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Judgment of the Court of Justice in Case C-33/07

Ministerul Administrației și Internelor - Direcția Generală de Pașapoarte București v Jipa

**NATIONAL RESTRICTIONS ON THE RIGHT OF FREE MOVEMENT MUST BE
BASED ON THE PERSONAL CONDUCT OF CITIZENS AND RESPECT THE
PRINCIPLE OF PROPORTIONALITY**

*That conduct must constitute a genuine, present and sufficiently serious threat to one of the
fundamental interests of society.*

Mr Jipa left Romania on 10 September 2006 to travel to Belgium. On account of his ‘illegal residence’ in that Member State, he was repatriated to Romania on 26 November 2006, by virtue of a readmission agreement¹ signed by the two countries.

The Ministerul Administrației și Internelor – Direcția Generală de Pașapoarte București (Ministry of Administration and Home Affairs – Directorate General for Passports, Bucharest) applied to the Tribunalul Dâmbovița for a measure prohibiting Mr Jipa from travelling to Belgium for a period of up to three years.

In those circumstances, the Tribunalul Dâmbovița asks the Court whether Community law, in particular the directive on the right of European citizens to move and reside freely within the territory of the European Union,² precludes Romanian 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.

The Court first of all points out that, as a Romanian national, Mr Jipa enjoys the status of a citizen of the Union and may therefore rely on the rights pertaining to that status, in particular the right to move and reside freely within the territory of the Member States, including against his Member State of origin. The Court notes that the right of freedom of movement includes both the right for citizens of the European Union in possession of a valid identity card or passport to enter a Member State other than the one of origin and the right to leave the State of origin.

¹ The 1995 Agreement between the Governments of the Kingdom of Belgium, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Government of Romania on the readmission of persons who are in an illegal situation.

² 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 (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

That right is nevertheless not unconditional and may be subject to limitations and conditions imposed by the Treaty, in particular on grounds of public policy or public security. The Court points out that the Member States are competent to determine the requirements of public policy and public security in accordance with their national needs. However, in the Community context, 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.

The Court adds that such restrictions imply in particular 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. The Court makes it clear that a measure limiting freedom of movement must 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 the measure 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. That consideration 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.

The Court, while stating that it is for the national court to make the necessary checks, observes that, in the present case, the Romanian authorities seem to rely solely on the repatriation measure, with no specific assessment of Mr Jipa's personal conduct and no reference to any threat that he might constitute to public policy or public security.

The Court concludes that **Community law does 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 account of his 'illegal residence' there, **provided that certain requirements are met**. First, **the personal conduct of that national must constitute a genuine, present and sufficiently serious threat to one of the fundamental interests of society**. Second, it is necessary that **the restrictive measure envisaged be appropriate to ensure the achievement of the objective it pursues and not go beyond what is necessary to attain it**.

The Court adds that it is for the national court to establish whether that is so in the case before it.

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Languages available: FR, BG, CS, DE, EN, ES, EL, HU, IT, NL, PL, RO, SK, SL

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-33/07>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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