policy and public security, must be interpreted to mean that previous criminal convictions are relevant only in so far as the circumstances which gave rise to them are evidence of personal conduct constituting a present threat to the requirements of public policy.

4. In so far as it may justify certain restrictions on the free movement of persons subject to Community law, recourse by a national authority to the concept of public policy presupposes, in any event, the existence, in addition to the perturbation to the social order which any infringement of the law involves, of a genuine and sufficiently serious threat affecting one of the fundamental interests of society.

In Case 30/77

Reference to the Court under Article 177 of the EEC Treaty by the Marlborough Street Magistrates' Court, London, for a preliminary ruling in the action pending before that court between

REGINA

and

PIERRE BOUCHEREAU

on the interpretation of Article 3 of Council Directive No 64/221/EEC 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 (OJ, English Special Edition 1963-1964, p. 117),

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The judgment referring the case to the Court and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. On 9 June 1976 a worker of French nationality was brought before the Marlborough Street Magistrates' Court on a charge of unlawful possession of drugs. On 7 January 1976 another London court had found the same person guilty for the first time of a similar offence.

Bouchereau pleaded guilty and the Court was minded to make a recommendation for deportation to the Secretary of State, pursuant to its powers under section 6 (1) of the Immigration Act 1971. Such a recommendation is not binding on the Secretary of State but is a precondition on the basis of which the Secretary of State is empowered to make a deportation order. In fact, most recommendations made by a court are implemented. However, under English law before a recommendation for deportation may be made written notice has to be served on the defendant informing him of rights attaching to patrial status. At the end of the proceedings which followed notification the parties to the main action raised certain questions of interpretation of Community law which led the Marlborough Street Court to ask the Court of Justice to give a preliminary ruling on the following questions:

'1. Whether a recommendation for deportation made by a national court of a Member State to the executive authority of that State (such recommendation being persuasive but not binding on the executive authority) constitutes a "measure" within the meaning of Article 3 (1) and (2) of Directive No 64/221/EEC.
2. Whether the wording of Article 3 (2) of Directive No 64/221/EEC, namely that previous criminal convictions shall not "in themselves" constitute grounds for the taking of measures based on public policy or public security means that previous criminal convictions are solely relevant in so far as they manifest a present or future propensity to act in a manner contrary to public policy or public security; alternatively, the meaning to be attached to the expression "in themselves" in Article 3 (2) of Directive No 64/221/EEC.
3. Whether the words "public policy" in Article 48 (3) of the Treaty establishing the European Economic Community, upon the grounds of which limitations to the rights granted by Article 48 must be justified, are to be interpreted:
   (a) as including reasons of State, even where no breach of the public peace or order is threatened; or
   (b) in a narrower sense in which is incorporated the concept of some threatened breach of public peace, order or security; or
   (c) in some other wider sense?'

As the court did not consider itself competent to grant legal aid in the proceedings for a preliminary ruling before the Court of Justice at Luxembourg, the defendant lodged an appeal against the order for reference of 20 November 1976.

The appeal was heard by the Divisional Court which, on 17 January 1977, ruled

that the power to grant legal aid also covered proceedings for a preliminary ruling before the Court of Justice.

The order was despatched on 28 February 1977 and was received at the Court Registry on 2 March 1977.

The Commission of the European Communities, the Government of the United Kingdom, the Metropolitan Police and the defendant submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations of the Commission

The Commission sets out, first of all, the provisions which, within the framework of Community law, attach limitations to the discretionary powers of Member States as regards measures justified on the grounds of public policy, public security and public health. Those provisions are Article 48 (3) of the EEC Treaty, Council Directive No 64/221/EEC of 25 February 1964 (OJ, English Special Edition 1963-1964, p. 117) and Council Directive No 72/194/EEC of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of the Directive of 25 February 1964 (OJ English Special Edition 1972 (II), p. 474).

The Commission examines the expression 'public policy', which corresponds in the English text of the provisions referred to above to the expressions 'ordre public', 'ordine pubblico', 'öffentliche Ordnung', 'openbare orde', 'offentlig orden' in the other versions of the same provisions, and considers that that concept is used in Article 48 of the EEC Treaty in a public law context and therefore may not be interpreted as granting an almost unlimited discretion. Furthermore, it is difficult to reconcile such an interpretation with 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 with Article 2 of Protocol No 4 on the same Convention, signed in Strasbourg on 16 September 1963, which provide that no restrictions shall be placed on the rights secured by the aforementioned articles other than such as are necessary for the protection of the interests of national security or public safety 'in a democratic society'. The case-law of the Court of Justice has also indicated that, in the context of the provisions in question, the concept of 'public policy' is one of greater precision than that which can, at first sight, be readily deduced from the English phrase 'public policy' (Case 41/74, *Van Duyn* v *Home Office,* judgment of 4 December 1974 [1974] 2 ECR 1337; Case 67/74, *Bonsignore* v *Oberstadtdirektor der Stadt Köln,* judgment of 26 February 1975 [1975] ECR 297; Case 36/75, *Rutili* v *Minister for the Interior,* judgment of 28 October 1975 [1975] ECR 1219; Case 48/75, *Royer,* judgment of 8 April 1976 [1976] ECR 497).

The first question

In the opinion of the Commission a strict interpretation of any derogation from a right conferred directly on any person by the EEC Treaty or by provisions adopted for its implementation rules out, first, a wide interpretation of the concept 'public policy', which would seriously diminish the rights of individuals and, secondly, a narrow over-literal interpretation of the

word 'measures', which would leave outside the scope of the directive repressive national practices capable of forming restrictions on the free movement of persons. A comparative and teleological interpretation of Article 3 (1) and (2) of Directive No 64/221/EEC confirms the wide interpretation which must be given to the word 'measures'. In fact, it is clear from Article 2 (1) and, more particularly, from the preamble to the directive and from Article 56 of the EEC Treaty that the word 'measures' (used in Article 2 (1) and in Article 3 (1) and (2) of the directive) must be understood to mean any provision laid down by law, regulation or administrative action, while at the same time in its judgment in the *Rutili* case the Court of Justice stated that the concept also includes 'individual decisions taken in application of such legislative provisions'. The concept 'measure of expulsion' thus includes not only the power of the executive to deport a national of another Member State but also all the steps in the exercise of such power and, in particular, a recommendation made by a court, where such recommendation is a pre-condition of the exercise of that power and can only be invalidated on appeal.

In reply to the first question, therefore, the Commission considers that a recommendation for deportation made by a national court of a Member State to the executive authority of that State, where such recommendation, although not binding on the executive authority, is a pre-condition to action by that authority, constitutes a 'measure' within the meaning of Article 3 (1) and (2) of Directive No 64/221/EEC.

The second question

From the emphasis placed in the judgment in the *Bonsignore* case (67/74) and in the opinion of the Advocate General in the *Royer* case (48/75 [1976] ECR 526) on the fact that measures taken in respect of aliens on grounds of public policy must be based on the personal conduct of the individual concerned, the Commission concludes that previous criminal convictions can only be relevant in so far as they provide supplementary proof that the personal conduct of an individual constitutes a grave and existing danger to public policy, in other words, that such personal conduct manifests a present or future propensity to act in a manner contrary to public policy or public security.

The third question

As regards public policy the Commission observes, first, that each Member State has a concept of public policy which is peculiar to it and that it has so far not been possible to define any Community concept.

However, the Commission refers to Directive No 64/221/EEC, which defines the scope of the concept of public policy, and notes that drug addiction appears in the exhaustive list of diseases which, under Article 4 of that directive, justify refusal of entry into a territory or refusal to issue a first residence permit (Article 4 (1)), on the ground that they are 'diseases and disabilities which might threaten public policy or public security' (Part B of the Annex). It emphasizes that under the terms of Article 4 (2) 'diseases or disabilities occurring after a first residence permit has been issued shall not justify refusal to renew the residence permit or expulsion from the territory'. In the opinion of the Commission it would be incompatible with the spirit, general scheme and wording of the directive if, for example in the case under reference, Article 3 could be invoked to set aside Article 4 (2). Furthermore, it emerges from the case-law of the Court and, in particular, from the aforementioned judgments in the *Van Duyn* and *Rutili* cases, as well as from the opinion of the Advocate-General in the *Bonsignore* case, that the concept of public policy in Articles 48 and 56 of the EEC Treaty is a 'restricted' concept

which excludes those areas of public policy in which the exercise of discretion by Member States is excluded by specific provisions of Community law, undisclosed reasons of state and those areas in which public policy which can be adequately protected by the application of criminal sanctions by the competent national courts to both the nationals of that State and to those of other Member States. On the other hand, the concept includes enacted, or otherwise clearly defined, measures which are necessary in a democratic society for the protection of public order or safety or for the protection of rights and freedom and where a substantial and present threat to public policy exists through the anti-social personal conduct of a particular individual.

Thus, the answer to the third question should be that the words 'public policy' in Article 48 (3) of the EEC Treaty are to be interpreted in the narrower sense in which is incorporated the concept that the personal conduct of the individual concerned constitutes a 'threat' of a serious breach of public peace, order or safety.

B — Observations of the Metropolitan Police

The Solicitor for the Metropolitan Police points out that although, in England and Wales, prosecutions are brought in the name of the Sovereign as the representative of the public, the institution and conduct of such prosecutions is usually undertaken by the police. Thus, in the present case, the proceedings are brought by the Commissioner of the Metropolitan Police.

The first question

A recommendation for deportation made by a court of the United Kingdom to the Secretary of State does not, it is submitted, constitute a 'measure' within the meaning of Articles 2 (1) and 3 (1) of Directive No 64/221/EEC. It is merely a notification to the Secretary of State that a particular foreign national who is capable of being deported has been convicted of an offence punishable with imprisonment. The fact that in the majority of cases such recommendation is normally followed by an order for deportation is no more relevant than the fact there are many cases in which no such order is made.

The second question

The Solicitor takes the view that there is nothing in Community legislation to support the proposition that previous criminal convictions are only relevant in so far as they manifest a present or future propensity to act in a manner contrary to public policy or public security. The purpose of Article 3 (2) of Directive No 64/221/EEC is to ensure that the facts or actions giving rise to the conviction are examined and that any subsequent decision which restricts the freedom of movement of the person concerned is only taken on the basis of the personal conduct resulting in the conviction. The argument that such personal conduct is only relevant in so far as it reveals a tendency to act in the future in a manner contrary to public policy or public security would result in preventing a Member State from deporting a worker who is a national of another Member State and who has been convicted of the most heinous breach of public policy or public security as long as it has not been shown that the individual concerned may commit a future breach of public policy or public security. That argument is *a fortiori* unacceptable in the light of the fact that a person who has not previously been convicted of a criminal offence but whose personal conduct nevertheless infringes public policy or public security may be deported without, in such a case, any need to consider the future danger which he represents.

The third question

The words 'public policy' in Article 48 (3) incorporate a concept wider than

public security. If that were not the case it would not have been necessary to include the words expressly. Although Member States cannot determine unilaterally the scope of public policy without being subject to control by the institutions of the Community (Case 41/74, *Van Duyn* v *Home Office* [1974] 2 ECR 1337), nevertheless they are not bound to restrict it to the concept of public security or to the criminal law but may give it a meaning approximate to the concept of public good.

C — Observations of the Government of the United Kingdom

The first question

The first question raises two points:

(a) Whether a judicial decision can constitute a 'measure' for the purposes of Article 3 (1) and (2) of Directive No 64/221/EEC;

(b) Whether a mere 'recommendation' by a national court can constitute a measure for those purposes.

The Government of the United Kingdom submits that:

(a) a judicial decision of a national court cannot constitute a 'measure' in the sense set out above; and

(b) at all events, a mere recommendation by a national court cannot constitute such a 'measure'.

As regards the first point, it appears from Directive No 64/221/EEC and, in particular, from the first recital thereto that the concept of 'measures ... taken by Member States' (Article 2 (1)) refers to provisions laid down by law, regulation or administrative action. There is nothing in the directive which suggests that the actions of the judiciary of a Member State are also included, in particular since the failure of a court of a Member State to give full effect to Article 3 (1) and (2) would render that State liable to proceedings for failure to fulfil an obligation under Article 169 of the EEC Treaty; this would call in question the independence of the judiciary, considered vital in all the Member States.

As regards the second point a distinction must be drawn between the executive role of the Government of the United Kingdom and the purely advisory role of the United Kingdom courts when they recommend deportation.

On this point the Government of the United Kingdom further states as follows:

— As the Secretary of State has full discretion in making the final decision, a mere judicial recommendation for deportation does not terminate the right to remain in the United Kingdom.

— In deciding the matter the Secretary of State must take account of the constraints imposed by Community law and if it appears that deportation would be contrary to that law the Secretary of State will not order it. In any case, his decision is subject to judicial review in the courts of the United Kingdom.

— Where appropriate, the Secretary of State takes into account considerations arising from matters not within the knowledge of the court making the recommendation, in particular, any change in the circumstances of the person concerned after the recommendation has been made. In this respect the Secretary of State has full powers to make fuller and more far-reaching inquiries than the courts.

— The Secretary of State is also in a position to make inquiries through diplomatic channels from the country of nationality of the person concerned.

The Government of the United Kingdom also emphasizes that a judicial recommendation is not a necessary prerequisite for the making of a deportation order, since the Secretary of State has power to make such an order on his own initiative if he deems deportation to be conducive to the public

good; a mere recommendation for deportation made by a court is simply an expression of the court's opinion as to the desirability of deporting the person concerned. It is but one of the factors, albeit an important one, which the Secretary of State takes into account in making his final decision.

As it has no binding effect such a recommendation cannot be a 'measure' for the purposes of Article 3 (1) and (2) of Directive No 64/221/EEC. That does not signify, however, that a national court may ignore the provisions of Article 3 (1) and (2). In the light of the above-mentioned judgments in the *Van Duyn* and *Bonsignore* cases there can be no doubt that the provisions of those articles are directly applicable and confer rights on nationals of Member States which national courts must protect.

The second question

The Government of the United Kingdom submits that the reference to 'previous criminal convictions ... in themselves' in Article 3 (2) means that a Member State cannot deport a national of another Member State merely on the ground that a criminal conviction exists against him. As regards the concept of 'personal conduct' in Article 3 (1) the judgments in the *Rutili* and *Bonsignore* cases have emphasized that a deportation order is only justified if the presence or conduct of the person concerned constitutes a real and sufficient threat to public policy or public security. The fact that the individual concerned has been found guilty of a crime is not, however, irrelevant to the proper consideration of his personal conduct. The nature and the gravity of the offence, the circumstances in which it was committed and how recently it has been committed, may be a guide to the future behaviour of the individual and, in particular, to the likelihood of his committing further offences. Although it is true that the Court has stated in its judgments in the *Royer* and *Watson* cases (judgments of 8 April 1976 in Case 48/75 [1976] ECR 497 and of 7 July 1976 in Case 118/75 [1976] ECR 1185) that there are some offences which are too trivial to justify a deportation order, it must also be true that if the individual has been convicted of a serious offence and the circumstances are such as to justify a fear that he may commit a like offence in the future, the Member State concerned may make a deportation order.

The Government of the United Kingdom observes that in its judgment in the *Bonsignore* case (Case 67/74) the Court of Justice stated that 'a deportation order may only be made for breaches of the peace and public order which might be committed by the individual affected' and points out that:

- In the United Kingdom breaches of the peace are exclusively criminal offences, whereas it is clear from the *Van Duyn* case that conduct may be contrary to public policy without being a crime;
- There may be circumstances in which the threats to public policy or public security are not committed by the person concerned but are caused or occasioned by his presence in the State.

The Government of the United Kingdom proposes that the formula used in the judgment in the *Rutili* case be adopted. In that case the Court stated that '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 sufficient threat to public policy'. The reference to 'previous criminal convictions ... in themselves' in Article 3 (1) connotes that a deportation order cannot be justified merely on the ground that a criminal conviction exists against the individual concerned but that it emerges from the concept of 'personal conduct' in Article 3 (1) that a deportation order is only

justified if the presence or conduct of the individual concerned constitutes a genuine and sufficient threat to public policy or public security.

The third question

The Government of the United Kingdom refers to the judgment in the *Van Duyn* case (41/74 [1974] 2 ECR 1351) and submits that in relation to matters such as drugs 'the particular circumstances ... might ... vary from one country to another', with the result that what constitutes a serious offence in one Member State may be regarded only as a minor offence in another. In that respect the Member States have an area of discretion when invoking the concept of public policy.

It further appears from the *Van Duyn* case that the concept of 'public policy' must be understood in the wide sense as including measures adopted to counteract activities which are merely socially harmful without amounting to an actual breach of public peace, order or security.

The Government of the United Kingdom submits however that that view does not justify recourse to the concept of public policy for every reason of state. Thus, the institutions of the Community will be ready to control measures taken by a Member State for an economic reason. It submits that greater precision in defining the concept of public policy is neither possible nor necessary, since each case must be looked at in the light of its own circumstances.

D — Observations submitted by Bouchereau

The first question

A recommendation for deportation, it is submitted, constitutes a 'measure' within the meaning of Article 3 (1) and (2) of Directive No. 64/221/EEC. In its judgment in the *Rutili* case ([1975] ECR 7) the Court of Justice stated (at p. 1230) that 'the expression "subject to limitations justified on grounds of public policy" in Article 48 ... concerns also individual decisions taken in application of such legislative provisions'.

A recommendation for deportation is a formal judicial step without which, in the present case, the executive would have no power to deport the defendant. It is therefore quite clearly a 'measure'.

The second question

Previous criminal convictions are solely relevant in so far as they manifest a present or future propensity to act in a manner contrary to public policy or public security. The criminal activity of an individual is one aspect of his personal conduct within the meaning of Article 3 (1) of Directive No 64/221/EEC, but if the fact of a criminal conviction, without any likelihood of present or future propensity to act again in a harmful manner, were sufficient to justify deportation the effect would be to use public policy for the punishment of criminals rather than for the protection of the State.

The defendant in the main action refers to the opinion of the Advocate General in the *Bonsignore* case ([1975] ECR at p. 311) and adopts his view that 'the national authorities should be able to order deportation only to the extent to which the personal conduct of the Community national who had committed an offence constituted or was likely to constitute in the future such a threat to national public policy that the presence of the individual concerned in the territory of the host country could no longer be tolerated'. Moreover, even if conclusions as to future conduct may be drawn from the commission of past acts, deportation is still only possible in so far as such an extreme measure is proportionate to the gravity of the conduct anticipated.

The third question

The defendant in the main action considers that the concept of public policy referred to in Article 48 (3) must be interpreted in a narrow sense in which is incorporated the concept of a threatened breach of public peace, order or security. That emerges from the case-law of the Court on the strict interpretation which must be given to restrictions on the principle of the free movement of persons.

The defendant, represented by Alan Newman of the London Bar, the Government of the United Kingdom, represented by its Agent, Peter Gibson, and the Commission of the European Communities represented by its Agent, Anthony McClellan, submitted oral observations at the hearing on 5 July 1977.

The Advocate General delivered his opinion at the hearing on 28 September 1977.

Decision

1 By order of 20 November 1976, received at the Court on 2 March 1977, the Marlborough Street Magistrates' Court, London, referred to the Court of Justice three questions concerning the interpretation of Article 48 of the Treaty and of certain provisions of Council Directive No 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 The questions arose within the context of proceedings against a French national who had been employed in the United Kingdom since May 1975 and who was found guilty in June 1976 of unlawful possession of drugs, which is an offence punishable under the Misuse of Drugs Act 1971.

3 On 7 January 1976 the defendant had pleaded guilty to an identical offence before another court and had been conditionally discharged for twelve months.

4 The Marlborough Street Magistrates' Court was minded to make a recommendation for deportation to the Secretary of State pursuant to its powers under section 6 (1) of the Immigration Act 1971 and the appropriate notice was served on the defendant, who maintained, however, that Article 48 of the EEC Treaty and the provisions of Directive No 64/221/EEC prevented such a recommendation from being made in that instance.

5 As the national court considered that the action raised questions concerning the interpretation of Community law it referred the matter to the Court of Justice under Article 177 of the Treaty.

The first question

6 The first question asks 'whether a recommendation for deportation made by a national court of a Member State to the executive authority of that State (such recommendation being persuasive but not binding on the executive authority) constitutes a "measure" within the meaning of Article 3 (1) and (2) of Directive No 64/221/EEC'.

7 That question seeks to discover whether a court which, under national legislation, has jurisdiction to recommend to the executive authority the deportation of a national of another Member State, such recommendation not being binding on that authority, must, when it does so, take into account the limitations resulting from the Treaty and from Directive No 64/221/EEC on the exercise of the powers which, in that area, are reserved to the Member States.

8 According to the observations submitted by the Government of the United Kingdom in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, the question referred to the Court raises two separate problems: whether a judicial decision can constitute a 'measure' for the purposes of the directive and, if the answer is in the affirmative, whether a mere 'recommendation' by a national court can constitute a measure for the purposes of that same directive.

(a) As regards the first point

9 Article 2 of Directive No 64/221/EEC states that the directive relates to all 'measures' (dispositions, Vorschriften, provvedimenti, bestemmelser, voorschriften) concerning entry into the 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.

10 Under paragraphs (1) and (2) of Article 3 of that directive, 'measures' (mesures, Maßnahmen, provvedimenti, forholdsregler, maatregelen) taken on grounds of

public policy or public security shall be based exclusively on the personal conduct of the individual concerned and previous criminal convictions shall not in themselves constitute grounds for the taking of such measures.

11 Although the Government of the United Kingdom declares that it accepts unreservedly that paragraphs (1) and (2) of Article 3 are directly applicable and confer rights on nationals of Member States to which the national courts must have regard, with the result that it is not open to a court of a Member State to ignore those provisions on any matter coming before the court to which they are relevant, it submits that a judicial decision of a national court cannot constitute a 'measure' within the meaning of the said Article 3.

12 On that point the Government observes that the fact that the term 'measures' is used in the English text in both Articles 2 and 3 shows that it is intended to have the same meaning in each case and that it emerges from the first recital in the preamble to the directive that when used in Article 2 the expression only refers to provisions laid down by law, regulation or administrative action, to the exclusion of actions of the judiciary.

13 A comparison of the different language versions of the provisions in question shows that with the exception of the Italian text all the other versions use different terms in each of the two articles, with the result that no legal consequences can be based on the terminology used.

14 The different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part.

15 By coordinating national rules on the control of aliens, to the extent to which they concern the nationals of other Member States, Directive No 64/221/EEC seeks to protect such nationals from any exercise of the powers resulting from the exception relating to limitations justified on grounds of public policy, public security or public health, which might go beyond the requirements justifying an exception to the basic principle of free movement of persons.

16 It is essential that at the different stages of the process which may result in the adoption of a decision to make a deportation order that protection may be

provided by the courts where they are involved in the adoption of such a decision.

17 It follows that the concept of 'measure' includes the action of a court which is required by the law to recommend in certain cases the deportation of a national of another Member State.

18 When making such a recommendation, therefore, such a court must ensure that the directive is correctly applied and must take account of the limits which it imposes on the action of the authorities in the Member States.

19 That finding is, moreover, in line with the point of view of the Government of the United Kingdom which 'is not suggesting that it would be open to a court of a Member State to ignore the provisions of Article 3 (1) and (2) on any matter coming before the court to which the articles are relevant' but on the contrary accepts 'that the provisions of those articles are directly applicable and confer rights on nationals of Member States to which the national courts must have regard'.

(b) As regards the second point

20 As regards the second aspect of the first question, the Government of the United Kingdom submits that a mere recommendation cannot constitute a 'measure' within the meaning of Article 3 (1) and (2) of Directive No 64/221/EEC, and that only the subsequent decision of the Secretary of State can amount to such a measure.

21 For the purposes of the directive, a 'measure' is any action which affects the right of persons coming within the field of application of Article 48 to enter and reside freely in the Member States under the same conditions as the nationals of the host State.

22 Within the context of the procedure laid down by section 3 (6) of the Immigration Act 1971, the recommendation referred to in the question raised by the national court constitutes a necessary step in the process of arriving at any decision to make a deportation order and is a necessary prerequisite for such a decision.

23 Moreover, within the context of that procedure, its effect is to make it possible to deprive the person concerned of his liberty and it is, in any event, one factor justifying a subsequent decision by the executive authority to make a deportation order.

24 Such a recommendation therefore affects the right of free movement and constitutes a measure within the meaning of Article 3 of the directive.

The second question

25 The second question asks 'whether the wording of Article 3 (2) of Directive No 64/221/EEC, namely that previous criminal convictions shall not 'in themselves' constitute grounds for the taking of measures based on public policy or public security means that previous criminal convictions are solely relevant in so far as they manifest a present or future propensity to act in a manner contrary to public policy or public security; alternatively, the meaning to be attached to the expression 'in themselves' in Article 3 (2) of Directive No 64/221/EEC'.

26 According to the terms of the order referring the case to the Court, that question seeks to discover whether, as the defendant maintained before the national court, 'previous criminal convictions are solely relevant in so far as they manifest a present or future intention to act in a manner contrary to public policy or public security' or, on the other hand, whether, as Counsel for the prosecution sought to argue, although 'the court cannot make a recommendation for deportation on grounds of public policy based on the fact alone of a previous conviction' it 'is entitled to take into account the past conduct of the defendant which resulted in the previous conviction'.

27 The terms of Article 3 (2) of the directive, which states that 'previous criminal convictions shall not in themselves constitute grounds for the taking of such measures' must be understood as requiring the national authorities to carry out a specific appraisal from the point of view of the interests inherent in protecting the requirements of public policy, which does not necessarily coincide with the appraisals which formed the basis of the criminal conviction.

28 The existence of a previous criminal conviction can, therefore, only be taken into account in so far as the circumstances which gave rise to that conviction

are evidence of personal conduct constituting a present threat to the requirements of public policy.

29 Although, in general, a finding that such a threat exists implies the existence in the individual concerned of a propensity to act in the same way in the future, it is possible that past conduct alone may constitute such a threat to the requirements of public policy.

30 It is for the authorities and, where appropriate, for the national courts, to consider that question in each individual case in the light of the particular legal position of persons subject to Community law and of the fundamental nature of the principle of the free movement of persons.

The third question

31 The third question asks whether the words 'public policy' in Article 48 (3) are to be interpreted as including reasons of state even where no breach of the public peace or order is threatened or in a narrower sense in which is incorporated the concept of some threatened breach of the public peace, order or security, or in some other wider sense.

32 Apart from the various questions of terminology, this question seeks to obtain a definition of the interpretation to be given to the concept of 'public policy' referred to in Article 48.

33 In its judgment of 4 December 1974 (Case 41/74, *Van Duyn* v *Home Office*, [1974] ECR 1337, at p. 1350) the Court emphasized that the concept of public policy in the context of the Community and where, in particular, it is used as a justification for derogating from the fundamental principle of freedom of movement for workers, must 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.

34 Nevertheless, it is stated in the same judgment that 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 and the provisions adopted for its implementation.

35 In so far as it may justify certain restrictions on the free movement of persons subject to Community law, recourse by a national authority to the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society.

Costs

36 The costs incurred by the Government of the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

37 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Marlborough Street Magistrates' Court by order of 20 November 1976, hereby rules:

(1) Any action affecting the right of persons coming within the field of application of Article 48 of the Treaty to enter and reside freely in the Member States under the same conditions as the nationals of the host State constitutes a 'measure' for the purposes of Article 3 (1) and (2) of Directive No 64/221/EEC. That concept includes the action of a court which is required by the law to recommend in certain cases the deportation of a national of another Member State, where such recommendation constitutes a necessary prerequisite for a decision to make a deportation order.

(2) Article 3 (2) of Directive No 64/221/EEC, according to which previous criminal convictions do not in themselves constitute grounds for the imposition of the restrictions on free movement authorized by Article 48 of the Treaty on grounds of public policy and public security, must be interpreted to mean that previous criminal convictions are relevant only in so far as the circumstances which gave rise to them are evidence of personal conduct constituting a present threat to the requirements of public policy.

(3) In so far as it may justify certain restrictions on the free movement of persons subject to Community law, recourse by a national authority to the concept of public policy presupposes, in any event, the existence, in addition to the perturbation to the social order which any infringement of the law involves, of a genuine and sufficiently serious threat affecting one of the fundamental interests of society.

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 27 October 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 28 SEPTEMBER 1977

My Lords,

In this case the Court is once more called upon to interpret, in specific respects, the provisions of Community law under which Member States are enabled to make exceptions 'on grounds of public policy, public security or public health' to the general principles of non-discrimination between nationals of Member States and, more particularly, of freedom of movement for workers within the Community, that are enshrined in the EEC Treaty. The permissible scope