cases where there is sufficient justification, of imposing restrictions on the exercise of a right derived directly from the Treaty. It does not therefore justify administrative measures requiring in a general way formalities at the frontier other than simply the production of a valid identity card or passport.

2. Article 3 (2) of Council Directive No 68/360 prohibiting Member States from demanding an entry visa or equivalent requirement for Community workers moving within the Community must be interpreted as meaning that the phrase 'entry visa or equivalent requirement' covers any formality for the purpose of granting leave to enter the territory of a Member State which is coupled with a passport or identity card check at the frontier, whatever may be the place or time at which that leave is granted and in whatever form it may be granted.

3. The issue of the special residence document provided for in Article 4 of Directive No 68/360 has only a declaratory effect and, for aliens to whom Article 48 of the EEC Treaty or parallel provisions give rights, it cannot be assimilated to a residence permit such as is prescribed for aliens in general. A Member State may not therefore require from a person enjoying the protection of Community law that he should possess a general residence permit instead of the document provided for by the combined provisions of Article 4 of and the Annex to Directive No 68/360, or impose penalties for the failure to obtain such a permit.

4. The failure on the part of a national of a Member State of the Community, to whom the rules on freedom of movement for workers apply, to obtain the special residence permit prescribed in Article 4 of Directive No 68/360 may not be punished by a recommendation for deportation or by measures which go as far as imprisonment.

In Case 157/79[4]

Reference to the Court under Article 177 of the EEC Treaty by the Pontypridd Magistrates' Court, Mid Glamorgan, Wales, for a preliminary ruling in the criminal proceedings pending before that court between

REGINA

and

STANISLAUS PIECK,

on the interpretation of Articles 7 and 48 of the EEC Treaty and of Council Directives No 68/360 of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 485) on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and No 64/221 of 25 February 1964 (Official Journal, English

Special Edition 1963-1964, p. 117) 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,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the 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 written procedure

1. Mr Pieck is a Netherlands national. As may be seen from his passport, he first entered the United Kingdom on 3 August 1973 and subsequently has resided there on several occasions. His passport was renewed at the Netherlands Consulate in London on 12 April 1976; on that occasion his address on the passport was changed from "Wellington, New Zealand" to "Cardiff, GB" Since entering the United Kingdom on 3 December 1977 Mr Pieck has been and is still employed as a printer at an undertaking known as "Graphic Prints" at Taffs Well near Cardiff.

2. Mr Pieck left the United Kingdom on 22 July 1978 and returned one week later, on 29 July. On each occasion on which he entered the United Kingdom the immigration authorities entered on his passport the date and place of entry together with the words "given leave to enter the United Kingdom for six months" in compliance with Rule 51 of

the Statement of Immigration Rules for Control on Entry (EEC and other Non-Commonwealth Nationals) (HC 81), adopted by the Home Secretary in pursuance of section 3 (2) of the Immigration Act 1971.

Rule 51 reads:

"When an EEC national is given leave to enter, no condition is to be imposed restricting his employment or occupation in the United Kingdom. Admission should normally be for a period of six months, except in the case of a returning resident or the holder of a valid residence permit".

3. The six months' leave of entry into the United Kingdom granted to Mr Pieck on 29 July 1978 expired on 21 January 1979. In March 1979 Mr Pieck voluntarily went to the South Wales Constabulary, explained that he had overstayed his leave and asked for advice. He was advised to send his passport to the Home Office together with an application for a further stay. Mr Pieck did nothing. On 3 May 1979 he was required by a police officer to produce his passport. He replied: "I was going to send it off but I forgot". On that date Mr Pieck was charged with an offence contrary to the Immigration Act 1971, section 24 (1) (b) (i), which reads:

"(24) (1): A person who is not a patrial shall be guilty of an offence punishable on summary conviction with a fine of not more than £ 200 or with imprisonment for not more than six months or with both, in any of the following cases . . .

(b) if, having only a limited leave to enter or remain in the United Kingdom he knowingly . . .

(i) remains beyond the time limited by the leave".

The charge against Mr Pieck reads as follows:

"For that you being a person who is not patrial and only having a limited leave to remain in the United Kingdom knowingly remained in the United Kingdom beyond 29 January 1979, the time limited by the leave."

At the same time a notice was served on Mr Pieck in pursuance of section 6 (2) of the Immigration Act 1971 to the effect that if he was convicted of the above offence the court would have power to recommend his deportation under section 3 (6) of the Immigration Act 1971.

4. On 12 July 1979 Mr Pieck appeared before the Pontypridd Magistrate's Court and, whilst not contesting the evidence adduced by the prosecution, pleaded not guilty to the charge. He relied on Article 48 (3) (b) and (c) of the EEC Treaty and the provisions of Directive No 68/360 to show that the initial grant of six months' leave to enter the United Kingdom and the requirement to extend it were incompatible with Community law.

By order of 5 September 1979 the Magistrates' Court asked the Court of Justice to give a preliminary ruling on the three following questions:

"1. What is the meaning of 'entry visa or equivalent document' in Article 3 (2) of Council Directive No 68/360/EEC of 15 October 1968?

2. Upon entry into a Member State by a EEC national, is the granting by that Member State of an initial leave

to remain for a period limited to six months consistent with the rights secured to such a national by Articles 7 and 48 of the Treaty establishing the EEC and the provisions of Council Directives No 64/221/EEC of 25 February 1964 and No 68/360/EEC of 15 October 1968?

3. (Only applicable if the answer to Question 2 is affirmative) Where such a national is given a six months' limited leave to remain in a Member State and being employed as a worker but having failed to apply for a resident's permit he overstays that leave, can such a breach of law be punished in that Member State by measures which include imprisonment and/or a recommendation for deportation?"

The order for reference was received at the Court Registry on 10 October 1979.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the Government of the United Kingdom, represented by Simon Brown, Barrister, and G. Dagtoglou, Treasury Solicitor's Department, acting as Agents, by Mr Pieck, represented by Alan Newman, Barrister, instructed by Messrs Spicketts, Solicitors, Pontypridd, and by the Commission of the European Communities, represented by its Legal Adviser Anthony McClellan, acting as Agent, assisted by Richard Plender, Barrister.

The Director of Public Prosecutions indicated that he endorsed the observations of the United Kingdom Government.

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

II — Summary of the written observations lodged with the Court

First question

The *Government of the United Kingdom* states that under Article 3 (2) of Directive No 68/360 "no entry visa or equivalent document may be demanded". In the United Kingdom's view a system involving an "entry visa or equivalent document" is a screening device to permit the receiving country, through its representatives abroad, to examine the credentials, intentions and arrangements of prospective entrants in order to reach a decision as to the intending traveller's acceptability before he embarks upon his journey. A visa is therefore never issued at the point of entry. Such a practice would defeat the very purpose of the visa system as the essential characteristic of a visa is to impose a prior condition on entry.

It emerges clearly from the provisions applicable that such a visa system, as practised by the United Kingdom, is not applicable to nationals of the EEC countries. The United Kingdom Government refers in particular to Rules 8 to 10 of the Statement of Immigration Rules for Control on Entry (EEC and other Non-Commonwealth Nationals) (HC 81), which define the foreign nationals for whom an "entry clearance"

is required ("visa nationals"), but do not include nationals of EEC countries. On the contrary, Rule 52 of the same rules provides as follows:

"An EEC national who wishes to enter the United Kingdom in order to take or seek employment, set up in business or work as a self-employed person is to be admitted without a work permit or other prior consent."

The phrase "no entry visa or equivalent document" in Article 3 (2) of Directive No 68/360 cannot include an endorsement containing the words "given leave to enter the United Kingdom for six months" stamped upon a passport at the time and place of entry in the United Kingdom such as the endorsement stamped upon Mr Pieck's passport on 29 July 1978. Such a stamp merely indicates that the entrant has duly been given leave to enter the United Kingdom for six months.

Nor does such leave to enter consistute a permission amounting to a visa. If it in fact constituted such permission, falling in this respect within the prohibition in Article 3 (2) of Directive No 68/360, nationals of Member States would have an absolute right to enter the territory of another Member State. Article 48 of the EEC Treaty and Directive No 64/221 make it clear that freedom of movement is subject to limitations.

The above submissions are further supported by the fact that the phrase "no entry visa or equivalent document may be demanded" is intended to prohibit the application of conditions incompatible with the rule in Article 3 (1) that the relevant entrant should be allowed to enter "simply on production of a valid identity card or passport". No such inconsistency arises under the United Kingdom procedures. Nationals of EEC countries are not required to produce anything other than a valid identity card or passport.

Mr Pieck explains the historical meanings of the words "visa" and "passport". Nowadays however the word "visa" connotes a stamp in a passport granting the bearer leave to enter or leave the country concerned upon such conditions as may be stated on the endorsement constituting the visa.

The two rectangular stamps — which moreover appear on the page headed by the word "VISA" — on page 14 of Mr Pieck's passport, constitute the formal grant of leave to enter the United Kingdom subject to a time limitation, namely six months' leave of entry. Mr Pieck thinks that it is irrelevant that the leave is given at the frontier immediately prior to entry and not by application at a consulate before the holder of the passport travels to the United Kingdom. On the other hand what is significant is that the leave is granted prior to the passport holder's passing through immigration control.

Even if the words "entry visa" are construed restrictively in such a way as to exclude the stamp on the passport, Mr Pieck takes the view that the words "equivalent document" are sufficiently wide in scope to cover it. It follows clearly from the French text of Article 3

(2) of Directive No 68/360 that that provision is not concerned with the formal nature of the words in question but with the obligation which is imposed. The fact that Mr Pieck, in common with all other EEC workers, is obliged to seek leave to enter the United Kingdom and, further, obliged to seek renewal of such leave after six months is an obligation equivalent to the imposition of an entry visa.

The *Commission* first emphasizes the limitations which Community law imposes on the powers of Member States with regard to aliens control as far as the nationals of other Member States are concerned. It observes that Article 3 (2) of Directive No 68/360 has as its object the elimination of a formality which may constitute a hindrance to the freedom of movement of workers. That objective appears not only from the place of the directive within the scheme of legislation implementing Article 48 of the EEC Treaty but also from its history and origins. The same prohibition is to be found in the precursors of Directive No 68/360, namely Article 2 (4) of Council Directive No 64/240 of 25 March 1964 (Journal Officiel 1964, page 981) and in Article 3 (2) and (3) of the Council Directive of 16 August 1961 (Journal Officiel 1961, page 1513).

According to the first recital in the preamble to the last-mentioned directive its purpose was

"l'élimination des procédures et pratiques administratives et des délais d'accès aux emplois disponibles faisant obstacle à la libération des mouvements des travailleurs . . ."

Considered in the light of that objective a document issued by an immigration officer at the port of entry is clearly capable of constituting an obstacle to a worker's right to enter a Member State and remain in it for the purpose of employment if it restricts the period for which the worker may remain in that State. A similar conclusion is suggested by the Courts's judgment in Case 118/75 *(Watson and Belmann,* [1976] ECR 1185) where, in connexion with a national law governing the duty to report the presence of aliens, the Court stated:

"In so far as national rules concerning the control of foreign nationals do not involve restrictions on the freedom of movement for persons and on the right conferred by the Treaty on persons protected by Community law, to enter and reside in the territories of the Member States, the application of such legislation, where it is based upon objective factors, cannot constitute 'discrimination on grounds of nationality' prohibited under Article 7 of the Treaty" (paragraph 22).

The Commission draws the conclusion that whereas Community law does not prohibit the act of endorsing a passport, it prohibits endorsements on passports or the issue of other documents to migrant workers purporting to constitute restrictions upon the rights conferred on such persons by the Treaty.

In diplomatic practice the term "entry visa", standing alone, is sometimes used

in a narrower sense to denote a document or stamp issued to an alien before he presents himself to an immigration officer as a prerequisite to his admission to a State. The word appears to have been used in this sense in a series of "visa abolition agreements" concluded between European States before the formation of the European Communities, [1] and in certain other international agreements. [2]

The Commission takes the view that even if the word "visa" had appeared alone, without any reference to other "equivalent documents", it might have been possible to construe it more generally so as to embrace also a written grant of leave to enter a Member State. It is related to definitions of the term "visa" referring to any entry or note in a passport, certificate or other official document, made by a competent authority to signify its authenticity or to recognize any specified consequence. [3]

Such a definition is broad enough to encompass a grant of limited leave to enter a State.

The expression "equivalent document" in the context of the directive, must be taken to denote those documents which, in common with visas, create or maintain restrictions upon freedom of movement for workers. It is in the nature of a visa to restrict such freedom, where it purports to constitute the authority for the bearer to enter a State or where it limits his stay. The position is the same with regard to any document, stamp or endorsement required for similar purposes on entry into a Member State.

Next in dealing with the role of national administrative documents the Commission draws a parallel between the free movement of persons and that of goods. National laws imposing a system of import or export licences or any other similar procedure, even though purely as a formality, constitute a hindrance in intra-Community trade to the free movement of goods (Joined Cases 51 to 54/71, *International Fruit Company* v *Produktschap Groenten en Fruit*, [1971] ECR 1107, paragraph 9). In the same way the imposition of immigration control upon workers falling within Article 48 of the Treaty, involving the grant of leave to enter a Member State, is incompatible with the free movement of persons. Hence, in the case of any beneficiary of the rights set out in the EEC Treaty, Member States no longer possess the authority to grant leave to enter their territories.

1 — For example the agrement of 5 February 1947 between the United Kingdom and Belgium (U.K.T.S.4 (1947), Cmd. 7038), superseded by the agreement of 1 April 1960 (U.K.T.S.40 (1960), Cmd. 1091).

2 — Cf. the European agreement on the abolition of visas for regugees, 1959, ETS No 31; the final act and agreement of the inter-governmental conference on the adoption of a travel document for refugees 1947, U.K.T.S.3 (1947), Cmd. 7033; paragraphs 8 to 10 of the schedule to the Geneva Convention on the status of refugees, 1951, U.K.T.S.39 (1954), Cmd. 9171; Article 5 of the Vienna Convention on consular relations 1963, U.K.T.S.14 (1973), Cmd. 5219.

3 — Cf. Sirey, Dictionnaire de la terminologie du droit international, 1960; Black's Law Dictionary, 1968; Jowitt's Dictionary of English Law, 1968; Luke T. Lee, Consular Law and Practice, 1961.

Consequently the expression "entry visa or equivalent document" in Article 3 (2) of Council Directive No 68/360 of 15 October 1968 means any document, endorsement, stamp or certificate however designated or described, issued to a national of a Member State in connexion with his entry into the territory of a Member State, either as a prerequisite to or as an authority for his admission, constituting to any degree and in any manner a limitation upon the freedom of movement conferred by the Treaty.

Second question

The *Government of the United Kingdom* points out that an endorsement "given leave to enter the United Kingdom for six months" has the sole effect of indicating to the entrant that he has duly been given leave to enter. It follows that such a person has a period of six months within which to obtain a residence permit, to which he will have an absolute right subject to considerations of public policy, public security and public health.

It follows from the facts of this case that Mr Pieck was not misled by the practice followed in the United Kingdom. However, the United Kingdom Government points out that the Statements of Immigration Rules, which are published and readily available documents, set out the true position clearly. Thus Rule 34 of the Statement of Immigration Rules for Control after Entry (EEC and other Non-Commonwealth Nationals) (HC 82) provides as follows:

"If a person admitted for six months enters employment he should be issued with a residence permit. The residence permit should be limited to the duration of the employment if this is expected to be less than 12 months. Otherwise the permit should be for five years. But a permit should not normally be granted if a person has not found employment at the end of the six months' period for which he was admitted or if during that time he has become a charge on public funds."

As regards the delay in issuing a residence permit, it cannot be contended that it must be issued at the time and point of entry. On the contrary, it is clearly implicit in Articles 4 (3), 6 (3) and 8 of Directive No 68/360 and Articles 5 (1) and (2) of Directive No 64/221 that delay is contemplated between entry and the subsequent acquisition of a residence permit by the entrant. In this respect a period of six months is not an unreasonably short time; it is even twice as long as the period allowed by most other Member States.

Finally the Government of the United Kingdom refers to the judgment of the Court in Case 8/77 (*Sagulo and Others,* [1977] ECR 1495, paragraphs 11 and 12) to confirm that the requirement for nationals of EEC countries to obtain residence permits contains no element of discrimination on grounds of nationality.

Mr Pieck observes that the right to the issue of a residence permit at the end of the period of six months as may be seen from Rule 34 of the Statement of

Immigration Rules for control after entry (HC 82) is by no means automatic. The fact that it is a matter of administrative discretion may be seen in particular from Rule 4, which is worded as follows:

"The succeeding paragraphs set out the main categories of people who may be given limited leave to enter and who may seek variation of their leave and the principles to be followed in dealing with their applications or in initiating any variation of their leave. In deciding these matters account is to be taken of all the relevant facts; the fact that the applicant satisfies the formal requirements of these rules for stay, or further stay, in the proposed capacity is not conclusive in his favour. It will, for example, be relevant whether the person has observed the time-limit and conditions subject to which he was admitted; whether in the light of his character, conduct or associations it is undesirable to permit him to remain; whether he represents a danger to national security; or whether, if allowed to remain for the period for which he wishes to stay, he might not be returnable to another country."

The lack of an automatic right to a residence permit and the obligation to seek an extension of the initial leave to remain, in breach of which a crime is committed under English law, is inconsistent with the rights conferred by the Treaty.

As regards the limited grant of six months' leave Mr Pieck takes the view that it is against the principle of freedom of movement for persons set out in Article 3 (c) of the Treaty as well as being inconsistent with the right to stay secured by Article 48 (3) (c) of the Treaty. An initial leave of entry of six months is an "administrative procedure" or "practice" within Article 49 (b) or an "other restriction" within Article 49 (c). It is contrary in particular to the obligation contained in Article 1 of Directive No 68/360, regarded in the light of Article 49 of the Treaty.

Mr Pieck contests the argument advanced by the prosecuting authority in the main action to the effect that the right of entry limited to six months was a necessary administrative provision to control EEC nationals inasmuch as in order to extend their stay or apply for a residence permit they would have to report to the immigration authorities. The only reporting requirement permitted by Community law is that outlined in Article 8 (2) of the directive. However, that provision applies only to workers in employment which is not expected to last more than three months and to certain seasonal workers.

Furthermore an initial leave to remain for a limited period, as well as the obligation to seek an extension of that leave, infringe Article 7 of the Treaty inasmuch as no such limitation applies to British subjects.

The *Commission* observes first of all that the right of nationals of a Member State to enter the territory of another Member State and reside there is a right conferred directly on any person falling within the scope of Community law by

the Treaty or as the case may be by the provisions adopted for its implementation. (Cf. the judgments in Case 48/75, *Royer,* [1976] ECR 511; in Case 118/75, *Watson and Belmann,* [1976] ECR 1197 and 1200 and in Case 8/77, *Sagulo and Others,* [1977] ECR 1503). The existence of these rights does not depend upon a grant by a Member State.

The Commission next sets out the conditions under which Member States are to issue residence permits in pursuance of Directive No 68/360. Articles 8 and 6 (3) lay down special rules for certain categories of workers, including those pursuing a temporary activity. In all other cases Article 6 (1) requires that the residence permit shall be valid for at least five years from the date of issue and shall be automatically renewable. The form of the residence permit is specified by Article 4 (2) and the annex to the directive.

The mandatory nature of the provisions referred to above excludes the power of Member States to require residence permits other than those specified in those provisions or leave to enter valid for a period of six months. Council Directive No 64/221 has no relevance to this matter.

The Commission concludes that, upon the entry into a Member State of an EEC national the grant of leave to remain for a period limited to six months is inconsistent with the rights secured to such a national by Articles 7 and 48 of the Treaty as well as by the provisions of Directive No 68/360.

Third question

Before answering this question the *United Kingdom Government* observes that on 3 May 1979 Mr Pieck was charged not merely with an offence contrary to section 24 of the Immigration Act 1971 but also with stealing a lady's handbag. On 12 July 1979 he pleaded guilty to the latter charge; he was placed on probation and ordered to pay compensation of £1.50 and costs of £15.

As regards the offence under Article 24 of the Immigration Act 1971 the United Kingdom Government does not contend that such a limited breach of law by a worker could be punished by "measures which include ... a recommendation for deportation", but it does contend that if such a breach of law is to be considered as a wilful refusal to register in intended defiance of the law it might exceptionally even in itself justify a sentence of imprisonment. The court might properly take account of it together with any other relevant misconduct in considering the penalty to be imposed.

Mr Pieck takes the view that an EEC worker who has been given a limited leave to remain is entitled as of right to an extension of that leave and to the issue of a residence permit. The right to reside is conferred directly by the Treaty and therefore independently of the issue of a residence permit. The mere failure to complete national formalities concerning access, movement and residence of aliens cannot constitute a

breach of the requirements of public policy or public security nor can it therefore justify a deportation order (judgment in Case 48/75, *Royer,* [1976] ECR 497, paragraphs 31 to 33 and 38 to 40). The same principle must apply to a recommendation for deportation (judgment in Case 30/77, *Regina* v *Bouchereau,* [1977] ECR 1999, paragraph 16).

In this case a sentence of imprisonment would be a penalty so disproportionate to the gravity of the infringement that it would constitute an obstacle to the free movement of persons (judgment in Case 118/75, *Watson and Belmann,* [1966] ECR 1185).

The *Commission* refers to the judgment in Case 8/77 (*Sagulo and Others,* [1977] ECR 1495), which emphasized that measures of constraint should be appropriate to the infringement of national provisions adopted in conformity with Directive No 68/360 (paragraph 6). Furthermore amongst the penalties attaching to a failure to comply with declaration and registration formalities deportation is certainly incompatible with the provisions of the Treaty (judgment in Case 118/75, *Watson and Belmann,* [1976] ECR 1185, paragraph 20).

Finally the Commission's proposed answer to Question 2, namely that leave to remain for a period of six months is incompatible with Community law implies that the answer to the third question must be in the negative.

III — Oral procedure

At the sitting on 8 May 1980, Mr Pieck, represented for the purposes of the oral procedure by Alan Newman, Barrister, the Government of the United Kingdom, represented for the purposes of the oral procedure by Simon Brown, Barrister, and the Commission of the European Communities, represented for the purposes of the oral procedure by Anthony McClellan, acting as Agent, and Richard Plender, Barrister, presented oral argument.

During the hearing the Government of the United Kingdom observed *inter alia* that contrary to Mr Pieck's statement, which referred exclusively to Rule 4 of the Statement of Immigration Rules for Control after Entry (EEC and other Non-Commonwealth Nationals) (HC 82), the United Kingdom authorities are not entitled to any discretion in respect of EEC nationals since Section II of the Rules, entitled "Nationals of EEC countries" provides in Rule 32:

"This section of the rules applies only to nationals of Belgium, Denmark, France, Germany, Italy, Luxembourg and the Netherlands and their families and, in relation to them, overrides the rules in Section I of Part A to the extent indicated in the following paragraphs. Otherwise Parts A and B apply to nationals of those countries as they do to the nationals of other countries."

The Advocate General delivered his opinion at the sitting on 4 June 1980.

Decision

1 By order of 5 September 1979, which was received at the Court on 15 October 1979, the Pontypridd Magistrates' Court under Article 177 of the EEC Treaty asked three questions on the interpretation of Articles 7 and 48 of the Treaty and of Council Directives No 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (Official Journal, English Special Edition 1963-1964, p. 117) and No 68/360 of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (Official Journal, English Special Edition 1968 (II), p. 485).

2 Criminal proceedings were brought in the national court against a Netherlands national, residing in Cardiff, Wales, and pursuing an activity as an employed person, who was charged that, being a person who was not a "patrial" (a British national having a right of abode in the United Kingdom) and having only been granted leave to enter the United Kingdom or to remain there for a limited period, knowingly remained beyond the time limited by the leave. The accused held no residence permit; when he last entered the territory of the United Kingdom, on 29 July 1978, an endorsement containing the words "given leave to enter the United Kingdom for six months" was stamped on his passort.

The first question

3 In its first question the court asks what is the meaning of "entry visa or equivalent document" in Article 3 (2) of Council Directive No 68/360.

4 The Court has already stated on several occasions that the right of nationals of a Member State to enter the territory of another Member State and reside there for the purposes intended by the Treaty is a right conferred directly by the Treaty or, as the case may be, by the provisions adopted for its implementation.

5 The aim of Directive No 68/360, as the recitals in the preamble thereto show, is to adopt measures for the abolition of restrictions which still exist concerning movement and residence within the Community, which conform to the rights and privileges accorded to nationals of Member States by Regulation No 1612/68 of the Council of 15 October 1968 in freedom of movement for workers within the Community. To this end the directive lays down the conditions on which nationals of Member States may exercise their right to leave their State of origin to take up activities as employed persons in the territory of another Member State and their right to enter the territory of that State and to reside there.

6 In this connexion Article 3 (1) of the directive provides that Member States shall allow the persons to whom Regulation No 1612/68 applies to enter their territory on production of a valid identity card or passport. Article 3 (2) contains the further provision that no entry visa or equivalent requirement may be demanded from these workers.

7 In the course of the procedure before the Court the British Government maintained that the phrase "entry visa" means exclusively a documentary clearance issued before the traveller arrives at the frontier in the form of an endorsement on his passport or of a separate document. On the contrary an edorsement stamped on a passport at the time of arrival giving leave to enter the territory may not be regarded as an entry visa or equivalent document.

8 This argument cannot be upheld. For the purpose of applying the directive, the object of which is to abolish restrictions on movement and residence for Community workers within the Community, the time at which clearance to enter the territory of a Member State has been given and indicated on a passport or by another document is immaterial. Furthermore the right of Community workers to enter the territory of a Member State which Community law confers may not be made subject to the issue of a clearance to this effect by the authorities of that Member State.

9 Admittedly the right of entry for the workers in question is not unlimited. Nevertheless the only restriction which Article 48 of the Treaty lays down concerning freedom of movement in the territory of Member States is that of limitations justified on grounds of public policy, public security or public health. This restriction must be regarded not as a condition precedent to the acquisition of the right of entry and residence but as providing the possibility, in individual cases where there is sufficient justification, of imposing restrictions on the exercise of a right derived directly from the Treaty. It does not therefore justify administrative measures requiring in a general way formalities at the frontier other than simply the production of a valid identity card or passport.

10 The answer to the first question should therefore be that Article 3 (2) of Directive No 68/360 prohibiting Member States from demanding an entry visa or equivalent requirement for Community workers moving within the Community must be interpreted as meaning that the phrase "entry visa or equivalent requirement" covers any formality for the purpose of granting leave to enter the territory of a Member State which is coupled with a passport or identity card check at the frontier, whatever may be the place or time at which that leave is granted and in whatever form it may be granted.

The second question

11 In its second question the national court seeks to ascertain whether, upon entry into a Member State by an EEC national, the granting by that Member State of an initial leave to remain for a period limited to six months is compatible with Articles 7 and 48 of the Treaty and with Council Directives No 64/221 and No 68/360.

12 Article 4 of Directive No 68/360 provides that Member States shall grant the right of residence in their territory to the persons referred to in the directive and goes on to say that as "proof" of this right a special residence permit shall be issued. This provision must interpreted in the light of the recitals in the preamble to the directive, according to which the rules applicable to residence should, as far as possible, bring the position of workers from other Member States into line with that of nationals.

13 The Court has already stated in its judgment of 14 July 1977 in Case 8/77 *Sagulo, Brenca and Bakhouche* [1977] ECR 1495 that the issue of a special residence document provided for in Article 4 above-mentioned has only a declaratory effect and that, for aliens to whom Article 48 of the Treaty or parallel provisions give rights, it cannot be assimilated to a residence permit such as is prescribed for aliens in general,' in connexion with the issue of which the national authorities have a discretion. The Court went on to say that a Member State may not therefore require from a person enjoying the protection of Community law that he should possess a general residence permit instead of the document provided for in Article 4 of Directive No 68/360.

14 It follows that the answer to the second question has already been given by the Court in the above-mentioned judgment.

The third question

15 The third question asks whether a national of a Member State of the Community who has overstayed the leave granted in the residence permit may be punished in that Member State by measures which include imprisonment and/or a recommendation for deportation.

16 In the above-mentioned judgment of 14 July 1977 the Court has already decided that the imposition of penalties or other coercive measures is ruled out in so far as a person protected by the provisions of Community law does not comply with national provisions which prescribe for such a person possession of a general residence permit instead of the document provided for in Directive No 68/360, since the national authorities should not impose penalties for disregard of a provision which is incompatible with Community law.

17 Having regard however to the circumstances of this case as stated by the national court and in the light of the answer just given to the second question, the third question may also be understood as raising the problem whether the failure on the part of a national of a Member State of the

Community, to whom the rules on freedom of movement for workers apply, to obtain the special residence permit prescribed in Article 4 of Directive No 68/360 may be punished by measures which include imprisonment or a recommendation for deportation.

18 Among the penalties attaching to a failure to comply with the formalities required as proof of the right of residence of a worker enjoying the protection of Community law, deportation is certainly incompatible with the provisions of the Treaty since, as the Court has already confirmed in other cases, such a measure negates the very right conferred and guaranteed by the Treaty.

19 As regards other penalties such as fines and imprisonment, whilst the national authorities are entitled to impose penalties in respect of failure to comply with the terms of provisions relating to residence permits which are comparable to those attaching to minor offences by nationals, they are not justified in imposing a penalty so disproportionate to the gravity of the infringement that it becomes an obstacle to the free movement of persons. This would be especially so if that penalty included imprisonment.

20 It follows that the failure on the part of a national of a Member State of the Community, to whom the rules on freedom of movement for workers apply, to obtain the special residence permit prescribed in Article 4 of Directive No 68/360 may not be punished by a recommendation for deportation or by measures which go as far as imprisonment.

Costs

21 The costs incurred by the Government of the United Kingdom and by the Commission of the European Communities which have submitted observations to the Court are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the questions referred to it by the Pontypridd Magistrates' Court, Mid Glamorgan, Wales, by order of 5 September 1979 hereby rules:

1. **Article 3 (2) of Council Directive No 68/360 of 15 October 1958 prohibiting Member States from demanding an entry visa or equivalent requirement from Community workers moving within the Community must be interpreted as meaning that the phrase "entry visa or equivalent requirement" covers any formality for the purpose of granting leave to enter the territory of a Member State which is coupled with a passport or identity card check at the frontier, whatever may be the place or time at which that leave is granted and in whatever form it may be granted.**

2. (a) **The issue of a special residence document provided for in Article 4 of Council Directive No 68/360 of 15 October 1968 has only a declaratory effect and for aliens to whom Article 48 of the Treaty or parallel provisions give rights, it cannot be assimilated to a residence permit such as is prescribed for aliens in general, in connexion with the issue of which the national authorities have a discretion.**

   (b) **A Member State may not require from a person enjoying the protection of Community law that he should possess a general residence permit instead of the document provided for in Article 4 (2) of Directive No 68/360 in conjunction with the Annex thereto.**

3. **The failure on the part of a national of a Member State of the Community, to whom the rules on freedom of movement for workers**

apply, to obtain the special residence permit prescribed in Article 4 of Directive No 68/360 may not be punished by a recommendation for deportation or by measures which go as far as imprisonment.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 3 July 1980.

The Registrar
by order

H. A. Rühl
Principal Administrator

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 4 JUNE 1980

My Lords,

This case comes before the Court by way of a reference for a preliminary ruling by a Stipendiary Magistrate sitting in the Pontypridd Magistrates Court, in Wales. It arises from the prosecution before that court of a Dutch worker, Mr Stanislaus Pieck, for an offence under United Kingdom immigration law and it raises questions as to the compatibility of that law with Community law.

The relevant provisions of Community law are, firstly, those of the EEC Treaty on freedom of movement for persons and in particular for workers, the terms of which are so familiar that I refrain from rehearsing them, and secondly the provisions of *Council Regulation (EEC) No 1612/68* "on freedom of movement for workers within the Community", of *Council Directive 68/360/EEC* "on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families", and of *Council Directive 64/221/EEC* "on the coordination of special measures concerning the