States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

Lecourt Kutscher Donner Mertens de Wilmars

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Delivered in open court in Luxembourg on 28 October 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 14 OCTOBER 1975 [1]

Mr President,
Members of the Court,

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* (Case 41/74 [1974] ECR 1337) and of 26 February 1975 in *Bonsignore* (Case 67/74 [1975] ECR 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'.

1 — Translated from the French.

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.*

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 No 68/360, which is concerned with workers and their families.

Under Article 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 Moselle, 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 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 *Commission* v *French Republic* of 4 April 1974 (Case 167/73 [1973] ECR 371).

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 No 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.

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 recognized 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.

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 characterized 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 No 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.

I — First question

With a view to ensuring that the two basic principles laid down in Article 48 are effectively realized, 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 Regulation (EEC) No 1612/68 of the Council 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 harmonizing particular measures for foreigners based on grounds of public policy.

The choice of method is understandable; the object was to harmonize 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 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, concerns 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 No 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 49 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:
— 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 inquire 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 No 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 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/EEC), which was the first enactment concerning movement and residence of self-employed persons in connexion 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 No 73/148 which replaced the original directive.

It does not appear in either of the two Directives, No 64/240 and No 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?

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 No 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 recognize 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 as 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 Article 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 Law 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 or when a state of emergency prevails.

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.