JUDGMENT OF THE COURT

26 November 2002 *

In Case C-100/01,

REFERENCE to the Court under Article 234 EC by the Conseil d'État (France) for a preliminary ruling in the proceedings pending before that court between

Ministre de l'Intérieur

and

Aitor Oteiza Olazabal,

on the interpretation of Articles 6, 8a and 48 of the EC Treaty (now, after amendment, Articles 12 EC, 18 EC and 39 EC) and of Council Directive 64/221/EEC 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 (OJ, English Special Edition 1963-1964, p. 117),

* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet and R. Schintgen (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur), V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: A. Tizzano,

Registrar: M.-F. Contet, Administrator,

after considering the written observations submitted on behalf of:

— Mr Oteiza Olazabal, by D. Rouget, avocat,

— the French Government, by R. Abraham, G. de Bergues and C. Chevallier, acting as Agents,

— the Spanish Government, by the Abogacía del Estado,

— the Italian Government, by U. Leanza, acting as Agent, assisted by F. Quadri, avvocato dello Stato,

— the Commission of the European Communities, by D. Martin and C. O'Reilly, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Oteiza Olazabal, represented by D. Rouget, the French Government, represented by R. Abraham and C. Bergeot, acting as Agent, the Belgian Government, represented by A. Snoecx, acting as Agent, the Spanish Government, represented by the Abogacía del Estado, and the Commission, represented by D. Martin and C. O'Reilly, at the hearing on 15 January 2002,

after hearing the Opinion of the Advocate General at the sitting on 25 April 2002,

gives the following

Judgment

1 By a decision of 29 December 2000, received at the Court on 28 February 2001, the Conseil d'État (Council of State), France, referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Articles 6, 8a and 48 of the EC Treaty (now, after amendment, Articles 12 EC, 18 EC and 39 EC) and of Council Directive 64/221/EEC 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 (OJ, English Special Edition 1963-1964, p. 117)

2 That question was raised in proceedings between the French Minister for the Interior and Mr Oteiza Olazabal, a Spanish national, concerning the legality of measures limiting the latter's right of residence to a part of French territory.

Legal background

Community law

3 The first paragraph of Article 6 of the Treaty provides:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

4 Article 8a(1) of the Treaty provides:

'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.'

5 Under Article 48 of the Treaty:

'1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest.

2. Such freedom of movement shall entail 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.

3. It shall entail the right, subject to limitations justified on grounds of public policy (*ordre public*), public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

...'

6 Article 2(1) of Directive 64/221 provides:

'This Directive relates to all measures concerning entry into their territory, issue or renewal of residence permits, or expulsion from their territory, taken by Member States on grounds of public policy, public security or public health.'

7 Article 3(1) and (2) of Directive 64/221 provide:

'1. Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.

2. Previous criminal convictions shall not in themselves constitute grounds for the taking of such measures.'

8 Pursuant to Article 6(1)(a) of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968(II), p. 485), the residence permit of a migrant worker 'must be valid throughout the territory of the Member State which issued it'.

9 According to Article 10 of Directive 68/360:

'Member States shall not derogate from the provisions of this Directive save on grounds of public policy, public security or public health.'

National law

10 Article 2 of Decree No 46-448 of 18 March 1946, applying Articles 8 and 36 of the Order of 2 November 1945 on the conditions for foreigners' entry into and residence in France, as amended by Decree No 93-1285 of 6 December 1993 (JORF, 8 December 1993, p. 17045, 'Decree No 46-448'), provides:

'Subject to the provisions of Article 1, foreigners may reside and move freely in the territory of metropolitan France.

The Minister for the Interior may, however, designate by decree certain départements in which foreigners may not, as from the date of publication of such decree, establish their place of residence without first obtaining the authorisation of the prefect of the place where they wish to go.

The residence permits of foreigners living in those départements shall carry a special entry making them valid for the département concerned.

Where, owing to his attitude or antecedents, a foreigner who does not hold a resident's card must be subject to special supervision, the Minister for the Interior may prohibit him from residing in one or more départements. The prefect of a département may, in the same circumstances, limit the territorial validity of the residence permit or document in lieu thereof held by the person concerned to the département or to one or more areas as he sees fit within the département. A reference to the decision of the Minister of the Interior and the prefect shall be entered in the residence permit of the person concerned.

The foreigners referred to in the paragraph above may not leave the area of validity of their residence permit without holding a safe conduct issued by the police superintendent or, failing the police superintendent, by the gendarmerie of their place of residence.

A foreigner who establishes his residence or stays in a territorial district in breach of the provisions of this article shall be punished by the penalties laid down for fifth-class petty offences.'

The dispute in the main proceedings

11 The order for reference and the documents before the Court show that Mr Oteiza Olazabal, a Spanish national of Basque origin, left Spain in July 1986 to enter France, where he applied for the status of refugee, which was refused.

12 On 23 April 1988, Mr Oteiza Olazabal was stopped and questioned in French territory in connection with proceedings initiated after the kidnapping of an industrialist in Bilbao (Spain), responsibility for which was claimed by ETA. On 8 July 1991, he was sentenced by the Tribunal de grande instance (Regional Court) of Paris (France), ruling under its criminal jurisdiction, to 18 months' imprisonment, of which eight months were suspended, and to a four-year ban on residence for conspiracy to disturb public order (*ordre public*) by intimidation or terror.

13 Relying on his status as a Community national, Mr Oteiza Olazabal applied to be issued with a resident's card. The French administrative authorities refused his application, while granting him provisional residence authorisation. He was also made the subject of a special supervision measure in accordance with Article 2 of Decree No 46-448, forbidding him from residing in nine départements. The validity of that measure expired in July 1995.

14 In 1996, Mr Olazabal, who had up to then resided in the département of Hauts-de-Seine (Ile de France region), decided to establish his residence in the département of Pyrénées-Atlantiques (Aquitaine region), bordering Spain, and more particularly bordering the autonomous community of the Basque Country.

15 In the light of police reports that Mr Oteiza Olazabal continued to maintain relations with ETA, the Minister for the Interior decided, by an order of 21 March 1996, adopted on the basis of Article 2 of Decree No 46-448, to prohibit him from residing in 31 départements in order to keep him away from the Spanish frontier. By an order of 25 June 1996, the prefect of Hauts-de-Seine prohibited him from leaving that département without authorisation.

16 Mr Oteiza Olazabal brought an action before the Tribunal administratif de Paris (Administrative Court, Paris) for annulment of those two orders, which that court upheld by a judgment of 7 July 1997. That judgment was confirmed by the Cour administrative d'appel de Paris (Administrative Court of Appeal, Paris) by a judgment of 18 February 1999.

17 Those courts took the view that the provisions of Articles 6, 8a and 48 of the Treaty, and those of Directive 64/221, as interpreted by the Court of Justice in its judgment in Case 36/75 *Rutili* [1975] ECR 1219, prevented such measures being taken against Mr Olazabal.

18 The Minister for the Interior appealed against the judgment of the Cour administrative d'appel to the Conseil d'État.

19 The Conseil d'État first noted that, whilst Article 8a of the Treaty recognises every citizen of the Union as having the right to move and reside freely within the territory of the Member States, it does so subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect. Similarly, the prohibition of discrimination on grounds of nationality is laid down by Article 6 of the Treaty only within the scope of the application of the Treaty and without prejudice to any special provisions contained therein. Moreover, Article 48 of the Treaty, while stating in paragraph (1) that freedom of movement for workers is assured within the Community and further stating in paragraph (3) that that freedom entails the right to accept offers of employment actually made and to move freely within the territory of Member States for that purpose, expressly reserves the case of limitations justified on grounds of public policy (*ordre public*), public security or public health.

20 The Conseil d'État then noted that, in accordance with the case-law of the Court of Justice, the reservation contained in Article 48(3) of the Treaty allows Member States, on grounds of public policy, to take measures prohibiting nationals of other Member States from entering national territory or removing them from it, which they cannot apply to their own nationals.

21 Finally, it held that the principle of proportionality required that measures taken to preserve public order must be appropriate to achieve the aim pursued and must not exceed the limits of what is necessary for that purpose. In that respect, it emphasised that a measure limiting the territorial validity of a residence permit was less stringent than a deportation decision.

22 Being uncertain, in the light of those considerations, as to the validity under Community law of a measure limiting the right of residence of a national of another Member State to part of the national territory, the Conseil d'État decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Do Articles 6, 8a and 48 of the Treaty of Rome, now Articles 12 EC, 18 EC and 39 EC, the principle of proportionality applicable in Community law and the provisions of secondary law adopted to implement the Treaty, in particular Directive 62/221/EEC of 25 February 1964, preclude a Member State from adopting, as against a national of another Member State to which the provisions of the Treaty apply, a measure for the maintenance of public order which, subject to judicial review, restricts that national's residence to a part of the national territory when interests of public order preclude him from residing in the remainder of the territory, or in such circumstances is the only measure restricting residence that can lawfully be taken as against that national a measure excluding him from the whole territory and adopted in accordance with national law?'

The question referred

23 As a preliminary, it needs to be ascertained which provisions of the Treaty apply to a case such as that in the main proceedings. In that respect, the observations submitted to the Court show that, during the whole of the period relevant for the purposes of the main proceedings, Mr Oteiza Olazabal worked as an employee in France.

24 In those circumstances, it appears that the case falls within the scope of Article 48 of the Treaty.

25 It is therefore not necessary to interpret Article 6 of the Treaty. That provision, which lays down the general principle of the prohibition of discrimination on grounds of nationality, applies independently only to situations governed by Community law in respect of which the Treaty lays down no specific prohibition of discrimination (see in particular Case C-131/96 *Mora Romero* [1997] ECR I-3659, paragraph 10).

26 Similarly, it should be noted that Article 8a of the Treaty, which sets out generally the right of every citizen of the Union to move and reside freely within the territory of the Member States, finds specific expression in Article 48 of the Treaty in relation to the free movement of workers. Since the facts with which the main proceedings are concerned fall within the scope of the latter provision, it is not necessary to rule on the interpretation of Article 8a of the Treaty (see, in relation to freedom of establishment, the judgment in Case C-193/94 *Skanavi and Chryssanthakopoulos* [1996] ECR I-929, paragraph 22).

27 Amongst other things, Article 48 of the Treaty guarantees to a national of a Member State the right to reside in another Member State in order to work there in an employed capacity. However, under Article 48(3), limitations may be imposed on that right in so far as they are justified on grounds of public policy (*ordre public*), public security or public health.

28 In the *Rutili* case, to which the national court refers, the Court was asked questions on the interpretation of the expression 'limitations justified on grounds of public policy, public security or public health' and gave a number of clarifications.

29 It replied to the questions referred, first, that 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 freedom of movement and residence for nationals of other Member States within its territory, but also concerns individual decisions taken pursuant to such legislative provisions.

30 Second, it held that an appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law which are designed to limit the discretion of Member States in that respect and to ensure that the rights of persons subject to restrictive measures under such legislation are protected.

31 The Court added that such 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 that respect which serve ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights, and, save where contrary to the interests of State security, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on

which the decision taken is based, enabling him to make effective use of legal remedies.

32 In particular, the Court ruled that 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 except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

33 In order to give a helpful answer to the referring court in this case, it is necessary to place the last dictum, which lies at the heart of the case in the main proceedings, in its context.

34 *Rutili* concerned the situation of an Italian national who had lived in France since birth and had been made subject in France to measures restricting his right of residence by reason of his political and trade union activities. He was accused of certain activities which, in essence, consisted of political actions at the time of the legislative elections of March 1967 and the events of May-June 1968, and of participating in a demonstration at the commemoration of 14 July 1968.

35 The defendant in the main proceedings, by contrast, has been sentenced in France to 18 months' imprisonment and a four-year ban on residence for conspiracy to disturb public order by intimidation or terror. The documents before the Court show that the administrative police measures taken against him, the legality of which forms the subject-matter of the main proceedings, were motivated by the fact that he formed part of an armed and organised group whose activity constitutes a threat to public order in French territory. Prevention of such activity may, moreover, be regarded as falling within the maintenance of public security.

36 Furthermore, it should be noted that, in *Rutili*, the national court had doubts as to whether a particular situation such as that of Mr Rutili, who had exercised trade union rights, allowed the adoption of a measure designed to preserve public order. In this case, by contrast, the referring court starts from the premiss that reasons of public order preclude the residence of the migrant worker in question on part of the territory, and that, without the possibility of imposing a measure prohibiting residence in that part of the territory, they could justify a measure prohibiting residence in the whole of the territory.

37 In those circumstances, it is necessary to examine whether Article 48 of the Treaty precludes a Member State from imposing on a migrant worker who is a national of another Member State administrative police measures limiting his right of residence to part of the national territory.

38 As the Advocate General has rightly pointed out in paragraph 29 of his opinion, it does not follow from the wording of Article 48(3) of the Treaty that limitations on the free movement of workers justified on grounds of public policy (*ordre public*) must always have the same territorial scope as rights conferred by that provision. Nor does secondary legislation preclude that interpretation. Even if Article 6(1)(a) of Directive 68/360 requires the residence card to be valid for the whole of the territory of the Member State which issues it, Article 10 of the same directive allows derogations to be made from that provision, particularly on grounds of public policy.

39 It should be remembered that the reservation provided for in Article 48(3) of the Treaty opens the possibility to Member States, faced with a genuine and sufficiently serious threat affecting a fundamental interest of society, to place restrictions on the free movement of workers (see, to that effect, Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 35, and Case C-363/89 *Roux* [1991] ECR I-273, paragraph 30).

40 The Court has held many times that the reservations contained in Article 48 of the Treaty and Article 56 of the EC Treaty (now, after amendment, Article 46 EC) permit Member States to adopt, with respect to nationals of other Member States, and in particular on the grounds of public policy, measures which they cannot apply to their own nationals, inasmuch as they have no authority to expel the latter from the territory or to deny them access thereto (see Case 41/74 *Van Duyn* [1974] ECR 1337, paragraphs 22 and 23, Joined Cases 115/81 and 116/81 *Adoui and Cornuaille* [1982] ECR 1665, paragraph 7, Joined Cases C-65/95 and C-111/95 *Shingara and Radiom* [1997] ECR I-3343, paragraph 28, and Case C-348/96 *Calfa* [1999] ECR I-11, paragraph 20).

41 In situations where nationals of other Member States are liable to banishment or prohibition of residence, they are also capable of being subject to less severe measures consisting of partial restrictions on their right of residence, justified on grounds of public policy, without it being necessary that identical measures be capable of being applied by the Member State in question to its own nationals.

42 It should, however, be remembered that a Member State cannot, by virtue of the public policy reservation contained in Articles 48 and 56 of the Treaty, adopt measures against a national of another Member State by reason of conduct which, when engaged in by nationals of the first Member State, does not give rise to punitive measures or other genuine and effective measures intended to combat that conduct (see, to that effect, *Adoui and Cornuaille*, paragraph 9).

43 It must also be remembered that a measure restricting one of the fundamental freedoms guaranteed by the Treaty may be justified only if it complies with the principle of proportionality. In that respect, such a measure must be appropriate for securing the attainment of the objective which it pursues and must not go beyond what is necessary in order to attain it (Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 37).

44 It is for the national courts to determine whether the measures taken in this case do in fact relate to individual conduct which constitutes a genuine and sufficiently serious threat to public order or public security, and whether they comply with the principle of proportionality.

45 The answer to the question referred must therefore be that neither Article 48 of the Treaty nor the provisions of secondary legislation which implement the freedom of movement for workers preclude a Member State from imposing, in relation to a migrant worker who is a national of another Member State, administrative police measures limiting that worker's right of residence to a part of the national territory, provided

— that such action is justified by reasons of public order or public security based on his individual conduct;

— that, by reason of their seriousness, those reasons could otherwise give rise only to a measure prohibiting him from residing in, or banishing him from, the whole of the national territory; and

— that the conduct which the Member State concerned wishes to prevent gives rise, in the case of its own nationals, to punitive measures or other genuine and effective measures designed to combat it.

Costs

46 The costs incurred by the French, Belgian, Spanish and Italian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Conseil d'État by decision of 29 December 2000, hereby rules:

Neither Article 48 of the EC Treaty (now, after amendment, Article 39 EC) nor the provisions of secondary legislation which implement the freedom of movement for workers preclude a Member State from imposing, in relation to a migrant worker who is a national of another Member State, administrative police measures limiting that worker's right of residence to a part of the national territory, provided

— **that such action is justified by reasons of public order or public security based on his individual conduct;**

— **that, by reason of their seriousness, those reasons could otherwise give rise only to a measure prohibiting him from residing in, or banishing him from, the whole of the national territory; and**

— **that the conduct which the Member State concerned wishes to prevent gives rise, in the case of its own nationals, to punitive measures or other genuine and effective measures designed to combat it.**

Rodríguez Iglesias	Puissochet	Wathelet
Schintgen	Gulmann	Edward
La Pergola	Jann	Skouris
Macken	Colneric	von Bahr
	Cunha Rodrigues	

Delivered in open court in Luxembourg on 26 November 2002.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President