

PUBLIC SECURITY, PUBLIC POLICY AND PUBLIC HEALTH AS POTENTIAL GROUNDS FOR IMPOSING RESTRICTIONS ON THE RIGHT OF FREE MOVEMENT OF PERSONS

ANDREA JÁNOSI

Faculty of Law, Department of European and International Private Law, University of
Miskolc

ZSUZSA WOPERA (Reviewer)

Key words

Free movement of persons – restrictions of free movement of persons- public policy – public security- public health

Resume

Free movement of persons has a central, distinguished place among common politics. Working in the territory of another Member State is a right of every citizen of the Union and also of their family members. However the realization of this principle was motivated originally by economic aims, the principle of free movement is more than merely just regulating economic questions.¹ The rules regulating the free movement have been changed a lot since this principle was first declared in the Treaty of Rome. The most important turning point was the Maastricht Treaty, which established that not only workers, but also every citizen of the Union has the right of free movement. In the meantime the EU-level regulation of this topic has become really complex, two regulations and nine directives contained rules in relation to this issue, therefore the simplification of these norms was of high priority. Therefore the 2004/38/EC Directive was accepted for simplifying these rules, and it has replaced the former fragmented and sectorial regulation. Although the goal of the Union is to ensure the right of free movement of the citizens, i.e. the right of entry and residence, to the

¹ GYULAVÁRI, Tamás – KÖNCZEI György: *Európai szociális jog*, Budapest: Osiris Kiadó, 2000., p. 86., ISBN 963 379 641 5

possible maximum extent, there are some cases, when it could be restricted. The grounds of these restrictions could be the public politics, public security and public health, amongst others.

COMMUNITY RULES OF RESTRICTIONS ON FREE MOVEMENT

The legal basis of the restrictions on the free movement of persons was set out in the EC Treaty, pursuant to which the right of free movement could be restricted. Consequently the above-mentioned provisions of the Treaty allow Member States to not to admit citizens from other Member States to their territory or to expel them. Nevertheless, neither the EC Treaty, nor Directive 64/221/EEC had determined, which kind of situations and behaviour could be qualified as to be dangerous to public policy, public security or public health.² According to the case law of the European Court of Justice, this notion has to be interpreted strictly. Member States must take into account different general and individual conditions, if they want to restrict the right of residence of citizens from other Member States.³

Directive 2004/38/EC has replaced Council Directive 64/221/EEC and contains elements of certain former secondary legal sources and the related case law of the Court of Justice of the European Communities.⁴ The aim of this Directive was to impose stricter conditions in respect of determining the circumstances under which citizens of the Union and their family members could be declined to enter in the territory of other Member States or could be expelled from that countries. In addition, it has defined stricter procedural safeguards as well.⁵

CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

However the protection of public policy has been codified in the EC Treaty,⁶ the Member States are not allowed to use the notion of public policy and public security

² GYULAVÁRI, Tamás: *Az Európai Unió szociális dimenziója*, Budapest: Szociális és Családjogi Minisztérium, 2000., p. 58., ISBN 963 00 3854 4

³ A személyek szabad mozgása az Európai Unióban - munkavállalás és tanulás a magyar állampolgárok számára, Forrás: Külügyminisztérium, see: <http://mathom.dura.hu/mszeib/eubovites/szabadmozg.htm> (20.04.2008.)

⁴ ASZTALOS, Zsófia: *Új irányelvek az uniós polgárok és családtagjaik szabad mozgásáról*. In: Európai Tükör, 2004/7 október sz., p. 104.

⁵ Directive 2004/38/EC, preamble, section 22.

⁶ BANKÓ, Zoltán: *Válogatás az Európai Bíróság munkajogi ítéleteiből, Munkavállalók szabad mozgása*, Budapest: KJK-KERSZÖV Jogi és Üzleti Kiadó Kft, 2004., p. 21., ISBN 963 224 774 4

arbitrarily. The European Court of Justice has expressed this opinion in the Bouchereau-case,⁷ One of the most often cited cases is the Van Duyn-case,⁸ in which a woman of Dutch nationality was not allowed to enter into the United Kingdom to work as a secretary at the "church of scientology".⁹ British politics did not assist the "church of scientology", and however it was not forbidden; according to the standpoint of the British politics it was socially harmful. The problem in the case of Commission of the European Communities v Kingdom of the Netherlands¹⁰ was that the general legislation of the Netherlands made it possible to establish a systematic and automatic connection between a criminal conviction and the issuance of expulsion orders.¹¹ The Court declared that the Netherlands has failed to fulfil its obligations under Directive 64/221/EEC¹²

Although the one of the most important goals of the European Union is to bring everyone in the position to be able to use the opportunities of free movement and to realise the four freedoms to the highest possible extent, there are some cases when the Member States are interested in to not to admit certain persons into their territory or expel them from there. The main purpose of my paper was to present such cases where the principle of free movement could be restricted. The grounds for such restrictions might be the public policy, public security or public health. I summarised the safeguards, which ensure free movement against restrictions; the strict conditions of expulsion and denial of entry; and the most important cases related to this topic.

janosiandrea@t-online.hu

⁷ Case 30-77. Régina v Pierre Bouchereau, Judgment of the Court of 27 October 1977., European Court reports 1977 Page 01999

⁸ Case 41/74. Yvonne van Duyn v. Home Office, Judgment of the Court of 4 December 1974., European Court reports 1974 Page 01337

⁹ Case 41/74. Yvonne van Duyn v. Home Office, Grounds, point 2.

¹⁰ Case C-50/06. Commission of the European Communities v Kingdom of the Netherlands, Judgment of the Court (Third Chamber) of 7 June 2007., European Court reports 2007 Page I-04383

¹¹ Case C-50/06. Commission of the European Communities v Kingdom of the Netherlands, Pre-litigation procedure, point 17.

¹² Case C-50/06. Commission of the European Communities v Kingdom of the Netherlands, Judgement