

Comments on the JIPA case

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Introduction

- Importance of the Jipa case - C-33/07
 - in general
 - for Romania
 - first preliminary ruling for Romania
 - solving a real problem

Facts 1

Mr. Jipa – Belgium – illegal residence

26 November 2006 - repatriated to Romania - Readmission Agreement

1 January 2007 – accession date

Facts 2

11 January 2007 – the Directorate General applied to the national court: prohibit Mr. Jipa from travelling to Belgium for a period of up to three years

24 January 2007 – the court – Tribunalul Dambovită – requested the preliminary ruling

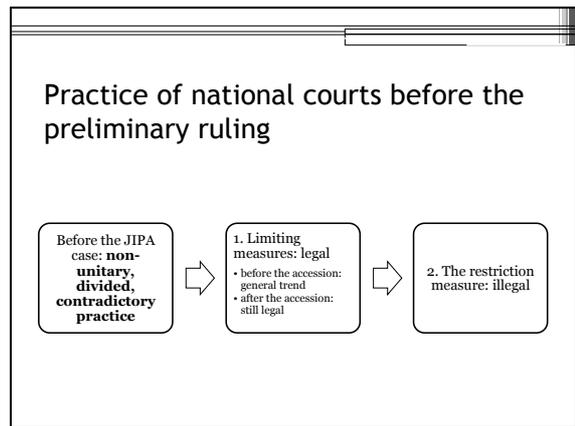
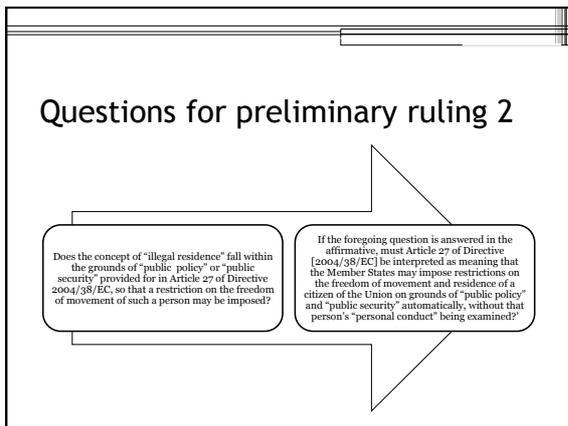
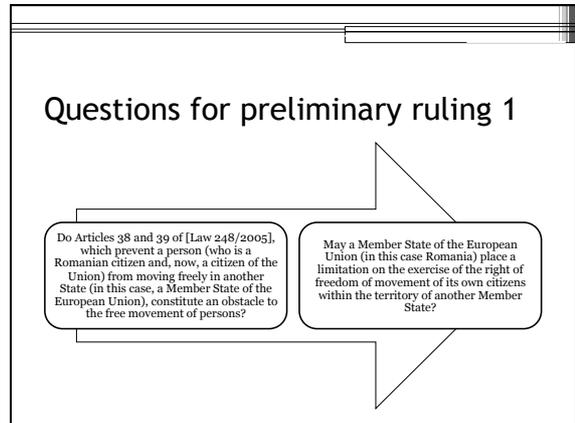
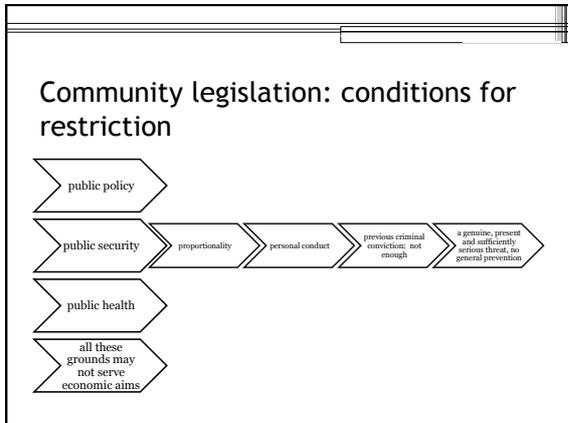
Facts 3

14 February 2008 – opinion of the Advocate General

10 July 2008 – judgment

National legislation

- Law no. 248/2005
- The exercise of the right of free movement abroad for Romanian citizens may be limited
 - **condition:** if the respective person is returned in Romania according to a readmission treaty
 - **content of limitation:** a temporary prohibition of travel to the specified State(s)
 - **duration of limitation:** only temporarily, for a period up to 3 years
- Competence: now Bucharest Tribunal (exclusively competent court), before all the Tribunals



Constitutional Court

- Constitutional Court brought two resolutions, settling that Law 248/2005 is constitutional (before the accession):
 - the law is in concordance with Article 53 of the fundamental law which provides that there may be imposed restrictions of certain rights or freedoms if necessary for the defense of national security, of public order, health, or morals
 - to prevent illegal migration from Romania to the EU is an important to preventing internal and external conflicts, justifying the restrictions

Practice of national courts before the preliminary ruling

- Article 4 (1) of Directive Directive 2004/38/EC
 - ➡ „Without prejudice to the provisions on travel documents applicable to national border controls, **all Union citizens [including Romanian 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 [including Romania] to travel to another Member State.**”

The preliminary ruling 1

- Article 18 EC and Article 27 of Directive 2004/38/EC ... 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'

The preliminary ruling 2

- **But:** 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 (**proportionality**)
- It is for the national court to establish whether that is so in the case before it.

Evaluation 1

- Still a real problem, but after the accession illegal residence
- EU-citizenship
 - referred as a new status of Romanian citizens, mandatory to be respected by the Romanian state (executive and judiciary)
- Restricting the free movement: legal, but strictly conditioned

Evaluation 2

- There is no definition for public policy and public security
- Member States essentially retain the freedom to determine the requirements of public policy and public security in accordance with their national needs
 - Those requirements must be interpreted strictly

Evaluation 3

- Repatriation: not enough



- **23 July 2008:** Tribunalul Dambovită refused applying restriction measures, because the conditions were not met