for its implementation, independently of any residence permit issued by the host State. The exception concerning the safeguard of public policy, public security and public health contained in Articles 48 (3) and 56 (1) of the Treaty 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.

2. Article 4 of Directive No 78/360 entails an obligation for Member States to issue a residence permit to any person who provides proof, by means of the appropriate documents, that he belongs to one of the categories set out in Article 1 of the directive.
3. The mere failure by a national of a Member State to comply with the formalities concerning the entry, movement and residence of aliens is not of such a nature as to constitute in itself conduct threatening public policy, and public security and cannot therefore, by itself, justify a measure ordering expulsion or temporary imprisonment for that purpose.
4. A decision ordering expulsion cannot be executed, save in cases of urgency which have been properly justified, against a person protected by Community law until the party concerned has been able to exhaust the remedies guaranteed by Articles 8 and 9 of Directive No 64/221.
5. Articles 53 and 62 of the Treaty prohibit the introduction by a Member State of new restrictions on the establishment of nationals of other Member States and the freedom to provide services which has in fact been attained and prevent the Member States from reverting to less liberal provisions or practices in so far as the liberalization measures already adopted constitute the implementation of obligations arising from the provisions and objectives of the Treaty.
6. The freedom left to the Member States by Article 189 as to the choice of forms and methods of implementation of directives does not affect their obligation to choose the most appropriate forms and methods to ensure the effectiveness of the directives.

In Case 48/75

Reference to the Court, pursuant to Article 177 of the EEC Treaty by the Tribunal de première instance of Liège for a preliminary ruling in the criminal proceedings pending before that court against

JEAN NOËL ROYER, resident in Lisieux (France)

on the interpretation of various provisions of Community law relating to freedom of movement for workers, to the right of establishment and the freedom to provide services, in particular Articles 48, 53, 56 and 62 of the EEC Treaty and Council Directives Nos 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 and 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.

THE COURT

composed of: R. Lecourt, President, H. Kutscher, President of Chamber, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen and Lord Mackenzie Stuart, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts giving rise to the case, the procedure and the observations submitted in accordance with Article 20 of the Protocol on the Statute of the Court of Justice may be summarized as follows:

I — Facts and written procedure

In pursuance of instructions from the Procureur Général of Liège concerning the suppression of gangsterism and the adoption of measures against international criminals, Mr Jean Noël Royer, a tradesman of French nationality, a resident of Lisieux (France), was, on 18 January 1972, 'detected' in Grâce-Hollogne since the month of November 1971 without having completed the administrative formalities of entry on the population register and that, in France, he had been prosecuted for various armed robberies committed between 1959 and 1966 and sentenced to two years' imprisonment for procuring.

On 24 January 1972, acting on the instructions from the general administration of the Sûreté, Aliens Department, the Belgian Police Judiciaire served on Royer an order ot leave the country on the ground that he was unlawfully resident there, and forbidding him to return.

In compliance with the order to leave the country, Royer went to Aachen where he remained until 10 February 1972.

The Belgian Police Judiciaire once again detected the presence of Royer in Grâce-Hollogne on 11 March 1972. The local Gendarmerie arrested him on 27 April 1972.

Royer was put under arrest for having disobeyed the order to leave the country and the prohibition on returning, and was handed over to the office of the Procureur Général and committed to prison on 28 April 1972.

On 3 May 1972 the Chambre du Conseil made an order that Royer should be set at liberty.

On 10 May 1972, the Chambre des Mises en Accusation heard the applications of the Public Prosecutor for the preventive detention to be continued and confirmed the order setting the accused at liberty.

Royer was set at liberty the same day but before leaving prison was served with a ministerial decree dated 5 May 1972 expelling him from the country, and an order to leave the country.

The expulsion order made by the Minister of Justice pursuant to Article 3 of the Law of 28 March 1952 on the control of aliens was based on the grounds that 'Royer's personal conduct shows his presence to be a danger to public policy ... and that he has not observed the conditions attached to the residence of aliens and he has no permit to establish himself in the Kindgdom.'

By a judgment of 6 November 1972, the Tribunal (Correctionnel) de première instance of Liège imposed on Royer a suspended sentence of imprisonment for one month and a fine of FB 3 000 for illegal residence in Belgium from November 1971 to 10 February 1972.

In 1973 Royer was again summoned and charged before the Tribunal de première instance of Liège for having, between 10 February and 27 April 1972, re-entered and resided in Belgium without having been authorized by the Minister of Justice in the manner determined by the Royal Decree of 21 December 1965 relating to conditions of entry, of residence and of establishment for aliens in Belgium.

Deciding that the case raised questions of the interpretation of various provisions of Community law on the freedom of movement for workers, on the right of establishment and on the freedom to provide services, the 11th Chamber of the Tribunal de première instance of Liège (tribunal correctionnel) in a judgment, the grounds of which were given at length, of 6 May 1975, decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

(1) Does a failure to comply with the national legal requirements laid down for controlling the exercise of the right based on the Treaty constitute in itself personal conduct capable of endangering public policy, public security or public health, within the meaning of Article 3 (1) of Directive No 64/221, in the light of which national laws must be interpreted?
Taking into account the effect to be given to the Treaty, the principle of the protection of basic rights in the application of Community law and the fact that this failure occurred in the exercise of a right, does such a failure in itself constitute a lawful ground for depriving an individual provisionally of his liberty?
Does an expulsion order adopted for this reason under the heading of unlawful residence constitute a measure of a general preventive nature or of a special preventive nature?

(2) Do the rights based on Article 48 et seq. of the Treaty vest directly in the individual, without any connexion with the organization and exercise of the national sovereignty of either the country of origin or the host country?

(3) Are the limitations provided in Article 48 et seq. inherent in the conceptual content of these rights or are they merely *external and fortuitous* factors of such a nature as to call in question the existence and exercise of a right which is complete in itself?

(4) Article 4 of Directive No 68/360/EEC provides that Member States shall *grant* the right of residence (within the meaning of the *Treaty)* to a national and the

members of his family where they are *able to* produce the permits and documents provided for (Article 4). Moreover, the Member States are obliged to simplify as far as possible the formalities and procedures necessary for obtaining the *documents* provided for in Article 8, which, according to Article 4 (2), *prove* the right of residence.

In these circumstances,

(a) Must the words *'able to'* be interpreted to mean in a position to bring evidence that they can produce the permits and documents provided for'?

(b) Does the right based on the Treaty exist independently of the document which proves it?

(c) Is not the host State therefore obliged, when a national of a Member State is within its territory, to request and assist him to obtain the document in question and is it entitled to take proceedings against such individual and deny him admittance without itself having complied with these preliminary obligations, if it is accepted in the answer to the first question that a failure to comply with the necessary formalities does not itself constitute personal conduct threatening public policy or public security, and that convictions or exclusions from the territory on this ground merely represent objectives of a general preventive nature?

(5) National courts are required to protect these rights. In these circumstances, do a decision to expel an individual and a decision to refuse to issue a residence or establishment permit only become definitive and take effect after rights of appeal before the national courts have been exhausted, or, at the cost of depriving Articles 48 et seq. of their proper effect, must the administrative measures be agreed to have provisional effect?

(6) If it is accepted that on one point or another of the Treaty the legislation of a Member State, as regards the rights created by the Treaty, was in advance of stages of the progressive implementation of the basic principles of the Community, does a return to practices and provisions which are less liberal but are nevertheless in line with a directive constitute a new restriction:

(a) as regards Articles 53 and 62 of the Treaty;

(b) as regards Article 4 (3) of Directive No 64/221?

(7) Article 53 of the Treaty prohibits the introduction of any new restrictions. Article 56 does not prejudice the applicability of national rules for the control of foreign nationals. Must not these provisions be coordinated with each other by a statement that any progress resulting from more liberal solutions, advancing more rapidly towards the implementation of the basic principles of the Treaty than is required by the directives, shall be irrevocable and, therefore, that all the guarantees which national legislation may have provided on the adoption of measures taken in implementation of the limitations imposed by Article 48 must be regarded as having been finally established?

(8) Article 53 of the Treaty prohibits the introduction of any new restrictions. Article 189 leaves to the Member States the choice of form and methods.

Must not these two provisions be brought into line by a statement that where progress has been achieved in a Member State as a result of procedures or methods which offer greater guarantees than are required in the directives, in particular through the free choice of the authority which is empowered to take the decision and the compulsory nature of prior consultation, such progress must be regarded as irreversible'

The judgment of the Tribunal de première instance of Liège was received at the Court Registry on 29 May 1975.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities on 29 July 1975.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided not to hold a preparatory inquiry.

II — Written observations submitted to the Court

The *Commission of the European Communities* feels that it would be useful, in order to identify the essential points of Community law raised by the case, to rearrange and to reformulate the questions referred as follows:

(1) Is the right of residence in the territory of a Member State for nationals of other Member States, who benefit from the principles of freedom of movement for workers and of the right of establishment, conferred directly by the Treaty and, where appropriate, by measures of secondary legislation for the implementation thereof, or only by the issue of a document drawn up the authorities of that State?

(2) Is this right a subjective right attached to the person in such a way that for its existence and exercise it is not dependent on the structure of the public authorities of the Member State of residence, particularly with regard to the supervision of the territory and the control of foreign nationals?

(3) Do the limitations on the right of residence admitted by Article 48 (3) and Article 56 of the EEC Treaty have the effect of restricting the acutal content of the right with the consequence that the State authority could make the exercise of the right subject to a proventive control designed to ascertain whether or not there is any ground which falls under these limitations or, on the contrary, are these limitations merely exceptions to a pre-existing complete right, and must reliance on them be justified in each individual case?

(4) (a) Does failure to comply with the administrative formalities for obtaining the permits or documents providing the right to residence in itself constitute personal conduct within the meaning of Article 3 (1) of Directive No 64/221 endangering or threatening public policy or public security thereby justifying an expulsion order?

(b) Does an expulsion order adopted for this reason constitute a measure of a general preventive nature prohibited by Community law or of a special preventive nature related to the personal conduct of the party concerned?

(c) If failure to comply with the above-mentioned administrative formalities is not a danger or a menace to public policy or to public security, is it a legitimate reason for taking away individual freedom, a fundamental human right which is part of the principles of Community law?

(5) Are the effects of a decision to refuse to grant a residence permit, and to expel a person before the issue of this permit, suspended, in the case of recourse to the national courts and then until the judicial remedies are exhausted, under the provisions of Articles 7, 8 and 9 of Directive No 64/221?

(6) Questions Nos 6, 7 and 8 formulated by the court making the order of reference.

(a) With regard to the origin and the nature of the right of residence, it should merely be stated that the free access to the territory of each Member State and

the right to reside there are the inseparable corollary of the right of access, within each Member State, to wage-earning posts or self-employed activities and to the exercise of these activities under the same conditions as the nationals of this State. This right of entry and of residence expressly set out for wage-earners by Article 48 (3) of the EEC Treaty is implied but none the less certain in Article 52 with regard to establishment. It is moreover confirmed by all the directives taken under Articles 49, 54 and 63 for the removal of restrictions on entry and residence. The right of residence is therefore a subjective right which the party concerned derives directly from Community law.

The right of residence clearly exists prior to all administrative formalities, in particular the issue of a document simply designed to prove the right and independently of these formalities.

Administrative control by the Member States of the presence of foreign nationals on their territory is certainly legitimate and even necessary to facilitate the exercise of the right of residence; the Community directives are intended to set out the details of this control and to lessen the formalities.

The present system with regard to the right of residence may be summarized as follows:

- Entry into a territory is as of right, subject to the mere presentation of a valid identity card or passport and any visa formalities are prohibited;
- The right of residence gives rise to the issue of a special permit enabling the party concerned easily to show his status as a privileged foreign national in that he is a national of a Member State;
- This permit must be valid for at least five years and is automatically renewable; it must be issued (or refused on the grounds of public policy, of public security or public health) within six months.

The documents thus issued in no way create rights: the right of establishment is immediately open to those entitled without any formalities or prior request not also imposed on nationals.

Therefore, the presence on the territory of a Member State, of a national of another Member State who establishes himself there to pursue an economic activity, whether wage-earning or self-employed, cannot be described as illegal residence on the grounds that the person concerned does not possess a document, certificate or other permit issued by the administrative authority of the country of establishmen. His residence must necessarily be legal by virtue of the Community legal system against which incompatible provisions of nationals law may not prevail.

(b) With regard to the effect on the nature of the right of residence of the limitations stipulated by Articles 48 (3) and 56 of the EEC Treaty it should be stated that they are a derogation from the fundamental principle of freedom of movement and that therefore the concepts of public policy and of public security, as justification of this derogation, must be strictly interpreted. Moreover, Directive No 64/221 of the Council of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on the grounds of public policy, public security or public health (OJ, English Special Edition, 1963 to 1964, p. 117) limits reliance on this reservation to cases where the personal conduct of the person concerned gives sufficient grounds.

Therefore the right of residence cannot be affected, as to its nature, by this reservation. It is complete and its exercise cannot depend on the suspensory condition that the authorities of the host state should first be satisfied that there exists no grounds for objection, but may only be prevented or interrupted by

the particular and justified reliance on the existence of such a ground of objection.

(c) In weighing up the failure to comply with the administrative formalities as against the requirement of personal conduct justifiying a measure of public policy, in particular expulsion from the territory and loss of freedom, it cannot be denied that the exception of public policy is a limited exception to be interpreted strictly and may therefore only be relied on if the conduct in question is of particular gravity and the Court of Justice is empowered to rule whether matters of the kind with which Royer is charged may legitimately be invoked by a Member State under this exception.

The mere offence of not having presented oneself to the local administration of one's place of residence for the purposes of registration and obtaining a residence card cannot be used to justify an expulsion order without giving to the reservation of public policy a scope exceeding the purpose for which the exception clause was inserted. Public policy cannot have been seriously endangered or threatened by such conduct to the extent that the presence of the individual in question on the territory of the host country has become intolerable.

The classic concept in the law relating to the control of aliens, whereby the right of residence depends exclusively on a decision of the competent national authority has been superseded by the intervention of Community law under which the nationals of the Member State possess the right to residence by virtue of the Treaty itself which prevails over any contrary national law.

Therefore the mere failure to comply with administrative formalities may not validly be invoked as a reason of public policy justifying the restriction of the right of a national of one Member State to reside in the territory of another Member State in order to carry out economic activity there.

In addition an expulsion order for failure to comply with certain administrative formalities is intended to secure compliance with administrative rules of general application; it is therefore possible to take the view that it is based on the ground of general prevention, or, more exactly, on that good administration.

In this respect, however, it is sufficient to state that the infringements of the rules governing the supervision of the presence of aliens in the territory are simply of a minor nature and may be dealt with by penalties and measures of enforcement of less gravity than a prohibition on residence.

In matters relating to entry, residence and expulsion of Community nationals, the national authorities are under an obligation to respect the rules of Community law which restrict their discretionary power. These rules embrace fundamental human rights, including individual freedom. Therefore a national of a Member State may not legally be deprived of his liberty in another Member State, albeit temporarily, merely because he makes use of his right under the Treaty to reside there, if no reason of public policy or public security enables this right to be withdrawn or restricted.

(d) The answer to the question whether an appeal against an expulsion order is of a suspensory nature is to be found in Articles 7, 8 and 9 of Directive No 64/221. Article 7 requires the competent administrative body to grant a certain time for leaving the territory save in cases of urgency; it follows from Articles 8 and 9 that the nature and the effects of appeals introduced against acts of the administration, in particular the question of suspensory effect, depend upon national law and not, according to the provisions as they stand at present, upon Community law.

Directive No 64/221 certainly cannot have reduced the rights which those concerned derive directly from Articles 48 and 52 of the Treaty. However these provisions do not imply that when the exception of public policy and public security is invoked, the exercise of the right of residence retains absolute priority over the administrative application of the exception, where this is contested, for so long as all possible legal remedies have not been exhausted. The need to reconcile on the one hand, the application of measures justified by the protection of public policy and public security and on the other hand, the fundamental principle of the free movement of persons, does not permit the imposition on the State of residence, for the duration of the appeal, of the continued presence in its territory of a national of a Member State against whom the exception of public policy or public security has legitimately been invoked for serious reasons.

Clearly the provisions of Community law are only in the nature of minimum guarantees. National legislation may go beyond this. The question whether this is the case in Belgian law, since the individual rights conferred by the Treaty are civil rights, is a question of domestic law alone.

(d) The last three questions referred to the Court of Justice seek to establish whether a Member State whose legislation has, independently of the requirements of Community directives, achieved a more extensive degree of protection of the rights of nationals of other Member States than is required by these provisions, may reverse this state of affairs by making its legislation accord with the minimum level required by Community law.

In theory the answer is simple: if the more favourable situation existed upon the entry into force of the Treaty, any reversion would be a new restriction within the meaning of Article 53 of the EEC Treaty. If the more favourable advantages or guarantees were granted after this date, Article 53 would not be applicable, without prejudice to the standstill rules contained in secondary legislation such as Article 4 (3) of Directive No 64/221.

With regard to the Belgian law applicable to the main action, it should be stated that since secondary Community law is silent on this point, it leaves to the Member State the choice of the authority competent to decide upon an expulsion and Directive No 64/221 expressly authorizes different decision-making procedures depending on whether the residence card was issued or not.

The possibilities left to Member States by Directive No 64/221 clearly cannot prevail over Article 53 of the Treaty. However, it would certainly not be correct to take the view that the Treaty automatically replaced the establishment permit under national law by an 'establishment permit' derived *ipso jure* from the Treaty and that therefore only the more favourable provisions granted by Belgian law to the holder of an establishment permit are applicable. Indeed, Article 53 refers to the situation existing on 1 January 1958; it is concerned with the right of entry and of residence, not as an autonomous right, but solely as a right forming part of the right of establishment. However, the entry into force of the Treaty did not automatically bring about the right of establishment; during the transitional period this depended on the directives to be adopted by the Council. Therefore the right of residence cannot come into being in advance of the creation of the right of establishment. Legislation introduced after 1 January 1958 which maintains, for nationals of other Member States, the distinction in the guarantees of protection which existed on 1 January 1958 is not in law contrary to Article 53. The situation is the same with regard to the standstill rule contained in Article 4 (3) of Directive No 64/221.

In any event, Article 53 was only relevant during the transitional period. However, the facts at issue in the main action arose after the expiry of this period and since then the right of establishment and its inseparable corollary, the right of residence, have in any event in fact been rights which the parties derive directly from the Treaty. It follows that an order to leave the country, before the issue of a residence permit, is only valid under Community law if it is sufficiently justified by reasons of public policy or of public security based upon the personal conduct of the person concerned. The national court can be under no obligation to give any effect to a first order to leave the country served upon a person enjoying the right of residence if this order is solely based upon his failure to register with the local administration of his place of residence.

(f) In conclusion the Commission considers that the questions referred may be answered as follows:

(1) The right of nationals of Member States to reside in each of the Member States in order to pursue an economic activity there stems directly from Articles 48 and 52, at least since the end of the transitional period.

(2) It is an individual right the exercise of which is not subject to the condition of the issue of a residence permit by the national authorities and which is subject to no reservation other than the exceptions justified on grounds of public policy, public security or public health.

(3) In each particular case the competent authority must show that these exceptions are made out and state the reasons establishing that this is so.

(4) In order to justify an expulsion order, the personal conduct, within the meaning of Article 3 of Directive No 64/221, must represent a serious danger or threat to public policy or to public health; mere minor infringements of the law, such as the failure to comply with administrative formalities relating to entry in the population registers, do not comply with this conditon. In the absence of reasons justified by the exception of public policy or public security, a measure depriving a person of freedom on the ground of 'illegal residence' calls into question the right of residence provided by the Treaty.

(5) Under Community law, an appeal against an expulsion order only has suspensory effect if this is so in the case of appeals available to nationals against administrative measures.

(6) Article 53 applies to the situation existing on 1 January 1958 (for the new Member States 1 January 1973). Any Member State which recognized, at that time, the distinction between the forms and guarantees surrounding expulsion orders according to whether an establishment permit has been granted or not, may retain this distinction by means of special legislation without infringing Article 53, at least in respect of persons who have not yet directly benefited under the Treaty from the right of establishment and the right of residence before the adoption of that legislation.

In any event Article 53 no longer has any practical relevance in relation to matters arising after the end of the transitional period.

Article 4 (3) of Directive No 64/221 only concerns restrictions justified by reasons of public health.

III — Oral procedure

The *Commission of the European Communities* represented by its Legal Adviser, Paul Leleux, submitted oral observations and its replies to questions put by the Court at the hearing on 23 October 1975. With regard to the question of deprivation of liberty the Commission emphasized that this comes within the sphere not only of the right of residence guaranteed by the Treaty but also the protection of fundamental rights

of the individual. According to the case-law of the Court of Justice respect for fundamental rights must be ensured within the legal system of the Community; they must, of course, be protected against infringements caused by the institutions of the Community but also against the actions of Member States and their authorities. The main action concerns the invoking by a Member State of a provision of Community law allowing the exception of public policy to be set up against the principle of freedom of movement. The invoking of the exception of public policy is subject to supervision by the Court of Justice; for the purposes of determining the bounds to be observed by Member States in the matter of a infringement of the fundamental right of freedom of movement the Court must also consider the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 which is ratified by all the Member States of the EEC and which is an integral part of Community law. In particular Article 5 (1) (f) of that Convention provides that a person may not be deprived of his freedom if he has entered the State in question in an authorized manner.

IV — Procedural developments

Following an appeal by the Ministère public against the judgment of the tribunal de première instance of Liège (tribunal correctionnel), the Cour d'Appel of Liège, 4th Chamber delivered on 22 December 1975 a judgment which 'in the interests of justice' confirms the contested judgment 'in its institution of proceedings before the Court of Justice of the European Communities for a preliminary ruling'.

The Advocate-General delivered his opinion at the hearing on 10 March 1976.

Law

1 By a judgment of 6 May 1975 which was received at the Court Registry on 29 May 1975, confirmed by the judgment of the Cour d'Appel of Liège of 22 December 1975 which was received at the Court Registry on 30 December 1975, the Tribunal de première instance of Liège asked, pursuant to Article 177 of the EEC Treaty, a number of questions concerning the interpretation of Articles 48, 53, 56, 62 and 189 of the EEC Treaty of Council Directives Nos 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 (OJ, English Special Edition 1963-1964, p. 117) and 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 (OJ, English Special Edition 1968 (II), p. 485).

2 These questions were raised in the course of criminal proceedings against a French national for illegal entry into and illegal residence in Belgian territory.

3 It appears from the file that in his country of origin the accused has been convicted of procuring and prosecuted for various armed robberies without, however, according to the information available, having been convicted of them.

4 The accused's wife, also a French national, runs a café and dance hall in the Liège district acting as an employee of the company owning the business and the accused had joined her but failed to comply with the administrative formalities of entry on the population register.

5 Having detected his presence, the competent authorities ordered him to leave the country and initiated proceedings against him for illegal residence which resulted in a first conviction by a court.

6 After a brief stay in Germany the accused returned to Belgian territory and rejoined his wife, once again failing to comply with the legal formalities for the control of aliens.

7 He was again apprehended by the police and committed to prison but the committal was not confirmed by the judicial authorities.

8 Before his release however the accused was served with a ministerial decree of expulsion on the grounds that 'Royer's personal conduct shows his presence to be a danger to public policy' and that 'he has not observed the conditions attached to the residence of aliens and he has no permit to establish himself in the Kingdom'.

9 Following this expulsion order the accused does in fact seem to have left Belgian territory but the prosecutions for illegal entry and illegal residence followed their course before the Tribunal de première instance.

The relevant Community provisions

10 At the present stage of the proceedings the national court has not yet finally determined the position of the accused with regard to the provisions of Community law applicable to him.

11 The facts submitted by the national court and the choice of the provisions of Community law of which it seeks interpretation allows of different hypotheses according to whether the accused falls within the provisions of Community law by virtue of an occupation which he carried out himself or by virtue of a post which he had himself found or again as the husband of a person subject to the provisions of Community law because of her occupation so that the accused's position may be regulated by either:

(a) the chapter of the Treaty concerning workers and, more especially, Article 48 which was implemented by Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) and Council Directive No 68/360/EEC or

(b) the chapters concerning the right of establishment and freedom to provide services, in particular Articles 52, 53, 56, 62 and 66 implemented by Council Directive No 73/148 of 21 May 1973 concerning the removal of restrictions on the movement and residence of nationals of the Member States within the Community for establishment and provision of services (OJ, L. 172, p. 14).

12 Nevertheless comparison of these different provisions shows that they are based on the same principles both in so far as they concern the entry into and residence in the territory of Member States of persons covered by Community law and the prohibition of all discrimination between them on grounds of nationality.

13 In particular Article 10 of Regulation (EEC) No 1612/68, Article 1 of Directive No 68/360 and Article 1 of Directive No 73/148 extend in identical terms the application of Community law relating to entry into and residence in the territory of the Member States to the spouse of any person covered by these provisions.

14 Further, Article 1 of Directive No 64/221 states that the directive shall apply to any national of a Member State who resides in or travels to another Member State of the Community either in order to pursue an activity as an employed or self-employed person, or as a recipient of services, and his or her spouse and members of their family.

15 It is apparent from the foregoing that substantially identical provisions of Community law apply in a case such as the one at issue if there exists either with regard to the party concerned or his spouse a connexion with Community law under any of the above-mentioned provisions.

16 The questions referred by the Tribunal de première instance will be answered in the light of these considerations and without prejudice to the national court's right to determine the situation before it with respect to provisions of Community law.

The first, second, third and fourth questions (source of rights) conferred by the Treaty in respect of entry into and residence in the territory of the Member States)

17 The first, second, third and fourth questions seek to determine, with particular regard to Article 48 of the Treaty and Directives Nos 64/221 and 68/360 the source of the right of any nationals of a Member State to enter into and reside in the territory of another Member State and the effect on the exercise of this right of powers exercised by the Member States with regard to the supervision of aliens.

18 More particularly, it is asked in this connexion

(a) whether this right is conferred directly by the Treaty or other provisions of Community law or whether it only arises by means of a residence permit issued by the competent authority of a Member State recognizing the particular position of a national of another Member State with respect to Community law;

(b) whether it is to be inferred from Article 4 (1) and (2) of Directive No 68/360 that Member States are obliged to issue a residence permit once the person concerned is able to produce proof that he or she is covered by the provisions of Community law;

(c) whether the failure by a national of a Member State to comply with the legal formalities for the control of aliens constitutes in itself conduct endangering public policy or public security and whether such conduct may therefore justify a decision ordering expulsion or the provisional deprivation of an individual's liberty;

(d) whether an expulsion order made subsequently to such a failure is a measure of a 'general' preventive nature or whether it is governed by considerations of a 'special' preventive nature attaching to the personal conduct of the individual concerned.

19 Article 48 provides that freedom of movement for workers shall be secured within the Community.

20 Paragraph (3) of that article provides that it shall entail the right to enter the territory of Member States, to move freely there, to stay there for the purpose of employment and to remain there after the end of this employment.

21 Article 52 provides that restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages which shall be completed by the end of the transitional period.

22 Article 59 provides that restrictions on freedom to provide services within the Community shall also be abolished in the same manner.

23 These provisions, which may be construed as prohibiting Member States from setting up restrictions or obstacles to the entry into and residence in their territory of nationals of other Member States, have the effect of conferring rights directly on all persons falling within the ambit of the above-mentioned articles, as later given closer articulation by regulations or directives implementing the Treaty.

24 This interpretation has been recognized by all the measures of secondary law adopted for the purpose of implementing the above-mentioned provisions of the Treaty.

25 Thus Article 1 of Regulation No 1612/68 provides that any national of a Member State, shall, irrespective of his place of residence, have 'the right to take up activity as an employed person and to pursue such activity within the territory of another Member State' and Article 10 of the same regulation extends the 'right to install themselves' to the members of the family of such a national.

26 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 and further states that as 'proof' of this right an individual residence permit shall be issued.

27 Further the preamble to Directive No 73/148 states that freedom of establishment can be fully attained only 'if a right of permanent residence is granted to the persons who are to enjoy freedom of establishment' and that freedom to provide services entails that persons providing and receiving services should have 'the right of residence for the time during which the services are being provided'.

28 These provisions show that the legislative authorities of the Community were aware that, while not creating new rights in favour of persons protected by Community law, the regulation and directives concerned determined the scope and detailed rules for the exercise of rights conferred directly by the Treaty.

29 It is therefore evident that the exception concerning the safeguard of public policy, public security and public health contained in Articles 48 (3) and 56 (1) of the Treaty 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.

30 In view of these considerations the specific questions referred by the national court may be answered as follows.

31 (a) It follows from the foregoing 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 — in particular to look for or pursue an occupation or activities as employed or self-employed persons, or to rejoin their spouse or family — is a right conferred directly by the Treaty, or, as the case may be, by the provisions adopted for its implementation.

32 It must therefore be concluded that this right is acquired independently of the issue of a residence permit by the competent authority of a Member State.

33 The grant of this permit is therefore to be regarded not as a measure giving rise to rights but as a measure by a Member State serving to prove the individual position of a national of another Member State with regard to provisions of Community law.

34 (b) Article 4 (1) and (2) of Directive No 68/360 provides, without prejudice to Article 10 thereof that Member States shall 'grant' the right of residence in their territory to persons who are able to produce the documents listed in the directive and that 'proof' of the right of residence shall be constituted by issue of a special residence permit.

35 The above-mentioned provisions of the directive are intended to determine the practical details regulating the exercise of rights conferred directly by the Treaty.

36 It follows therefore, that the right of residence must be granted by the authorities of the Member States to any person falling within the categories set out in Article 1 of the directive and who is able to prove, by producing the documents specified in Article 4 (3), that he falls within one of these categories.

37 The answer to the question put should therefore be that Article 4 of Directive No 68/360 entails an obligation for Member States to issue a residence permit to any person who provides proof, by means of the appropriate documents, that he belongs to one of the categories set out in Article 1 of the directive.

38 (c) The logical consequence of the foregoing is that the mere failure by a national of a Member State to complete the legal formalities concerning access, movement and residence of aliens does not justify a decision ordering expulsion.

39 Since it is a question of the exercise of a right acquired under the Treaty itself, such conduct cannot be regarded as constituting in itself a breach of public policy or public security.

40 Consequently any decision ordering expulsion made by the authorities of a Member State against a national of another Member State covered by the

Treaty would, if it were based solely on that person's failure to comply with the legal formalities concerning the control of aliens or on the lack of a residence permit, be contrary to the provisions of the Treaty.

41 It must nevertheless be stated in this respect that on the one hand the Member States may still expel from their territory a national of another Member State where the requirements of public policy and public security are involved for reasons other than the failure to comply with formalities concerning the control of aliens without prejudice to the limits placed on their discretion by Community law as stated by the Court in its judgment of 26 October 1975 (Case 36/75, *Rutili* v *Minister for the Interior* [1975] ECR 1219).

42 On the other hand Community law does not prevent the Member States from providing, for breaches of national provisions concerning the control of aliens, any appropriate sanctions — other than measures of expulsion from the territory — necessary in order to ensure the efficacity of those provisions.

43 As to the question whether a Member State may take measures for the temporary deprivation of liberty of an alien covered by the terms of the Treaty with a view to expelling him from the territory it must first be stated that no measure of this nature is permissible if a decision ordering expulsion from the territory would be contrary to the Treaty.

44 Moreover the validity of a measure of provisional deprivation of liberty taken in the case of an alien who was unable to prove that he was covered by the Treaty or who could be expelled from the territory for reasons other than failure to comply with the formalities concerning the control of aliens depends on the provisions of national law and the international obligations assumed by the Member State concerned since Community law as such does not yet impose any specific obligations on Member States in this respect.

45 (d) Article 3 (1) of Directive No 64/221 provides that 'Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned'.

46 This provision obliges the Member States to make their assessment, as regards the requirements of public policy and public security, on the basis of the

individual position of any person protected by Community law and not on the basis of general considerations.

47 Nevertheless it is evident from the foregoing that the failure to comply with the legal formalities concerning the entry, movement and residence of aliens does not in itself constitute a threat to public policy and public security within the meaning of the Treaty.

48 In itself such conduct cannot therefore give rise to the application of the measures referred to in Article 3 of the above-mentioned directive.

49 It is therefore apparent from what has already been stated that this part of the questions no longer serves any purpose.

50 The questions put should therefore be answered in the sense that the right of nationals of one Member State to enter the territory of another Member State and to reside there is conferred directly, on any person falling within the scope of Community law, by the Treaty, especially Articles 48, 52 and 59 or, as the case may be, by its implementing provisions independently of any residence permit issued by the host State.

51 The mere failure by a national of a Member State to comply with the formalities concerning entry, movement and residence of aliens is not of such a nature as to constitute in itself conduct threatening public policy and public security and cannot therefore by itself justify a measure ordering expulsion or temporary imprisonment for that purpose.

The fifth question (implementation of measures of expulsion and legal remedies)

52 In substance the fifth question asks whether a decision ordering expulsion or a refusal to issue a residence or establishment permit may, in view of the requirements of Community law, give rise to immediate measures of execution or whether such a decision only takes effect after remedies before the national courts have been exhausted.

53 Under Article 8 of Directive No 64/221 any person subject to an order of expulsion from the territory shall have the same legal remedies in respect of

these decisions as are available to nationals in respect of acts of the administration.

54 In default of this the person concerned must, under Article 9, at the very least be able to exercise his right of defence before a competent authority which must not be the same as that which adopted the measures restricting his freedom.

55 It is appropriate to state in this respect that all steps must be taken by the Member States to ensure that the safeguard of the right of appeal is in fact available to anyone against whom a restrictive measure of this kind has been adopted.

56 However this guarantee would become illusory if the Member States could, by the immediate execution of a decision ordering expulsion, deprive the person concerned of the opportunity of effectively making use of the remedies which he is guaranteed by Directive No 64/221.

57 In the case of the legal remedies referred to in Article 8 of Directive No 64/221, the party concerned must a least have the opportunity of lodging an appeal and thus obtaining a stay of execution before the expulsion order is carried out.

58 This conclusion also follows from the link established by the directive between Articles 8 and 9 thereof in view of the fact that the procedure set out in the latter provision is obligatory *inter alia* where the legal remedies referred to in Article 8 'cannot have suspensory effect'.

59 Under Article 9 the procedure of appeal to a competent authority must precede the decision ordering expulsion in cases of urgency.

60 Consequently where a legal remedy referred to in Article 8 is available the decision ordering expulsion may not be executed before the party concerned is able to avail himself of the remedy.

61 Where no such remedy is available, or where it is available but cannot have suspensory effect, the decision cannot be taken — save in cases or urgency which have been properly justified — until the party concerned has had the

opportunity of appealing to the authority designated in Article 9 of Directive No 64/221 and until this authority has reached a decision.

62 The question must therefore be answered to the effect that a decision ordering expulsion cannot be executed, save in cases of urgency which have been properly justified, against a person protected by Community law until the party concerned has been able to exhaust the remedies guaranteed by Articles 8 and 9 of Directive No 64/221.

The sixth, seventh and eighth questions (prohibition of new restrictions)

63 The sixth, seventh and eighth questions ask whether, by virtue of Articles 53 and 62 of the Treaty prohibiting the introduction by a Member State of new restrictions on the establishment of nationals of other Member States and on the freedom to provide services which has in fact been achieved, a Member State may revert to provisions or practices which are less liberal than those which it had previously applied.

64 More particularly, it is asked in this respect

(a) whether national provisions which have the effect of making the provisions previously applied less liberal are justified when they seek to bring national law into line with the relevant Community directives;

(b) whether the prohibition on new restrictions applies also to provisions of a formal or procedural nature in spite of the fact that Article 189 of the EEC leaves to the Member States 'the choice of forms and methods' for the implementation of directives.

65 (a) Articles 53 and 62 prohibit not merely the introduction of new restrictions as compared with those applying in the situation existing when the Treaty entered into force, but also the revocation of liberalizing measures taken by the Member States in implementation of their obligations under Community law.

66 In this respect, the measures adopted by the Community particularly in the form of directives for the implementation of the Treaty provisions may give some indication as to the scope of the obligations borne by the Member States.

67 In particular this is true of Directive No 64/221 which sets out a number of limits on the discretion enjoyed by the Member States and of obligations imposed upon them with regard to the safeguard of public policy, public security and public health.

68 On the other hand it is not possible to rely on the rule in Articles 53 and 62 in cases where it is established that the advantages granted by a Member State to nationals of other Member States are not granted in execution of an obligation under Community law.

69 (b) There is no contradiction between the prohibition of new restrictions by Articles 53 and 62 and the provision contained in Article 189 which leaves to the Member States 'the choice of form and methods' for the implementation of directives.

70 In fact the choice of form and methods can only operate in compliance with the stipulations and prohibitions in Community law.

71 With respect to the directives intended to implement the free movement of persons the competent Community institutions have attached particular importance to a group of stipulations of a formal and procedural nature intended to ensure the practical working of the scheme established by the Treaty.

72 This is the case in particular as regards Directive No 64/221 on special measures justified on grounds of public policy, public security or public health, in that some of the guarantees provided by the directive for persons protected by Community law, namely the obligation to inform any person subject to a restrictive measure of the reasons for it and to give him a right of appeal, are of a procedural nature.

73 The Member States are consequently obliged to choose, within the bounds of the freedom left to them by Article 189, the most appropriate forms and methods to ensure the effective functioning of the directives, account being taken of their aims.

74 The questions should therefore be answered to the effect that Articles 53 and 62 of the Treaty prohibit the introduction by a Member State of new restrictions on the establishment of nationals of other Member States and the freedom to provide services which has in fact been attained and that they prevent the Member States from reverting to less liberal provisions or practices in so far as the liberalization measures already adopted constitute the implementation of obligations arising from the provisions and objectives of the Treaty.

75 The freedom left to the Member States by Article 189 as to the choice of forms and methods of implementation of directives does not affect their obligation to choose the most appropriate forms and methods to ensure the effectiveness of the directives.

Costs

76 The costs incurred by the Commission of the European Communities which has submitted observations to the Court are not recoverable.

77 Since the proceedings are, so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Tribunal de première instance of Liège, it is for that court to make an order as to costs.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal de première instance, Liège, hereby rules:

1. **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 — especially Articles 48, 52 and 59 — or, as the case may be, by the provisions adopted for its implementation, independently of any residence permit issued by the host State.**

2. **Article 4 of Directive No 68/360 entails an obligation for Member States to issue a residence permit to any person who provides proof, by means of the appropriate documents, that he belongs to one of the categories set out in Article 1 of the directive.**

3. **The mere failure by a national of a Member State to comply with the formalities concerning the entry, movement and residence of aliens is not of such a nature as to constitute in itself conduct threatening public policy and public security and cannot therefore, by itself, justify a measure ordering expulsion or temporary imprisonment for that purpose.**

4. **A decision ordering expulsion cannot be executed, save in cases of urgency which have been properly justified, against a person protected by Community law until the party concerned has been able to exhaust the remedies guaranteed by Articles 8 and 9 of Directive No 64/221.**

5. **Articles 53 and 62 of the Treaty prohibit the introduction by a Member State of new restrictions on the establishment of nationals of other Member States and the freedom to provide services which has in fact been attained and prevent the Member States from reverting to less liberal provisions or practices in so far as the liberalization measures already adopted constitute the implementation of obligations arising from the provisions and objectives of the Treaty.**

6. **The freedom left to the Member States by Article 189 as to the choice of forms and methods of implementation of directives does not affect their obligation to choose the most appropriate forms and methods to ensure the effectiveness of the directives.**

Lecourt Kutscher Donner

Mertens de Wilmars Pescatore Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 8 April 1976.

A. Van Houtte — Registrar

R. Lecourt — President