JUDGMENT OF THE COURT (First Chamber)

10 July 2008 *

In Case C-33/07,

REFERENCE for a preliminary ruling under Article 234 EC, by the Tribunalul Dâmbovița (Romania), made by decision of 17 January 2007, received at the Court on 24 January 2007, in the proceedings

Ministerul Administrației și Internelor — Direcția Generală de Pașapoarte București

v

Gheorghe Jipa,

THE COURT (First Chamber),

composed of P. Jann, President of Chamber, A. Tizzano (Rapporteur), A. Borg Barthet, M. Ilešič and E. Levits, Judges,

* Language of the case: Romanian.

Advocate General: J. Mazák,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Romanian Government, by E. Ganea, acting as Agent,

— the Greek Government, by E. Skandalou and G. Papagianni, acting as Agents,

— the Commission of the European Communities, by D. Maidani and I. Trifa, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 February 2008,

gives the following

Judgment

1 This reference for a preliminary ruling relates to 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 (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).

2 The reference has been made in the course of proceedings relating to an application submitted by the Ministerul Administrației și Internelor — Direcția Generală de Pașapoarte București (Ministry of Administration and Home Affairs — Directorate General for Passports, Bucharest, 'the Minister'), seeking to obtain from the Tribunalul Dâmbovița an order prohibiting Mr Jipa, a Romanian national, from travelling to Belgium for a period of up to three years.

Legal framework

Community legislation

3 Article 4(1) of Directive 2004/38 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.'

4 Under Article 27(1) and (2) of Directive 2004/38:

'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 legislation

5 Article 1 of the 1995 Agreement between the Governments of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, on the one hand, and the Government of Romania, on the other, on the readmission of persons who are in an illegal situation ('the Readmission Agreement'), which was approved by Romanian Government Decree 825/1995 (*Monitorul Oficial al României* No 241 of 20 October 1995), 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 national.'

6 Article 3(1) and (3) of Law 248 of 20 July 2005 on the conditions for the free movement of Romanian citizens abroad (*Monitorul Oficial al României* No 682 of 29 July 2005, 'Law 248/2005') states in the version applicable to the main proceedings:

'(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 [of Romanian citizens] shall consist of a temporary prohibition of travel to specified States, imposed by the competent Romanian authorities, in accordance with the conditions laid down by the present Law.'

7 Article 38 of Law 248/2005 reads as follows :

'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.'

8 Article 39 of Law 248/2005 provides:

'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, by the Tribunalul Bucureşti.'

The dispute in the main proceedings and the reference for a preliminary ruling

9 Mr Jipa left Romania on 10 September 2006 to travel to Belgium. On account of his 'illegal residence' in Belgium, he was repatriated to Romania on 26 November 2006 under the terms of the Readmission Agreement.

10 On 11 January 2007 the Minister applied to the Tribunalul Dâmbovița for a measure prohibiting Mr Jipa from travelling to Belgium for a period of up to three years, in accordance with Articles 38 and 39 of Law 248/2005.

11 The referring court emphasises that the Minister's application does not specify the nature of the 'illegal residence' that led to Mr Jipa's readmission.

12 In those circumstances, the Tribunalul Dâmbovița decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must Article 18 EC … be interpreted as [precluding] the legislation in force in Romania (Articles 38 and 39 of [Law 248/2005]) [from placing] 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 [Romanian] Government Decree 825/1995 approving the [Readmission Agreement] (the provision on the basis of which the readmission of the defendant [to Romania] 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, 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] 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?'

13 The referring court considered that the above questions called for an urgent answer from the Court in view of the need for Mr Jipa to be able to exercise his right of free movement or to ascertain as quickly as possible whether his exercise of that right is restricted. It therefore asked the Court to apply the accelerated procedure to the reference for a preliminary ruling in accordance with the first paragraph of Article 104a of the Rules of Procedure.

14 The President of the Court rejected that request by Order of 3 April 2007 on the ground that the conditions laid down in the first paragraph of Article 104a of the Rules of Procedure had not been met.

The questions referred for a preliminary ruling

15 By its questions, which it is appropriate to deal with together, the referring court asks, in essence, whether Article 18 EC and Article 27 of Directive 2004/38 preclude national legislation that allows the right of a national of a Member State to travel to another Member State to be restricted, in particular on the ground that he has previously been repatriated from the latter Member State on account of his 'illegal residence' there.

16 In their written observations before the Court, the Romanian and Greek Governments and the Commission of the European Communities are in agreement that the questions should be answered in the affirmative.

17 It must first of all be noted that, as a Romanian national, Mr Jipa enjoys the status of a citizen of the Union under Article 17(1) EC 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 18 EC to move and reside freely within the territory of the Member States (see, for example, to that effect Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraphs 31 to 33; Case C-192/05 *Tas-Hagen and Tas* [2006] ECR I-10451, paragraph 19; and Joined Cases C-11/06 and C-12/06 *Morgan and Bucher* [2007] ECR I-9161, paragraphs 22 and 23).

18 Next, it should be made clear that, as the Advocate General has pointed out in point 35 of his Opinion, 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 right to leave the State of origin. As the Court has already had occasion to state, the fundamental freedoms guaranteed by the EC 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 by analogy, in respect of freedom of establishment and free movement of workers, Case 81/87 *Daily Mail and General Trust* [1988] ECR 5483, paragraph 16; Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 31; and Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 97).

19 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.

20 It follows that a situation such as that of the defendant in the main proceedings, as described in paragraphs 9 and 10 of this judgment, is covered by the right of citizens of the Union to move and reside freely in the Member States.

21 Finally, it is important to bear in mind that 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, for example, to that effect Case C-356/98 *Kaba* [2000] ECR I-2623, paragraph 30; Case C-466/00 *Kaba* [2003] ECR I-2219, paragraph 46; and Case C-398/06 *Commission* v *Netherlands*, paragraph 27).

22 As far as the main proceedings are concerned, those limitations and conditions derive in particular from Article 27(1) of Directive 2004/38, which provides that Member States may restrict the freedom of movement of Union citizens and their family members on grounds inter alia of public policy or public security.

23 In that respect, the Court has always pointed out 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 Community 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 Community institutions (see, to that effect, Case 36/75 *Rutili* [1975] ECR 1219, paragraphs 26 and 27; Case 30/77 *Bouchereau* [1977] ECR 1999, paragraphs 33 and 34; Case C-54/99 *Église de scientologie* [2000] ECR I-1335, paragraph 17; and Case C-36/02 *Omega* [2004] ECR I-9609, paragraphs 30 and 31). The Court's case-law has accordingly made it clear 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 to one of the fundamental interests of society (see, for example, *Rutili*, paragraph 28; *Bouchereau*, paragraph 35; and Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, paragraph 66).

24 Such restrictions on the derogations from the abovementioned fundamental principle that are capable of being invoked by a Member State imply in particular, as is apparent from Article 27(2) of Directive 2004/38, that, in order to be justified, measures taken on grounds of public policy or public security must be based exclusively on the personal conduct of the individual concerned, and justifications that are isolated from the particulars of the case in question or that rely on considerations of general prevention cannot be accepted.

25 It should be added that a measure limiting the exercise of the right of free movement must, as has been rightly pointed out by the Romanian Government and the Commission as well as by the Advocate General in point 43 of his Opinion, be adopted in the light of considerations pertaining to the protection of public policy or public security in the Member State imposing the measure. Thus it cannot be based exclusively on reasons advanced by another Member State to justify a decision to remove a Community national from the territory of the latter State, as in the main proceedings. That does not however rule out the possibility of such reasons being taken into account in the context of the assessment which the competent national authorities undertake for the purpose of adopting the measure restricting freedom of movement (see, by analogy, Case C-503/03 *Commission* v *Spain* [2006] ECR I-1097, paragraph 53).

26 In other words, in a situation such as that in the main proceedings, the fact that a citizen of the Union has been subject to a measure repatriating him from the territory of another Member State, where he was residing illegally, may be taken into account by his Member State of origin for the purpose of restricting that citizen's right of free movement only to the extent that his personal conduct constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society.

27 The situation that has given rise to the main proceedings does not however seem to meet the requirements set out in paragraphs 22 to 26 of the present judgment. In particular, it appears from the file sent to the Court by the referring court and from the written observations of the Romanian Government that the request of the Minister to restrict Mr Jipa's right of free movement is based solely on the measure repatriating him from the territory of the Kingdom of Belgium to which he was subject on account of his 'illegal residence' in that Member State; there was no specific assessment of his personal conduct and no reference to any threat that he might constitute to public policy or public security. Furthermore, the Romanian Government states in its written observations that the decision of the Belgian authorities ordering the repatriation of Mr Jipa was also not founded on reasons of public policy or public security.

28 It is nevertheless for the national court to make the necessary findings in this respect, on the basis of the matters of fact and of law justifying, in the main proceedings, the request of the Minister for a restriction on Mr Jipa's right to leave Romania.

29 When making such an assessment, the national court will have also to determine whether that restriction on the right to leave is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it. According to Article 27(2) of Directive 2004/38 and the Court's settled case-law, a measure which restricts the right of freedom of movement may be justified only if it respects the principle of proportionality (see, for example, to that effect Joined Cases C-259/91, C-331/91 and C-332/91 *Alluè and Others* [1993] ECR I-4309, paragraph 15; Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 91; and Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraph 43).

30 The answer to the questions referred must therefore be that Article 18 EC and Article 27 of Directive 2004/38 do not preclude national legislation that allows the right of a national of a Member State to travel to another Member State to be restricted, in particular on the ground that he has previously been repatriated from the latter Member State on account of his 'illegal residence' there, provided that the personal conduct of that national constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it. It is for the national court to establish whether that is so in the case before it.

Costs

31 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 (First Chamber) hereby rules:

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 do not preclude national legislation that allows the right of a national of a Member State to travel to another Member State to be restricted, in particular on the ground that he has previously been repatriated from the latter Member State on account of his 'illegal residence' there, provided that the personal conduct of that national

constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it. It is for the national court to establish whether that is so in the case before it.

[Signatures]