



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

4 October 2012\*

(Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States — Directive 2004/38/EC — Article 27 — Administrative prohibition on leaving the territory on account of failure to pay a debt owed to a private legal person — Principle of legal certainty with regard to administrative acts which have become final — Principles of equivalence and effectiveness)

In Case C-249/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Bulgaria), made by decision of 9 May 2011, received at the Court on 19 May 2011, in the proceedings

**Hristo Byankov**

v

**Glaven sekretar na Ministerstvo na vatreshnite raboti,**

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, U. Lõhmus, A. Ó Caoimh (Rapporteur), A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the European Commission, by C. Tufvesson and V. Savov, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 June 2012,

gives the following

\* Language of the case: Bulgarian.

## Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 4(3) TEU, read in conjunction with Articles 20 TFEU and 21 TFEU, of Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and of Articles 27(1) and 31(1) and (3) 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 proceedings between Mr Byankov and the glavnen sekretar na Ministerstvo na vatrešnite raboti (Principal Secretary of the Ministry of the Interior) concerning the refusal to reopen an administrative procedure and to annul an administrative measure prohibiting Mr Byankov from leaving Bulgaria on account of his failure to pay a private debt.

### Legal context

#### *EU legislation*

- 3 Recital 31 in the preamble to Directive 2004/38 states that the directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter.
- 4 Under Article 3(1) thereof, Directive 2004/38 applies 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 who accompany or join them.
- 5 Article 4(1) of Directive 2004/38 reads as follows:

'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.'

- 6 Article 27 of Directive 2004/38, which is contained in Chapter VI of the directive, 'Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health', provides in paragraphs 1 and 2:

'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.

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.'

7 Also in Chapter VI of Directive 2004/38, Article 31, entitled ‘Procedural safeguards’, provides:

‘1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.

...

3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate...

...’

8 Article 32(1) of Directive 2004/38, also to be found in Chapter VI, reads as follows:

‘Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.

The Member State concerned shall reach a decision on this application within six months of its submission.’

#### *The Bulgarian legislation*

9 Article 23(2) of the Law on Bulgarian identity documents (Zakon za balgarskite litschni dokumenti, DV No 93 of 11 August 1998), in the version applicable to the case in the main proceedings (DV No 105 of 22 December 2006; ‘ZBLD’), provides that ‘[e]very 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’.

10 Article 23(3) continues ‘[n]o 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’.

11 Article 76(3) of the ZBLD provides:

‘The following persons may be prohibited from leaving the country and may be refused passports and similar documents:

...

3. persons who owe considerable debts, established by court order, to Bulgarian or foreign natural or legal persons, unless their personal assets cover the debt or they provide appropriate security.’

12 Under the supplementary provisions of the ZBLD, an amount in excess of BGN 5 000 is regarded as ‘considerable’ for the purposes of Article 76(3) of the ZBLD.

13 Article 76(3) of the ZBLD was repealed by point 3 of Paragraph 62 of the Law amending and making supplementary provision to the ZBLD (DV No 82 of 16 October 2009), which entered into force on 20 October 2009. However, the Bulgarian legislature did not provide that any coercive administrative measures imposed on the basis of Article 76(3) of the ZBLD would automatically cease to have effect.

14 Article 99 of the Code of Administrative Procedure (Administrativnoprotsesualen kodeks, 'APK'), which is contained in Chapter 7 of the APK entitled 'Reopening of the procedure for the adoption of administrative acts', reads:

'A final individual or general administrative act which has not been contested before the courts may be annulled or amended by the next-higher-ranking administrative authority or, if the administrative act was not open to challenge by way of an administrative remedy, by the authority which adopted it, where:

1. there has been a material breach of one of the conditions governing its legality;

...

7. a decision of the European Court of Human Rights has established an infringement of the [European Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950].'

15 According to the order for reference, Article 99(1) of the APK enables the administrative body to annul an administrative act that has become final where there has been a material breach of one of the conditions governing its legality. However, under Articles 100 and 102(1) of the APK, that power may be exercised only within a period of one month from the date on which the act concerned was adopted and only on the initiative of the administrative body which adopted the act, of the prosecutor concerned or of the ombudsman.

16 However, pursuant to Article 102(2) of the APK, in the situation provided for in Article 99(7) of the APK, the procedure may be reopened at the request of the addressee of an administrative measure which, not having been challenged before the courts, has become final.

17 It is apparent from the order for reference that the addressee of such a measure may also apply to have the procedure reopened in the cases referred to in Article 99(2) to (6) of the APK.

18 It also emerges from the order for reference that Article 99(2) of the APK covers, *inter alia*, the situation in which there is new documentary evidence.

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

19 By order of the Regional Directorate of the Ministry of the Interior of 17 April 2007 ('the 2007 order'), a coercive administrative measure was imposed on Mr Byankov, a Bulgarian national, under Article 76(3) of the ZBLD, which prohibited him from leaving Bulgarian territory and prevented him from being issued with a passport or replacement identity documents ('the prohibition on leaving the territory at issue in the main proceedings').

20 The 2007 order was adopted at the request of a bailiff on account of a debt owed to a legal person governed by Bulgarian private law. The order stated that the debt, amounting to BGN 200 000 plus costs and interest, was 'considerable' within the meaning of the supplementary provisions of the ZBLD and that Mr Byankov had not provided adequate security.

21 That order was not challenged before the courts and it became final.

- 22 On 6 July 2010 — thus more than three years after the 2007 order was adopted — Mr Byankov applied for annulment of the prohibition on leaving the territory at issue in the main proceedings, invoking his status as a citizen of the Union and his right to move and reside freely within the Union. Mr Byankov also relied on Article 27(1) of Directive 2004/38, on the judgment in Case C-33/07 *Jipa* [2008] ECR I-5157 and on judgment No 3909 of 24 March 2010 of the Varhoven administrativen sad (Supreme Administrative Court). He argued that the restrictive measures liable to be adopted under Article 76(3) of the ZBLD could not be covered by the notion of ‘public policy’.
- 23 The glavnen sekretar na Ministerstvo na vatreshnite raboti, to whom Mr Byankov’s application was forwarded, examined it as an application for annulment of a final administrative act, a procedure governed by Article 99 of the APK.
- 24 By order of 20 July 2010, that application was rejected on the ground that the legal conditions prescribed by Article 99 of the APK for annulment of a ‘settled administrative act’ were not met. It was stated that none of the grounds for annulment provided for in Article 99(2) to (7) of the APK — the cases in which an individual is entitled to make an application for the procedure to be reopened — had been established. In particular, the order stated that, since the judgment of the Varhoven administrativen sad referred to in paragraph 22 of this judgment concerned a person other than Mr Byankov, it did not amount to new documentary evidence for the purposes of Article 99(2) of the APK. The order also stated that the ground for annulment provided for in Article 99(1) of the APK had not been established, since no application had been made, within the prescribed period, by a person entitled to do so.
- 25 Mr Byankov brought proceedings before the referring court seeking annulment of the order of 20 July 2010 and requesting that his application for annulment of the 2007 order be granted.
- 26 The defendant in the main proceedings contends that Mr Byankov’s action should be dismissed, relying on the lawfulness of the prohibition on leaving the territory at issue in the main proceedings.
- 27 According to the referring court, the reasons stated in the 2007 order make no mention of any grounds of public policy, public security or public health and include no assessment of Mr Byankov’s personal conduct. Nor do they give any explanation showing that the imposition of the prohibition on leaving the territory at issue in the main proceedings would facilitate payment of the sums in question.
- 28 In those circumstances the Administrativen sad Sofia-grad (Sofia Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. In the light of the facts of the main proceedings, does the principle of sincere cooperation under Article 4(3) TEU in conjunction with Articles 20 TFEU and 21 TFEU require that a national provision of a Member State such as that at issue in the main proceedings — under which a final administrative act may be annulled in order to put an end to an infringement of a fundamental right which has been established by a decision of the European Court of Human Rights, which right is also recognised in EU law and concerns the freedom of movement enjoyed by nationals of the Member States — must also be applied with reference to the interpretation adopted by decision of the Court ... of provisions of EU law which are relevant to the restrictions on the exercise of the aforementioned right, where the administrative act must be annulled in order to put an end to the infringement?
  2. Does it follow from Article 31(1) and (3) of Directive 2004/38 that, where a Member State has provided in its national law for a procedure for examining an administrative act which limits the right under Article 4(1) of the Directive, the competent administrative authority is required, at the request of the addressee of the administrative act, to examine that measure and to assess its legality with reference also to the case-law of the Court ... on the interpretation of relevant provisions of EU law governing the conditions and limitations applicable to the exercise of that

right, so as to ensure that the limitation imposed on the right is not disproportionate at the time when the review decision is adopted, where the administrative act imposing the limitation is already final at that time?

3. Do the provisions of the second sentence of Article 52(1) of the [Charter] and Article 27(1) of Directive 2004/38 permit the application of a national provision which provides for the imposition of a limitation on the freedom of movement, within the European Union, of a national of a Member State, solely on account of the existence of an unsecured liability in excess of a certain amount laid down by law that is owed to a private person (a commercial company), in the context of pending enforcement proceedings for the recovery of the claim, and without regard to the possibility, provided for in EU law, of the claim being recovered by an authority of another Member State?’

### The questions referred for a preliminary ruling

#### *The third question*

- 29 By its third question, which it is appropriate to consider first, the referring court is asking, in essence, whether EU law must be interpreted as precluding the application of a national provision which provides for the imposition of a restriction on the freedom of movement, within the European Union, of a national of a Member State, solely on the ground that he owes a legal person governed by private law a debt which exceeds a statutory threshold and is unsecured.
- 30 In that regard, it should be noted at the outset that a situation like that of Mr Byankov, who is prevented from travelling from the Member State of which he is a national to another Member State, falls within the scope of the freedom to move and reside within the territory of the Member States which is conferred by the status of citizen of the Union (see, by analogy, *Jipa*, paragraph 17; Case C-430/10 *Gaydarov* [2011] ECR I-11637, paragraphs 24 to 27; and Case C-434/10 *Aladzhov* [2011] ECR I-11659, paragraphs 24 to 27).
- 31 It is clear from the Court’s case-law that that right of freedom of movement includes both the right for citizens of the 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 FEU Treaty would be rendered meaningless if the Member State of origin could, without due justification, prohibit its own nationals from leaving its territory in order to enter the territory of another Member State (see *Jipa*, paragraph 18 and case-law cited).
- 32 Indeed, Article 4(1) of Directive 2004/38 expressly provides — without requiring the prior exercise of the right to move and reside freely — that all Union citizens with a valid identity card or passport are to have the right to leave the territory of a Member State to travel to another Member State.
- 33 In that regard, there is no relevance in the facts, to which the order for reference draws attention, that Article 76(3) of the ZBLD, which entered into force before the accession of the Republic of Bulgaria, is not intended to implement EU law or that Article 27 of Directive 2004/38 has been implemented in the Bulgarian legal order solely in relation to nationals of Member States other than the Republic of Bulgaria (see, on the latter point, *Aladzhov*, paragraphs 31 and 32).
- 34 In those circumstances, it should be noted 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, inter alia, *Jipa*, paragraph 21 and case-law cited, and *Aladzhov*, paragraph 28).

- 35 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 provision, be invoked 'to serve economic ends' (*Aladzhov*, paragraph 29).
- 36 Therefore, for an administrative measure such as that at issue in the main proceedings to be permitted under EU law, it must, inter alia, be shown that the measure was taken on one of the grounds listed in Article 27(1) of Directive 2004/38, subject to the further condition that that ground was not invoked to serve economic ends.
- 37 However, it is clear from the order for reference and the wording of the third question that the prohibition on leaving the territory at issue in the main proceedings is based on just two findings: the existence of a debt owed to a legal person governed by private law and the inability of the debtor to provide security in respect of that debt. There is no mention of public policy, public safety or public health.
- 38 In this connection, the referring court mentions the argument that Article 76(3) of the ZBLD and, consequently, the prohibition on leaving the territory at issue in the main proceedings pursue the objective of protecting creditors.
- 39 Even if the view could reasonably be taken that some notion of safeguarding the requirements of public policy underlies such an objective, it cannot be ruled out, on the basis of the order for reference, that the prohibition on leaving the territory at issue in the main proceedings pursues an exclusively economic objective. However, Article 27(1) of Directive 2004/38 expressly excludes the possibility of a Member State invoking grounds of public policy to serve economic ends.
- 40 Moreover, it is apparent from the Court's case-law that recourse to 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, and *Gaydarov*, paragraph 33).
- 41 In that context, the derogations from the free movement of persons that are capable of being invoked by a Member State imply in particular, as is stated in Article 27(2) of Directive 2004/38, that, if measures taken on grounds of public policy or public security are to be justified, they must be based exclusively on the personal conduct of the individual concerned and that justifications that are isolated from the particulars of the case in question or that rely on considerations of general prevention cannot be accepted (*Jipa*, paragraph 24, and *Gaydarov*, paragraph 34).
- 42 However, it is apparent from the order for reference that the 2007 order does not include any assessment relating specifically to Mr Byankov's personal conduct or to the genuine, present and sufficiently serious nature of any threat which that conduct might represent with regard to a fundamental interest of Bulgarian society, an interest that is not defined in the documents submitted to the Court.
- 43 Furthermore, it is clear from Article 27(2) of Directive 2004/38 and from the Court's settled case-law that a measure which restricts the right of freedom of movement may be justified only if — by being appropriate to ensure the achievement of the objective it pursues and not going beyond what is necessary to attain it — it respects the principle of proportionality (see, to that effect, inter alia, *Jipa*, paragraph 29, and *Gaydarov*, paragraph 40).

- 44 In that regard, the Court notes, first, that, apart from the possibility of paying the sum owed or providing adequate security, the prohibition on leaving the territory at issue in the main proceedings is absolute; it is not coupled with any exceptions, temporal limitation or possibility of regular review of the factual and legal circumstances underpinning it. Thus, as long as such a prohibition is not lifted, its legal effects for a person such as Mr Byankov are continually renewed and will persist indefinitely.
- 45 Second, there exists within EU law a body of legal rules that are capable of protecting creditors' rights without necessarily restricting the debtor's freedom of movement. By way of example, it is sufficient to mention Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), to which the referring court itself alludes.
- 46 Accordingly, contrary to the concern expressed by the referring court, it cannot be concluded that, on account of the exclusion under Article 27(1) of Directive 2004/38 of exceptions invoked to serve economic ends, the European Union legal order does not afford a level of protection of the property rights of others — in this case creditors — which is at least equivalent to that established under the European Convention on the Protection of Human Rights and Fundamental Freedoms.
- 47 Moreover, as the referring court has in essence stated, it follows from the case-law of the European Court of Human Rights that measures, such as the prohibition on leaving the territory at issue in the main proceedings, which curb a person's right to leave his country, must, inter alia, be regularly reviewed if the measures are not to be regarded as 'disproportionate' within the meaning of that case-law (see, to that effect, inter alia, Eur. Court H. R *Ignatov v. Bulgaria* judgment of 2 July 2009, application No 50/02 (§ 37), and *Gochev v. Bulgaria* judgment of 26 November 2009, application No 34383/03 (§§ 55 to 57)).
- 48 In view of all the foregoing, the answer to the third question is that EU law must be interpreted as precluding the application of a national provision which provides for the imposition of a restriction on the freedom of movement, within the European Union, of a national of a Member State, solely on the ground that he owes a legal person governed by private law a debt which exceeds a statutory threshold and is unsecured.

### *The first and second questions*

#### Preliminary considerations

- 49 It can be seen from the documents submitted to the Court that the proceedings before the referring court are seeking annulment, on the basis of an alleged conflict with EU law, of an administrative decision rejecting Mr Byankov's application for the reopening of the administrative procedure that culminated in adoption of the 2007 order. It is thus a question in the main proceedings of determining whether that rejection complies with the requirements of EU law.
- 50 In that context, the referring court expresses uncertainty, in the context of its first question, as to the relationship between, on the one hand, the principle of legal certainty with regard to a final administrative act and, on the other, the principle of effective judicial protection of rights conferred on individuals by EU law. The referring court takes particular account of the judgment of 13 January 2004 in Case C-453/00 *Kühne & Heitz* [2004] ECR I-837 and of part of the case-law deriving from it. The gist of its interpretation appears to be that the principle of effective judicial protection will always reach its limits when it comes up against 'national rules which establish the principle of legal certainty with regard to administrative acts'.

- 51 In the circumstances of this case, there is, however, no need to take a view on the reasoning set out on that point in the order for reference. It suffices to note only that, since the 2007 order became final without having been subject to judicial review, the judgment in *Kühne & Heitz* is not directly relevant for the purposes of determining whether, in a situation such as that in issue in the main proceedings, an administrative body is under an obligation to reopen an administrative procedure with a view to annulling an administrative measure such as the 2007 order (see, by analogy, Joined Cases C-392/04 and C-422/04 *i-21 Germany and Arcor* [2006] ECR I-8559, paragraphs 53 and 54).
- 52 It is also in the context described in paragraph 49 of this judgment that the referring court, by its second question, asks, in essence, whether Article 31 of Directive 2004/38 may serve as the basis for an obligation to review an administrative decision in a situation such as that in the main proceedings.
- 53 Article 31 of Directive 2004/38 is intended in particular to ensure that citizens of the Union and members of their families have access to judicial and, where appropriate, administrative redress procedures to appeal against or seek review of any decision restricting their right to move and reside freely in the Member States.
- 54 Those procedural safeguards required by Article 31 of Directive 2004/38 are intended to apply at the time when the measures restricting that right are adopted.
- 55 However, it is not disputed in this case that, at the time the 2007 order was adopted, remedies were available to Mr Byankov that would have allowed him to challenge the prohibition on leaving the territory at issue in the main proceedings, before a court where appropriate. Indeed, it is clear from the order for reference that Mr Byankov did not bring an action against the 2007 order at the time it was adopted, with the result that the order became final.
- 56 Accordingly, Article 31 of Directive 2004/38 is not applicable, per se, to legal situations such as that described by the referring court in its second question.
- 57 In the context of the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. In that light, the Court may have to reformulate the questions referred to it (see, inter alia, Case C-334/95 *Krüger* [1997] ECR I-4517, paragraphs 22 and 23, and Case C-243/09 *Fuß* [2010] ECR I-9849, paragraph 39 and case-law cited).
- 58 To that end, the Court may extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the legislation and the principles of EU law that require interpretation in view of the subject-matter of the dispute (see, to that effect, inter alia, Case 83/78 *Redmond* [1978] ECR 2347, paragraph 26; Case C-56/01 *Inizan* [2003] ECR I-12403, paragraph 34; and *Fuß*, paragraph 40).
- 59 In that regard, it is apparent from the order for reference that, under Bulgarian law, an administrative procedure that resulted in the adoption of a final individual administrative act which has not been contested before the courts may, exceptionally, be reopened in the cases listed exhaustively in Article 99 of the APK for the purpose of annulling or altering that act.
- 60 Furthermore, as can be seen from paragraphs 15, 23 and 24 of this judgment, Mr Byankov's application for the reopening of the administrative procedure in order to obtain annulment of the prohibition on leaving the territory at issue in the main proceedings was rejected on the ground that the legal conditions for Article 99 of the APK to apply were not met. In particular, as regards paragraph 1 of Article 99, no application for the reopening of the administrative procedure had been made within

one month from the date of the 2007 order by a person entitled to make such an application, namely the administrative body that adopted the order, the ombudsman or, where relevant, the prosecutor concerned.

- 61 Therefore, as the referring court has in essence pointed out, no possibility is now open to Mr Byankov under Bulgarian law alone — apart from the possibility of repaying the sum claimed or providing adequate security — for obtaining a review of the factual and legal circumstances that gave rise to the territorial prohibition to which he is subject, even though, as is apparent from the answer to the third question and as is also accepted in the order for reference, such a prohibition is clearly contrary to the requirements of EU law, in particular those of Article 27 of Directive 2004/38.
- 62 Moreover, the relevant Bulgarian administrative bodies, which are subject to the obligation to respect the primacy of EU law (see, to that effect, *inter alia*, Case C-341/08 *Petersen* [2010] ECR I-47, paragraph 80 and case-law cited), are no longer in a position, according to the referring court's interpretation of the legislation at issue in the proceedings before it, to exercise their power to have Mr Byankov's case reviewed in the light, in particular, of what has been held by the Court in *Jipa, Gaydarov* and *Aladzhov*. That power may be exercised only within a period of one month from the date on which the measure concerned was adopted.
- 63 However, according to the Court's case-law, Article 21(1) TFEU confers on individuals rights which are enforceable by them and which the national courts must protect (see, to that effect, *inter alia*, Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraphs 84 to 86).
- 64 Furthermore, by virtue, in particular, of the principle of sincere cooperation enshrined in Article 4(3) TEU, all the authorities of the Member States, including the administrative and judicial bodies, must ensure the observance of the rules of EU law within the sphere of their competence (see, to that effect, Case C-91/08 *Wall* [2010] ECR I-2815, paragraph 69).
- 65 The issue in the present case is thus whether, in order to safeguard the rights which individuals derive from EU law, a national court hearing an action such as Mr Byankov's may find, in view of Article 4(3) TEU (see, to that effect, Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 38 and case-law cited), that it has to recognise the existence of an obligation on the part of the administrative authority to review and, if appropriate, annul a prohibition on leaving the territory such as that at issue before the referring court (*i-21 Germany and Arcor*, paragraphs 55 and 56).
- 66 Accordingly, the first and second questions must be understood, in essence, as seeking to ascertain whether, in circumstances such as those of the case before the referring court, EU law must be interpreted as precluding legislation of a Member State under which an administrative procedure that has resulted in the adoption of a prohibition on leaving the territory such as that at issue in the main proceedings, which has become final and has not been contested before the courts, may be reopened — in the event of that measure being clearly contrary to EU law — only in circumstances such as those exhaustively listed in Article 99 APK, despite the fact that such a prohibition continues to produce legal effects with regard to its addressee.

The first and second questions as reformulated

- 67 It follows from, in particular, paragraphs 30 to 32 of this judgment that the safeguards imposed by the EU legislature in Article 32 of Directive 2004/38 are applicable to measures prohibiting citizens of the Union from leaving the territory of a Member State.

- 68 However, for the review procedure to be available in the specific context of Article 32, the measure at issue must, inter alia, have been ‘validly adopted in accordance with [European Union] law’. It is apparent from the answer to the third question that that is not the case of a measure such as the 2007 order. For that reason, amongst others, Article 32 of Directive 2004/38 cannot be regarded as applicable, per se, to the dispute before the referring court.
- 69 It is settled case-law that, in the absence of relevant EU rules, it is, under the principle of procedural autonomy of the Member States, for the domestic legal system of each Member State to regulate the legal procedures designed to ensure the protection of the rights which individuals acquire under EU law (see *Wall*, paragraph 63), provided, however, that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (see, inter alia, Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12; *i-21 Germany and Arcor*, paragraph 57 and case-law cited; and Case C-378/10 *VALE Építési* [2012] ECR, paragraph 48 and case-law cited).
- 70 With regard to the principle of equivalence, this requires that all the rules applicable to actions, including the prescribed time-limits, apply without distinction to actions based on infringement of EU law and those based on infringement of national law (see, inter alia, Case 63/08 *Pontin* [2009] ECR I-10467, paragraph 45 and case-law cited, and Case C-591/10 *Littlewoods Retail and Others* [2012] ECR, paragraph 31).
- 71 In that regard, the referring court has not specifically entered into the issue of whether the particular conditions laid down for implementing Article 99 of the APK differ depending on whether the claim of illegality made against the final administrative act is based on an infringement of EU law or on an infringement of national law.
- 72 In the present case, the question which more particularly arises is whether national legislation such as that described by the referring court is compatible with the principles of effectiveness and sincere cooperation.
- 73 Indeed, under such legislation, addressees of prohibitions on leaving the territory in situations such as Mr Byankov’s will never, unless they pay the sums claimed or provide adequate security, have an opportunity to have their cases reviewed, despite the manifest illegality of prohibitions on leaving the territory which are imposed on them for an unlimited period.
- 74 Furthermore, as is clear from, inter alia, paragraphs 13 and 15 of this judgment, since no initiative was taken to withdraw prohibitions on leaving the territory, imposed under Article 76(3) of the ZBLD, following the judgment in *Jipa* in particular and since a one-month period is applicable when Article 99(1) of the APK is applied, the relevant administrative bodies consider themselves to be barred from allowing a review in situations such as that at issue in the main proceedings, even though the illegality under EU law has been confirmed by the Court’s case-law.
- 75 It is apparent from the Court’s case-law that situations in which the question arises as to whether a national procedural provision makes the exercise of rights conferred on individuals by the European Union legal order impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure as a whole and to the progress and special features of the procedure before the various national bodies (see, inter alia, *Peterbroeck*, paragraph 14; Case C-2/08 *Fallimento Olimpiclub* [2009] ECR I-7501, paragraph 27; and Case C-618/10 *Banco Español de Crédito* [2012] ECR, paragraph 49).

- 76 In that regard, the Court has already acknowledged that finality of an administrative decision contributes to legal certainty, with the consequence that EU law does not require that an administrative body be, in principle, under an obligation to reopen an administrative decision which has become final (see, to that effect, Case C-2/06 *Kempter* [2008] ECR I-411, paragraph 37).
- 77 The Court has none the less held, in essence, that particular circumstances may be capable, by virtue of the principle of sincere cooperation arising from Article 4(3) TEU, of requiring a national administrative body to review an administrative decision that has become final, in particular to take account of the interpretation of a relevant provision of European law which the Court has given subsequently (see *Kempter*, paragraph 38). It can be seen from the case-law that, in that context, the Court has taken account of the particular features of the situations and interests at issue in order to strike a balance between the requirement for legal certainty and the requirement for legality under EU law (see, to that effect, inter alia, *Kühne & Heitz*, paragraphs 25 and 26; *i-21 Germany and Arcor*, paragraphs 53, 63 and 64; *Kempter*, paragraphs 46, 55 and 60; and *Fallimento Olimpiclub*, paragraphs 22, 26 and 31).
- 78 In the present case, it is necessary to consider more specifically whether, in situations such as that at issue in the main proceedings, national legislation such as that described in the order for reference may be justified in order to safeguard the principle of legal certainty, having regard to the consequences that follow from such legislation for the application of EU law and for citizens of the Union who are subject to prohibitions on leaving the territory such as the one in issue before the referring court (see, by analogy, *Fallimento Olimpiclub*, paragraph 28).
- 79 As is apparent from the answer to the third question and, in particular, from paragraphs 37, 42 and 44 of this judgment, in circumstances such as those of the main proceedings, the legislation at issue in those proceedings, which makes no provision for regular review, maintains for an unlimited period a prohibition on leaving the territory and thereby perpetuates an infringement of the right laid down in Article 21(1) TFEU to move and reside freely within the territory of the Member States. In such circumstances, a prohibition of that kind is the antithesis of the freedom conferred by Union citizenship to move and reside within the territory of the Member States (see also, by analogy, Case C-348/96 *Calfa* [1999] ECR I-11, paragraph 18).
- 80 Furthermore, by means of Article 32(1) of Directive 2004/38, the EU legislature has placed an obligation on the Member States to ensure that it is possible for measures which prohibit a person from entering or leaving their territories to be reviewed, even where those measures have been validly adopted under EU law and even where they have — like the 2007 order — become final. There is all the more reason why that should be the case in relation to prohibitions on leaving the territory, such as that at issue before the referring court, which have not been validly adopted under EU law and are the antithesis of the freedom laid down in Article 21(1) TFEU. In such a situation, the principle of legal certainty does not entail an absolute requirement that an act imposing such a prohibition should continue to produce legal effects for an unlimited period.
- 81 In view also of the importance which primary law accords to citizenship of the Union (see, inter alia, Case C-135/08 *Rottmann* [2010] ECR I-1449, paragraphs 43 and 56), it must be concluded that, in circumstances such as those at issue in the main proceedings, national legislation such as that described in the order for reference, to the extent that it (i) prevents citizens of the Union from asserting the right conferred on them by Article 21 TFEU to move and reside freely against absolute territorial prohibitions that have been adopted for an unlimited period and (ii) prevents administrative bodies from acting upon a body of case-law whereby the Court has confirmed the illegality, under EU law, of such prohibitions, cannot reasonably be justified by the principle of legal certainty and must therefore be considered, in this respect, to be contrary to the principle of effectiveness and to Article 4(3) TEU (see, by analogy, *Fallimento Olimpiclub*, paragraphs 30 and 31).

82 In view of the foregoing, the answer to the first and second questions is that EU law must be interpreted as precluding legislation of a Member State under which an administrative procedure that has resulted in the adoption of a prohibition on leaving the territory such as that at issue in the main proceedings, which has become final and has not been contested before the courts, may be reopened — in the event of the prohibition being clearly contrary to EU law — only in circumstances such as those exhaustively listed in Article 99 APK, despite the fact that such a prohibition continues to produce legal effects with regard to its addressee.

### **Costs**

83 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 (Second Chamber) hereby rules:

1. **European Union law must be interpreted as precluding the application of a national provision which provides for the imposition of a restriction on the freedom of movement, within the European Union, of a national of a Member State, solely on the ground that he owes a legal person governed by private law a debt which exceeds a statutory threshold and is unsecured.**
2. **European Union law must be interpreted as precluding legislation of a Member State under which an administrative procedure that has resulted in the adoption of a prohibition on leaving the territory such as that at issue in the main proceedings, which has become final and has not been contested before the courts, may be reopened — in the event of the prohibition being clearly contrary to European Union law — only in circumstances such as those exhaustively listed in Article 99 of the Code of Administrative Procedure (Administrativnoprotsesualen kodeks), despite the fact that such a prohibition continues to produce legal effects with regard to its addressee.**

[Signatures]