (see *Riener v. Bulgaria*, paragraphs 114 to 117), that non-recovery of tax liabilities may fall within the scope of the requirements of public policy. That can however, in the light of the rules of European Union law relating to the freedom of movement of Union citizens, be the case only in circumstances where there is a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society related, for example, to the amount of the sums at stake or to what is required to combat tax fraud.

38 Moreover, since the purpose of recovery of debts owed to a public authority, in particular the recovery of taxes, is to ensure the funding of actions of the Member State concerned on the basis of the choices which are the expression of, inter alia, its general policy in economic and social matters (see, to that effect, Case C-398/09 *Lady & Kid and Others* [2011] ECR I-7375, paragraph 24), the measures adopted by the public authorities in order to ensure that recovery also cannot be considered, as a matter of principle, to have been adopted exclusively to serve economic ends, within the meaning of Article 27(1) of Directive 2004/38.

39 Nonetheless, on the basis solely of the information provided in the order for reference, as set out in paragraph 36 of this judgment, it is not possible to determine whether the measures of the kind at issue in the main proceedings were adopted on the basis of such considerations and, in particular, it is not possible to conclude that they were adopted solely to serve economic ends. It is for the national court to make the necessary determinations in that regard.

40 In the light of the foregoing, the answer to the first question is that European Union law does not preclude a legislative provision of a Member State which permits an administrative authority to prohibit a national of that State from leaving it on the ground that a tax liability of a company of which he is one of the managers has not been settled, subject, however, to the twofold condition that the measure at issue is intended to respond, in certain exceptional circumstances which might arise from,

inter alia, the nature or amount of the debt, to a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and that the objective thus pursued does not solely serve economic ends. It is for the national court to determine whether that twofold condition is satisfied.

The second and third questions

41 By its second and third questions, which should be considered together, the referring court seeks to ascertain under what conditions legislation of the kind at issue in the main proceedings can be regarded as proportionate and as respecting the rule that restrictions on freedom of movement must be based on the personal conduct of the person concerned, where, first, there are Community instruments on assistance in tax matters and, second, the legislation at issue can be described as strict and automatic in application.

42 In that regard, it must be recalled that, under Article 27(2) of Directive 2004/38, measures taken on grounds of public policy or public security are to comply with the principle of proportionality and are to be based exclusively on the personal conduct of the individual concerned. Further, as is clear from the case-law cited in paragraph 35 of this judgment, the conduct of the person 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 are not to be accepted.

43 In those circumstances, a national legislative or regulatory provision under which a decision to prohibit an individual from leaving the country solely on the ground that there is a tax liability is adopted automatically, without taking into account the

personal conduct of that individual, would not meet the requirements of European Union law (see, to that effect, Case C-348/96 *Calfa* [1999] ECR I-11, paragraphs 27 and 28).

44 In the main proceedings, it appears, having regard to the order for reference, that there cannot be found, either in the provisions of the Code of taxation and social insurance procedure or in those of the ZBLD, which were the basis for the decision of the authorities to prohibit Mr Aladzhov from leaving Bulgaria, any obligation on the part of the competent administrative authorities to take into consideration the personal conduct of the person concerned. Granted, the provisions of the Code of taxation and social insurance procedure do not appear to rule out such consideration since they confer discretion on the authorities mentioned by providing that they 'may' request that such a prohibition be imposed under the ZBLD. In that context, while those authorities are not deprived of the possibility of taking that conduct into consideration, it must however be held that legislative provisions such as those at issue in the main proceedings do not appear to contain any obligation of the kind described above, that alone being compatible with the requirements of European Union law.

45 Further, on the basis of the documents sent to the Court by the referring court, it would appear that the measure taken against the applicant is founded solely on the existence of the tax liability of the company of which he is one of the joint managers, and on the basis of that status alone, without any specific assessment of the personal conduct of the person concerned and with no reference to any threat of any kind which he represents to public policy.

46 However, it is not for the Court to rule on the compatibility of national measures with European Union law and it is for the referring court to make the necessary findings in order to assess that compatibility (*Jipa*, paragraph 28).

47 It will also be for the referring court, when reviewing whether there has been compliance with the principle of proportionality, to determine whether the prohibition

on leaving the country is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it (see, to that effect, *Jipa,* paragraph 29). In that respect, even if the impossibility of recovering the debt at issue were to constitute a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, it will be for the referring court to determine, inter alia, whether, by depriving Mr Aladzhov of the possibility of pursuing part of his professional activity abroad and thereby depriving him of part of his income, the measure of prohibition at issue is both appropriate to ensure the recovery of the tax sought and necessary for that purpose. It will be also be for the referring court to determine that there were no other measures other than that of a prohibition on leaving the territory which would have been equally effective to obtain that recovery, but would not have encroached on freedom of movement.

48 Those other measures could, as appropriate, include the measures which the national authorities can adopt under, for example, Directive 2008/55, as mentioned by the national court. However, it is in any event the task of the national court to determine whether the debt owed to the Member State concerned falls within the scope of that directive.

49 In the light of the foregoing, the answer to the second and third questions is that, even if a measure imposing a prohibition on leaving the territory such as that applying to Mr Aladzhov in the main proceedings has been adopted under the conditions laid down in Article 27(1) of Directive 2004/38, the conditions laid down in Article 27(2) thereof preclude such a measure:

— if it is founded solely on the existence of the tax liability of the company of which he is one of the joint managers, and on the basis of that status alone, without any specific assessment of the personal conduct of the person concerned and with no reference to any threat of any kind which he represents to public policy, and

— if the prohibition on leaving the territory is not appropriate to ensure the achievement of the objective it pursues and goes beyond what is necessary to attain it.

It is for the referring court to determine whether that is the position in the case before it.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **European Union law does not preclude a legislative provision of a Member State which permits an administrative authority to prohibit a national of that State from leaving it on the ground that a tax liability of a company of which he is one of the managers has not been settled, subject, however, to the twofold condition that the measure at issue is intended to respond, in certain exceptional circumstances which might arise from, inter alia, the nature or amount of the debt, to a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and that the objective thus pursued does not solely serve economic ends. It is for the national court to determine whether that twofold condition is satisfied.**

2. Even if a measure imposing a prohibition on leaving the territory such as that applying to Mr Aladzhov in the main proceedings has been adopted under the conditions laid down in Article 27(1) 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, the conditions laid down in Article 27(2) thereof preclude such a measure:

— **if it is founded solely on the existence of the tax liability of the company of which he is one of the joint managers, and on the basis of that status alone, without any specific assessment of the personal conduct of the person concerned and with no reference to any threat of any kind which he represents to public policy, and**

— **if the prohibition on leaving the territory is not appropriate to ensure the achievement of the objective it pursues and goes beyond what is necessary to attain it.**

It is for the referring court to determine whether that is the position in the case before it.

[Signatures]