Roland Rutili v. Minister of the Interior

(Case 36/75)

Before the Court of Justice of the European Communities

ECJ

(The President, Judge R. Lecourt; Judges H. Kutscher, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sorensen and Lord Mackenzie Stuart). M. Henry Mayras, Advocate General.

28 October 1975.

Reference from the Tribunal Administratif of Paris under Article 177 EEC.

Community law and national law. Directives. Self-executing effect.

The effect of the provisions in Directive 64/221 concerning limitations on freedom of movement of employees on grounds of public policy is to impose duties on member-States and it is, accordingly, for the courts to give the rules of Community law which may be pleaded before them precedence over the provisions of national law if legislative measures adopted by a member-State in order to limit within its territory freedom of movement or residence for nationals of other member-States prove to be incompatible with any of those duties. [16]

Community law and national law. Administrative decisions.

Inasmuch as the object of provisions of the EEC Treaty and of secondary EEC legislation is to regulate the situation of individuals and to ensure their protection, it is also for the national courts to examine whether national individual administrative decisions are compatible with the relevant provisions of Community law. 'Community law' for this purpose may include provisions in directives. [17]-[18].

Aliens. Freedom of movement. Restrictions on grounds of public policy.

The expression 'subject to limitations justified on grounds of public policy' in

Article 48 EEC relates not only to legislative provisions adopted by a member-State to limit within its territory freedom of movement and residence for nationals of other member-States but also to individual administrative decisions applying such legislation. [21].

Aliens. Freedom of movement. 'Public policy'.

The concept of public policy (*ordre public*) must, in the Community context and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for employees, be interpreted strictly, and*141 its scope cannot be determined unilaterally by a member-State without being subject to control by the institutions of the Community. Accordingly restrictions on freedom of entry into and movement within a member-State may only be imposed if the alien's presence or conduct constitutes a genuine and sufficiently serious threat to *ordre public*. [27]-[28]

Human rights. Aliens. Freedom of movement. 'Public policy'.

Taken as a whole, the limitations on the right of member-States to restrict the freedom of entry, residence and movement within their territory of Community nationals which are found in Articles 2 and 3 of Directive 64/221 and Article 8 of Regulation 1612/68 are a specific manifestation of the more general principle, contained in Articles 8, 9, 10 and 11 of the European Convention on Human Rights and Article 2 of its Protocol 4, which provide in identical terms that no restrictions in the interests of national security or public safety shall be placed on those rights other than such as are necessary for the protection of those interests 'in a democratic society'. [32]

Administrative procedure. Right of appeal.

Any person enjoying the protection of the procedural provisions of Directive 64/221 must be entitled to the double safeguard of (a) notification to him of the grounds on which a measure restrictive of his free movement has been adopted and (b) the availability of a right of appeal. Consequently, the authorities, when notifying an individual of a restrictive measure taken against him, must give him a precise and comprehensive statement of the grounds for the measure, so as to enable him to take effective steps to prepare his defence. [37] & [39]

Aliens. Freedom of movement. National treatment.

A member-State may not, in the case of a national of another member-State covered by the provisions of the EEC Treaty, impose prohibitions on residence which are territorially limited except in circumstances in which such prohibitions may be imposed on its own nationals. [50]
The Court interpreted the phrase 'subject to limitations justified on grounds of

public policy' in Article 48 EEC.

Representation

Marcel Manville, of the Paris Bar, for the plaintiff.
Jean-Claude Seche, legal adviser to the E.C. Commission, for the Commission as amicus curiae.

Amicus briefs were also submitted by the French and Italian Governments.

The following cases were referred to by the Advocate General in his opinion:
1. Van Duyn v. Home Office (41/74), 4 December 1974: [1975] 1 C.M.L.R. 1, [1974] E.C.R. 1337.
*142 2. Bonsignore v. Oberstadtdirektor of the City of Cologne (67/74), 26 February 1975: [1975] 1 C.M.L.R. 472, [1975] E.C.R. 297.
3. Re French Merchant Seamen: E.C. Commission v. France (167/73), 4 April 1974: [1974] 2 C.M.L.R. 216, [1974] E.C.R. 359.

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Facts

Mr. Roland Rutili, of Italian nationality, was born on 27 April 1940 in Loudun (Vienne), and has been resident in France since his birth; he is married to a Frenchwoman and was, until 1968, the holder or a privileged resident's permit and domiciled at Audun-le-Tiche (in the department of Meurthe-et-Moselle), where he worked and engaged in trade union activities.
On 12 August 1968, the Ministry for the Interior made a deportation order against him, and on 19 September 1968 an order was issued requiring him to reside in the department of Puy-de-Dome. By orders of 19 November 1968 the Minister for the Interior revoked the deportation and residence orders affecting Mr. Rutili and, on the same date, informed the Prefect of the Moselle of his decision to prohibit Mr. Rutili from residing in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges.
On 17 January 1970 Mr. Rutili applied for the grant of a residence permit for a national of a member-State of the EEC. On 9 July 1970 he appealed to the Tribunal Administratif, Paris, against the implied decision refusing him this document. On 23 October 1970, the Prefect of Police, acting on instructions given by the Minister for the Interior on 17 July, granted Mr. Rutili a residence permit for a national of a member-State of the EEC, which was valid until 22 October 1975 but subject to a prohibition on residence in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges. On 16 December 1970, Mr. Rutili brought proceedings before the Tribunal Administratif, Paris, for annulment

of the decision limiting the territorial validity of his residence permit.
During the proceedings before the Tribunal Administratif, it became apparent that Mr. Rutili's presence in the departments of Lorraine was considered by the Minister for the Interior to be 'likely to disturb public policy' and that there were complaints against him in respect of certain activities (the truth of which is, however, contested) which are alleged to consist, in essence, in political actions during the parliamentary elections in March 1967 and the events of*143 May and June 1968 and in his participation in a demonstration during the celebrations on 14 July 1968 at Audun-le-Tiche.
By judgment of 16 December 1974, the Tribunal Administratif, Paris, decided to stay proceedings under Article 177 of the EEC Treaty until the Court of Justice had given a preliminary ruling on the following questions:
1. Does the expression, 'subject to limitations justified on grounds of public policy', employed in Article 48 of the Treaty establishing the EEC concern merely the legislative decisions which each member-State of the EEC has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other member-States or does it also concern individual decisions taken in application of such legislative decisions?
2. What is the precise meaning to be attributed to the word 'justified'?

Opinion of the Advocate General (M. Henri Mayras)

Introduction

The present case takes its place in the line of precedents introduced by the two recent judgments of this Court of 4 December 1974 in Van Duyn (41/74) [FN1] and of 26 February 1975 in Bonsignore (67/74). [FN2]

FN1 [1975] 1 C.M.L.R. 1, [1974] E.C.R. 1337.

FN2 [1975] 1 C.M.L.R. 472, [1975] E.C.R. 297.

It affords the Court an opportunity to define more clearly the outlines of the concept of public policy contained in Article 48 (3) of the Treaty establishing the European Economic Community.
The Tribunal Administratif, Paris, has referred two questions for a preliminary ruling and in considering them the Court will need to give an interpretation of this exception to the principle of freedom of movement for workers within the Community.
The first question asks whether the expression 'subject to limitations justified on grounds of public policy' concern only the legislative decisions which each member-State has decided to take in order to limit, on its territory, freedom of movement and of residence for nationals of other member-States.
The second, more fundamental, question is concerned with the actual significance of the concept of public policy; the French court is in fact asking what precise meaning is to be attributed to the word 'justified'.
Before beginning to examine these questions, let me recall the facts which gave

rise to the main action.
Roland Rutili, born in France of an Italian father and married to a Frenchwoman who is the mother of his three children, has, it appears, resided on French territory ever since his birth, but has nevertheless retained his nationality of origin *jure sanguinis*.
*144 He and his family resided in Audun-le-Tiche in the department of Meurthe-et-Moselle where he was in paid employment. He was the holder of a privileged resident's permit.
Some weeks after the events which occurred in France during May 1968, a deportation order was made against him. The decision was not carried into effect, in all likelihood because, very shortly afterwards, it was replaced by an order to reside in a department in central France, which measure was itself revoked in November 1968.
The documents on the file do not disclose what kind of residence permit was supplied to him after that period.
At all events his situation was finally settled on 23 October 1970 by the grant of a residence card of the type which, under the French Decree of 5 January 1970, is issued to foreigners who are nationals of member-States of the Community. This instrument was made in application of the Community decisions on the abolition of restrictions on movement and residence of such nationals and, in particular of Council Directive 68/360, which is concerned with workers and their families.
Under section 6 of the decree, these residence permits 'shall be valid throughout French territory unless otherwise decided in an individual case by the Minister for the Interior on grounds of public policy'.
This exception empowers the Minister to limit the territorial validity of the card issued to a national of a member-State by withholding the right of residence in certain administrative areas.
A restriction of this nature was imposed on Mr. Rutili. The card issued to him prohibited him from residing in the Lorraine departments of Moselle, Meurthe-et-Mossele, Meuse and Vosges.
Mr. Rutili brought an appeal against the Minister's decision before the Tribunal Administratif, Paris, on the ground that it was *ultra vires*. It was only through the statements submitted on behalf of the Minister during the written procedure that the plaintiff in the main action became aware of the grounds for the restrictive measure taken in his case. Three facts were alleged by the Administration:
--Mr. Rutili participated in the election campaign for the 1967 parliamentary elections;
--he took part in subversive activity which occurred during the events of May 1968;
--finally, he played an active part in a political demonstration during the national 14 July celebrations at Audun-le-Tiche in 1968.
Before the Tribunal Administratif, the applicant did not rely solely on submissions based on the illegality of the contested decision from the viewpoint of national law, both as regards the procedure followed by the administrative authorities, and as regards the accuracy in substance of the facts alleged against him and their legal definition. He also claimed the benefit of the personal rights conferred upon

him by*145 the provisions of the Treaty of Rome and the implementing measures issued thereunder guaranteeing freedom of movement and the right of residence for workers within the Community.
What are these provisions?
They have their origin in Article 48 of the Treaty, which sets forth the principle of freedom of movement for workers and is designed to ensure that it is being applied by the end of the transitional period. That Article imposes on the member-States a precise and unconditional obligation, the discharge of which requires no implementing legislation, either Community or national. It is directly applicable notwithstanding the reservation contained in paragraph (3), concerning limitations justified on grounds of public policy.
This was expressly decided in the judgment in the Van Duyn case which, on this point, confirmed the judgment in Re French Merchant Seamen: Commission v. French Republic of 4 April 1974 (167/73). [FN3]

FN3 [1974] 2 C.M.L.R. 216, [1974] E.C.R. 359.

Although, in fact, every member-State may avail itself of the reservation relating to public policy, the legality of its application is subject to review by the courts. In consequence, the fact that this exception, which is limited and must be strictly interpreted, exists, does not prevent individuals from asking the courts to uphold the rights conferred upon them by Article 48 of the Treaty, which national courts must protect.
Furthermore, the principle of freedom of movement has been expounded and elaborated by Council directives, some of which will apply in the present case.
In view of the information supplied during the oral procedure by the representative of the Commission, among those decisions the following should be borne in mind.
The first is Directive 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.
That instrument will be familiar to you because its interpretation claimed your attention when you were considering the Van Duyn and Bonsignore cases.
Within its ambit come not only the employed workers referred to in Article 48 but also industrialists, traders, farmers and members of the professions covered by Article 52 on the right of establishment. Above all, Article 3 (1) of the Directive will call for our attention today. It provides as follows: 'Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.' This provision, which this Court has recognised as having direct effect, limits the discretionary powers which national law normally confers upon the competent authorities responsible for control of aliens; it prohibits them from taking into account any grounds other than those based on personal conduct.
*146 This provision is conclusive enough in itself to answer the first question referred by the Tribunal Administratif, Paris.
Articles 6, 8 and 9 of the same directive also need to be considered inasmuch as

the administrative procedure whereby, in a member-State, measures restricting freedom of movement and residence may be adopted affects the legality of such measures in terms of Community law.
In fact, Article 6 imposes on the national authorities a duty to inform every person concerned of the grounds of public policy on which the decision in his case is based, unless it is contrary to the interests of the security of the State.
Secondly, under Articles 8 and 9 of the directive, the legal guarantees to which these measures must be subject constitute an essential factor in the appraisal of the use, whether justified or not, which the national authorities are called upon to make of the reservation relating to public policy. In fact, in order to make effective use of the personal rights conferred on them by Article 48 of the Treaty, those concerned must be enabled to make effective use of their means of defence before the administration has taken a restrictive decision in their case.
Finally, directives have been adopted specifically concerning only the movement and residence of workers of the member-States and their families within the Community. In view of the development which characterised the gradual abolition of restrictions on freedom of movement and the right of residence on the territory of member-States, it was natural for the Council to proceed by progressive stages in accordance with the provisions of Article 49 of the Treaty. The first directive of 16 August 1961 was accordingly replaced by that of 25 March 1964 (No. 64/240) which in turn was replaced by Directive 68/360 of 15 October 1968, which applied at the time when Mr. Rutili was issued with the residence permit of a national of a member-State and is, moreover, still in force. One of the provisions of this directive has a very special relevance to the answer which must be given to the second question from the national court. I am referring to Article 6 (1) (a), under which the residence permit (of a national of a member-State of the Community) 'must be valid throughout the territory of the member-State which issued it'.
Inasmuch as that provision contains no reference to the power of the national authorities to restrict the territorial validity of a residence permit, should not this be construed as prohibiting the authorities in the member-States from laying down a restriction of this kind? Or is not Article 48, standing alone, intended to ensure for Community workers freedom of movement on the territory of all member-States on the same conditions as for nationals?
These are the provisions the interpretation of which will enable a helpful answer to be given to the court making the reference.

*147 I. First question

With a view to ensuring that the two basic principles laid down in Article 48 are effectively realised, namely:
--freedom of movement for workers within the Community; and
--the abolition of any discrimination based on nationality between workers of the member-States as regards employment, remuneration and other conditions of work and employment,the authors of the Treaty empowered the Council, by means of Article 49, to use two different methods: directives or regulations.
The conditions regarding eligibility for employment and the conditions of work

and employment, whether as regards remuneration, dismissal or reinstatement, and the conditions relating to enjoyment of social and tax advantages on the basis of equality with nationals, have been laid down by means of regulations. At present they are contained in Council Regulation 1612/68 of 15 October 1968 the provisions of which are, under Article 189 of the Treaty, binding and directly applicable in each of the member-States without the intervention of any kind of domestic legislation.

On the other hand, the Council has worked by means of directives with regard to the gradual abolition of restrictions on the movement and residence of workers and also in harmonising particular measures for foreigners based on grounds of public policy.

The choice of method is understandable; the object was to harmonise and co-ordinate the legislative systems of the member-States in a field where, owing to the existence of the reservation in respect of public policy, they retained a certain degree of discretion which is, however, limited by Community rules.

But, as we have seen, use of this procedure in no way precludes the direct applicability of certain provisions in the directives in so far as they impose obligations on the States which are sufficiently precise, complete and unconditional.

Nevertheless, the national authorities took the view that they should adapt their national law and they adopted legislative measures to apply those directives. This gave rise in France to the Decree of 5 January 1970 governing the conditions of entry and residence on French territory of nationals of member-States of the European Economic Community who avail themselves of the free movement of persons and services.

But this does not deprive nationals, particularly workers, of the right to ask the national courts to uphold the individual rights conferred upon them by the provisions of Community directives which have direct effect.

This situation has two consequences:

1. In cases where member-States adopt legislative measures of general and impersonal application which are found to be incompatible with the obligations imposed upon them by the directives, it is for the national courts, if need be after referring the matter for a*148 preliminary ruling, to give those directly applicable Community rules precedence over the provisions of national law.

In this sense there can be no doubt that the expression 'subject to limitations justified on grounds of public policy', as clarified by the implementing provisions adopted in the form of directives, concern the legislative measures which each State may have taken to limit, within its territory, freedom of movement and residence for migrant workers.

2. But this expression also concerns any individual decision of such a nature as to infringe the personal rights of any of those workers, whether by way of a refusal of entry to the territory of the member-State or deportation measure, or finally, a restriction placed on his freedom of movement and on his choice of place of residence within that territory.

There is no doubt that this solution is the inescapable effect of Article 3 (1) of Directive 64/221, which implies not only that the national authorities must carry

out a special examination in each particular case of the personal conduct of the worker concerned but also requires that the only grounds of public policy relied upon to justify such a decision shall be based solely on that conduct, to the exclusion of all other considerations, whether economic (as mentioned in Article 2 (2) of the Directive or, as the Court ruled in its judgment in the Bonsignore case, of a 'general' preventive nature.
The reply to the first question must therefore be in the affirmative.

II. Second question

In approaching the examination of the second question the reasoning used by this Court in the Van Duyn case must be recalled in order to place the concept of public policy in the Community context.
This Court held that that concept, which was incorporated into Article 48 of the Treaty as a justification for derogating from the fundamental principle of freedom of movement for workers, must be interpreted strictly. Its scope cannot be determined unilaterally by each member-State without being subject to control by the institutions of the Community.
This ruling corresponds to the need for uniform application of Community law and implies that an attempt is being made to define the meaning of the concept according to that requirement.
Nevertheless, to repeat the words of the judgment in that case, 'the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within the limits imposed by the Treaty'.
In other words it is a question of reconciling two different requirements:
*149 --that of the Community which consists in achieving freedom of movement for workers;
--and that of member-States, which is concerned with the maintenance of public policy within their territory.
Since, in my view, it is impossible to provide an exclusively Community definition of the concept of public policy which is still in many respects a relative matter, it seems to me more realistic to enquire precisely what limits the Treaty and the directives adopted in implementation thereof have set on the powers of the national authorities.
Some arise from the formal and procedural conditions under which those powers must be exercised.
Others go to the root of the problem: once the authorities of member-States have permitted a worker to reside in the national territory, may they nevertheless restrict his right to move about freely? If they wish to restrict this freedom, are they not obliged to observe the principle of equal treatment with nationals?
As to the safeguards which must surround all decisions which restrict freedom of movement or the right of residence, Directive 64/221 contains, as I have said, an important provision which indirectly but clearly limits the powers of the national authorities in that it compels them to inform the person concerned of the grounds of public policy upon which the decision is based unless this is contrary to the

security of the State.
With this single reservation, all decisions of this kind, even if they amount to no more than a prohibition on residence in part of the national territory, must contain a precise statement of the grounds relied upon by the Administration. It would certainly not be sufficient for the statement of reasons to be confined to a simple general reference to grounds of public policy. The facts alleged against the worker relating to his personal conduct must be clearly specified. It is also essential for the person concerned to be informed of these facts before the decision is put into effect, in other words, at the latest when it is communicated to him.
Moreover, although Articles 7, 8 and 9 of the directive refer only to the refusal to issue or renew a residence permit or to decisions ordering expulsion from the territory, in other words deportation, it appears to me, on the assumption at least that a measure containing a territorial limitation on the right of residence could be lawfully taken against a worker, that the requirement regarding notification of the facts on which the measure is based is nevertheless necessary in order to enable the person concerned to prepare an effective defence.
This requirement is justified, both where the opinion of a consultative body which is independent of the authority competent to take the decision is necessary in the circumstances laid down in Article 9 of the directive, before the adoption of a decision restricting the right of entry or of residence and *a fortiori* if an appeal to a court of law which*150 is available to Community workers just as to nationals is lodged by the individual concerned.
The Administration cannot leave the plaintiff in ignorance of the grounds for the decision taken in his case and disclose them only during the proceedings before the court.
The object of these various provisions, the direct effect of which is in my view scarcely open to doubt, is to provide considerable safeguards for Community workers.
But we must examine the provisions in greater depth to inquire whether, in the light of the objectives of Article 48 of the Treaty, member-States may, on grounds of public policy, validly deny a Community national the right of residence in part of their territory.
As the Commission's representative explained, the Council considered that the right of residence must extend to the whole of the territory of each of those States. A survey of the directives issued in turn establishes that Article 4 of the Directive of 25 February 1964 (No. 64/220), which was the first enactment concerning movement and residence of self-employed persons in connection with establishment and the provision of services, alone empowered the national authorities to derogate, by means of individual decisions, from the principle that the residence permit is valid for the whole of the territory of the member-State which issued it. This provision was not re-enacted in Decision 73/148 which replaced the original directive.
It does not appear in either of the two Directives, 64/240 and 68/360, the second of which is still in force, on the abolition of restrictions on the movement and residence of workers.

Finally the directive on the co-ordination of special measures which are justified on grounds of public policy for foreign nationals refers only to refusals to issue or renew residence permits and to deportation.
Should one conclude from reading these enactments in conjunction, that no restriction affecting territorial validity may any longer be placed on residence permits issued to Community nationals?
I should be reluctant to give an affirmative answer because of the fact that each of these enactments contains a general statement of principle whereby member-States may derogate from the provisions of the directives only on grounds of public policy, public security or public health, a principle which may be taken to cover any restriction, whatever its scope or character, provided that it is lawfully based on the concept of public policy.
Moreover, since the national authorities are entitled to rely upon the reservation relating to public policy to refuse certain Community workers entry to their territory or to deport those who have been permitted to reside there, but whose personal conduct justifies their expulsion, would it not, therefore, be unreasonable to deprive member-States of the right to take, in the case of those workers, less drastic measures which do no more than prohibit residence in part of their territory?
*151 I shall not, accordingly, rely on the argument based on the successive wording of the directives, but on the considerations, which are far more important, which I feel able to deduce from the scheme of Article 48 and the objectives of the principle of freedom of movement.
It seems to me in fact that, once a worker has been permitted to enter the territory of a member-State, his right of residence is *inseparably* linked with that of being employed there and that the exercise of that right necessarily includes the right to establish his residence in any place in the territory of the host State under the same conditions as its nationals.
The principle of equality of treatment, which is the basic principle underlying Regulation 1612/68 as regards both eligibility for employment and conditions of work and employment, is in my view applicable to the right of residence.
Although the possibility remains that when, by his personal conduct, a Community worker has created or is liable to create a sufficiently serious disturbance of the peace, he can as *ultima ratio* be deported and while it is true that the rule against discrimination based on nationality does not, in that context, apply, since because of a general principle of international law, the States cannot deprive their own nationals of the right to live in their territory, this does not apply to a prohibition on residence.
I recognise of course that in the construction of Article 48 the condition relating to public policy inserted at the beginning of paragraph (3) of that Article is a justification for derogating both from the right of workers to ' accept offers of employment actually made' and from the right to move freely within the territory of member-States and to stay there for the purpose of employment. But, under Article 48 (2) the exercise of these rights, which are indivisible, precludes any discrimination based on nationality.
From this I conclude that a measure prohibiting residence in part of the territory

may only be taken in any member-State against a worker who is a national of another member-State in circumstances in which such a decision may be taken against a national.
In answer to questions put by the Court, the French Government stated that under section 44 of the Penal Code a prohibition on residence is an additional *penalty* which may be imposed only by the court which passes sentence. Apart from the very exceptional case of a state of emergency, for which provision is made under the Act of 3 April 1955, such a measure cannot be adopted by the administrative authority.
The rule of equality of treatment with nationals should therefore lead to the acknowledgement that Community workers who are permitted to reside in French territory may only be the subject of a prohibition on residence in certain places or departments as an additional penalty under criminal law when a state of emergency prevails.
*152 In my opinion you should rule that:
1. the expression 'limitations justified on grounds of public policy' used in Article 48 (3) of the Treaty establishing the European Economic Community concerns both individual decisions restricting freedom of movement and of residence for workers who are nationals of member-States and legislative provisions adopted in this field by the national authorities;
2. a decision the object of which is to prohibit such a worker from residing in part of the territory of the host State may, in view of the objectives of Article 48 of the Treaty and, above all, of the principle that there must be no discrimination based on nationality, be justified only if adopted under conditions relating to substance and procedure which could justify adoption of a measure prohibiting residence against a national of that State.

JUDGMENT

[1] By a decision of 16 December 1974, received at the Court Registry on 9 April 1975, the Tribunal Administratif, Paris, has referred to the Court two questions under Article 177 of the EEC Treaty concerning the interpretation of the reservation made in respect of public policy in Article 48 of the EEC Treaty in the light of the measures taken for implementation of that Article, especially Council Regulation 1612/68 of 15 October 1968 and Council Directive 68/360 of the same date, on freedom of movement for workers. [2] These questions were raised in the course of proceedings brought by an Italian national residing in the French Republic against a decision to grant him a residence permit for a national of a member-State of the EEC subject to a prohibition on residence in certain French departments. [3] The file of the Tribunal Administratif and the oral procedure before the Court have established that the plaintiff in the main action was, in 1968, the subject first of all of a deportation order and then of an order directing him to reside in a particular department. [4] On 23 October 1970 this measure was replaced by a prohibition on residence in four departments including the department in which the person concerned was habitually resident and where his family continues to reside. [5] It is also clear from the file on the

case and from information supplied to the Court that the reasons for the measures taken against the plaintiff in the main action were disclosed to him in general terms during the proceedings brought before the Tribunal Administratif on a date subsequent to the commencement of the action, namely, 16 December 1970. [6] From information given to the Tribunal Administratif by the Ministry for the Interior, which, however, is contested by the plaintiff in the main action, it transpires that his political and trade union activities during 1967 and 1968 are the subject of complaint and that his presence in the departments*153 covered by the decision is for this reason regarded as 'likely to disturb public policy'. [FN4] [7] In order to resolve the questions of Community law raised during the proceedings concerning the principles of freedom of movement and equality of treatment for workers of the member-States, the Tribunal Administratif referred two questions to the Court for the purpose of ascertaining the precise meaning of the reservation regarding public policy contained in Article 48 of the Treaty.

FN4 'De nature a troubler l'ordre public.' This is the context in which 'public policy' is not an adequate translation of the French 'ordre public', and perhaps something like 'public order' would be better.--Ed.

First question

[8] The first question asks whether the expression 'subject to limitations justified on grounds of public policy' in Article 48 of the Treaty concerns only the legislative decisions which each member-State has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other member-States or whether it also concerns individual decisions taken in application of such legislative provisions.
[9] Under Article 48 (1), freedom of movement for workers is to be secured within the Community. [10] Under Article 48 (2), such freedom of movement is to entail the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment. [11] Under Article 48 (3), it is to entail the right for workers to move freely within the territory of member-States, to stay there for the purpose of employment and to remain there when employment has ceased. [12] Subject to any special provisions in the Treaty, Article 7 thereof contains a general prohibition, within the field of application of the Treaty, on any discrimination on grounds of nationality. [13] Nevertheless, under Article 48 (3), freedom of movement for workers, in particular their freedom to move within the territory of member-States, may be restricted by limitations justified on grounds of public policy, public security or public health. [14] Various implementing measures have been taken for the purpose of putting the above-mentioned provisions into effect, in particular Regulation 1612/68 and Council Directive 68/360 on freedom of movement for workers. [15] The reservation concerning public policy was laid down in Council Directive 64/221 of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health. [16] The effect of all

these provisions, without exception, is to impose duties on member-States and it is, accordingly, for the courts to give the rules of Community law which may be pleaded before them precedence over the provisions of national law if legislative measures adopted by a member-State in order to limit within its territory freedom*154 of movement or residence for nationals of other member-States prove to be incompatible with any of those duties. [17] Inasmuch as the object of the provisions of the Treaty and of secondary legislation is to regulate the situation of individuals and to ensure their protection, it is also for the national courts to examine whether individual decisions are compatible with the relevant provisions of Community law. [18] This applies not only to the rules prohibiting discrimination and those concerning freedom of movement enshrined in Articles 7 and 48 of the Treaty and in Regulation 1612/68, but also to the provisions of Directive 64/221, which are intended both to define the scope of the reservation concerning public policy and to ensure certain minimal procedural safeguards for persons who are the subject of measures restricting their freedom of movement or their right of residence. [19] This conclusion is based in equal measure on due respect for the rights of the nationals of member-States, which are directly conferred by the Treaty and by Regulation 1612/68, and the express provision in Article 3 of Directive 64/221 which requires that measures taken on grounds of public policy or of public security 'shall be based exclusively on the personal conduct of the individual concerned'. [20] It is all the more necessary to adopt this view of the matter inasmuch as national legislation concerned with the protection of public policy and security usually reserves to the national authorities discretionary powers which might well escape all judicial review if the courts were unable to extend their consideration to individual decisions taken pursuant to the reservation contained in Article 48 (3) of the Treaty. [21] The reply to the question referred to the Court must therefore be that the expression 'subject to limitations justified on grounds of public policy' in Article 48 concerns not only the legislative provisions which each member-State has adopted to limit within its territory freedom of movement and residence for nationals of other member-States but concerns also individual decisions taken in application of such legislative provisions.

Second question

[22] The second question asks what is the precise meaning to be attributed to the word 'justified' in the phrase 'subject to limitations justified on grounds of public policy' in Article 48 (3) of the Treaty.
[23] In that provision, the words 'limitations justified' mean that only limitations which fulfil the requirements of the law, including those contained in Community law, are permissible with regard, in particular, to the right of nationals of member-States to freedom of movement and residence. [24] In this context, regard must be had both to the rules of substantive law and to the formal or procedural rules subject to which member-States exercise the powers reserved under Article 48 (3) in respect of public policy and public security. [25] In addition, consideration must be given to the particular issues raised in relation to Community law by the

nature of the measure complained of before*155 the Tribunal Administratif in that it consists in a prohibition on residence limited to part of the national territory.

Justification of measures adopted on grounds of public policy from the point of view of substantive law

[26] By virtue of the reservation contained in Article 48 (3), member-States continue to be, in principle, free to determine the requirements of public policy in the light of their national needs. [27] Nevertheless, the concept of public policy must, in the Community context and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, be interpreted strictly, so that its scope cannot be determined unilaterally by each member-State without being subject to control by the institutions of the Community. [28] Accordingly, restrictions cannot be imposed on the right of a national of any member-State to enter the territory of another member-State, to stay there and to move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy. [FN5] [29] In this connection Article 3 of Directive 64/221 imposes on member-States the duty to base their decision on the individual circumstances of any person under the protection of Community law and not on general considerations. [30] Moreover, Article 2 of the same directive provides that grounds of public policy shall not be put to improper use by being 'invoked to service economic ends'. [31] Nor, under Article 8 of Regulation 1612/68, which ensures equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, may the reservation relating to public policy be invoked on grounds arising from the exercise of those rights. [32] Taken as a whole, these limitations placed on the powers of member-States in respect of control of aliens are a specific manifestation of the more general principle, enshrined in Articles 8, 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all the member-States, and in Article 2 of Protocol 4 of the same Convention, signed in Strasbourg on 16 September 1963, which provide, in identical terms, that no restrictions in the interests of national security or public safety shall be placed on the rights secured by the above-quoted Articles other than such as are necessary for the protection of those interests 'in a democratic society',

FN5 'Constitue une menace reelle et suffisamment grave pour l'ordre public'. See fn. 4, *supra.*

Measures adopted on grounds of public policy: justification from the procedural point of view

[33] According to the third recital of the preamble to Directive 64/221, one of the aims which it pursues is that 'in each member-State, nationals of other member-States should have adequate legal*156 remedies available to them in respect of

the decisions of the administration' in respect of measures based on the protection of public policy. [34] Under Article 8 of the same directive, the person concerned shall, in respect of any decision affecting him, have 'the same legal remedies ... as are available to nationals of the State concerned in respect of acts of the administration'. [35] In default of this, the person concerned must, under Article 9, at the very least be able to exercise his right of defence before a competent authority which must not be the same as that which adopted the measure restricting his freedom. [36] Furthermore, Article 6 of the directive provides that the person concerned shall be informed of the grounds upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State. [37] It is clear from these provisions that any person enjoying the protection of the provisions quoted must be entitled to a double safeguard comprising notification to him of the grounds on which any restrictive measure has been adopted in his case and the availability of a right of appeal. [38] It is appropriate to state also that all steps must be taken by the member-States to ensure that this double safeguard is in fact available to anyone against whom a restrictive measure has been adopted. [39] In particular, this requirement means that the State concerned must, when notifying an individual of a restrictive measure adopted in his case, give him a precise and comprehensive statement of the grounds for the decision, to enable him to take effective steps to prepare his defence.

The justification for, in particular, a prohibition on residence in part of the national territory

[40] The questions put by the Tribunal Administratif were raised in connection with a measure prohibiting residence in a limited part of the national territory. [41] In reply to a question from the Court, the Government of the French Republic stated that such measures may be taken in the case of its own nationals either, in the case of certain criminal convictions, as an additional penalty, or following the declaration of a state of emergency. [42] The provisions enabling certain areas of the national territory to be prohibited to foreign nationals are, however, based on legislative instruments specifically concerning them. [43] In this connection, the Government of the French Republic draws attention to Article 4 of Council Directive 64/220 of 25 February 1964 on the abolition of restrictions on movement and residence within the Community for nationals of member-States with regard to establishment and the provision of services which reads: 'Subject to any measures taken in particular cases on grounds of public policy or public security, the right of residence shall be effective throughout the territory of the member-State concerned.' [44] It is clear that this provision is peculiar to the directive concerned and is exclusively applicable in respect of establishment and the provision of services and it has not been re-enacted in the directives*157 on freedom of movement for workers, in particular Directive 68/360, which is still in force, or, again, in Council Directive 73/148 of 21 May 1973 concerning establishment and the provision of services, which has meanwhile replaced Directive 64/220. [45] In the Commission's view, expressed during the oral

proceedings, the absence of this provision in the directives at present applicable to employed persons or to establishment and the provision of services, does not, however, mean that member-States have absolutely no power to impose, in respect of foreigners who are nationals of other member-States, prohibitions on residence limited to part of the territory.

[46] Right of entry into the territory of member-States and the right to stay there and to move freely within it is defined in the Treaty by reference to the whole territory of these States and not by reference to its internal subdivisions. [47] The reservation contained in Article 48 (3) concerning the protection of public policy has the same scope as the rights the exercise of which may, under that paragraph, be subject to limitations. [48] It follows that prohibitions on residence under the reservation inserted to this effect in Article 48 (3) may be imposed only in respect of the whole of the national territory. [49] On the other hand, in the case of partial prohibitions on residence, limited to certain areas of the territory, persons covered by Community law must, under Article 7 of the Treaty and within the field of application of that provision, be treated on a footing of equality with the nationals of the member-State concerned. [50] It follows that a member-State cannot, in the case of a national of another member-State covered by the provisions of the Treaty, impose prohibitions on residence which are territorially limited except in circumstances where such prohibitions may be imposed on its own nationals.

[51] The answer to the second question must, therefore, be that an appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of member-States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected. [52] These limitations and safeguards arise, in particular, from the duty imposed on member-States to base the measures adopted exclusively on the personal conduct of the individuals concerned, to refrain from adopting any measures in this respect which service ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies. [53] In particular, measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a member-State on nationals of other member-States who are subject to the provisions*158 of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

Costs

[54] The costs incurred by the Government of the French Republic, the Government of the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not

recoverable. [55] As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Tribunal Administratif, Paris, the decision on costs is a matter for that court.

Order

On those grounds, THE COURT, in answer to the questions referred to it by the Tribunal Administratif, Paris, by judgment of 16 December 1974,
HEREBY RULES:
1. The expression 'subject to limitations justified on grounds of public policy', in Article 48 concerns not only the legislative provisions adopted by each member-State to limit within its territory freedom of movement and residence for nationals of other member-States but concerns also individual decisions taken in application of such legislative provisions.
2. An appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of member-States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.
These limitations and safeguards arise, in particular, from the duty imposed on member-States to base the measures adopted exclusively on the personal conduct of the individuals concerned; to refrain from adopting any measures in this respect which service ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.
In particular, measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a member-State on nationals of other member-States who are subject to the provisions of the Treaty*159 except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

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