

Case C-434/10

Petar Aladzhov

v

**Zamestnik director na Stolichna direktsia na vatreshnite raboti
kam Ministerstvo na vatreshnite raboti**

(Reference for a preliminary
ruling from the Administrativen sad Sofia-grad)

(Freedom of movement of a Union citizen — Directive 2004/38/EC — Prohibition
on leaving national territory because of non-payment of a tax liability — Whether
measure can be justified on grounds of public policy)

Opinion of Advocate General Mengozzi delivered on 6 September 2011 . . . I - 11663

Judgment of the Court (Fourth Chamber), 17 November 2011 I - 11682

Summary of the Judgment

1. *Citizenship of the European Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Right to leave and to enter — Field of application (Arts 20 TFEU and 21 TFEU; European Parliament and Council Directive 2004/38, Art. 4(1))*

2. *Citizenship of the European Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restriction of the right of entry and the right of residence on grounds of public policy, public security or public health — General principles — Direct effect*
(European Parliament and Council Directive 2004/38, Art. 27)
3. *Citizenship of the European Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restriction of the right of entry and the right of residence on grounds of public policy, public security or public health — Scope*
(European Parliament and Council Directive 2004/38, Art. 27)
4. *Citizenship of the European Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restriction of the right to enter and reside for reasons of public policy or public security*
(Art. 21 TFEU; European Parliament and Council Directive 2004/38, Art. 27)
5. *Citizenship of the European Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Restriction of the right of entry and the right of residence on grounds of public policy, public security or public health*
(European Parliament and Council Directive 2004/38, Art. 27(1) and (2))

1. A person holding the nationality of a Member State 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. 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. 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.

Since Article 4(1) of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States 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, the situation of a person 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

provision. 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 paras 31-32)

(see paras 24-27)

2. The fact that national legislation transposing Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States is not applicable to the nationals of the Member State concerned cannot have the effect of preventing a national court from giving full effect to the applicable rules of European Union law, and more particularly to Article 27 of that directive. Accordingly, it is the duty of the court seized to refuse, if necessary, to apply any provision of national legislation contrary to European Union law, in particular by annulling an individual administrative decision adopted on the basis of such a

3. Even though Member States 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 para. 34)

4. 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.

move and reside freely within the territory of the Member States.

(see paras 37-38, 40, operative part 1)

It is not, as a matter of principle, to be excluded that non-recovery of tax liabilities may possibly fall within the ambit of the requirements of public policy. Nor, moreover, the purpose of recovery of debts owed to a public authority, in particular the recovery of taxes, being 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, may the measures adopted by the public authorities in order to ensure that recovery, 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 on the right of citizens of the Union and their family members to

5. Even if a measure imposing a prohibition on leaving the territory has been adopted under the conditions laid down in Article 27(1) of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, 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 the person concerned 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 of 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.

(see para. 49, operative part 2)