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

movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health". The combined effect of those instruments cannot, however, in my opinion, properly be appreciated unless one also takes into account *Council Directive 73/148/EEC* "on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services".

Of *Regulation No 1612/68* I need say little. Its terms are too familiar. It applies of course not only to workers but also to their families. It is of direct relevance only in that *Directive 68/360* refers to it.

Directive 68/360 is the instrument with the interpretation of which this case is mainly concerned. It replaced an earlier Council Directive *(64/240),* which had itself replaced an earlier one still, dated 16 August 1961 (OJ 80 of 13. 12. 61, p. 1513). The provisions of *Directive 68/360* that are particularly in point are these:

"Article 3

1. Member States shall allow the persons referred to in Article 1 [i.e. persons to whom *Regulation No 1612/68* applies] to enter their territory simply on production of a valid identity card or passport.

2. No entry visa or equivalent document may be demanded save from members of the family who are not nationals of a Member State. Member States shall accord to such persons every facility for obtaining any necessary visas."

I pause there to observe that the words "No entry visa or equivalent document may be demanded" in the English text of paragraph 2 of that article differ somewhat from the corresponding words in the other texts of it. Thus the French text has "Aucun visa d'entrée ni obligation équivalente ne peut être imposé", which literally means "No entry visa or equivalent requirement may be imposed". The Danish, Dutch and Italian texts have exactly the same meaning as the French. The German has "Für die Einreise darf weder ein Sichtvermerk noch ein gleichartiger Nachweis verlangt werden". That is closer to the English, but "Nachweis" is less vague a term than "document". The particular wording of the English text led Counsel in this case to concentrate unduly, in my opinion, on the question of what sort of document Article 3(2) was about, rather on the question of what sort of requirement it was about. It is noteworthy that the English text of Article 3(2) of *Directive 73/148,* which is the parallel provision relating to the abolition of restrictions on movement and residence within the Community of nationals of Member States with regard to freedom of establishment and freedom to provide services, uses the phrase, "No entry visa or equivalent requirement".

Article 4 of *Directive 68/360* provides:

"1. Member States shall grant the right of residence in their territory to the persons referred to in Article 1 who are able to produce the documents listed in paragraph 3.

2. As proof of the right of residence, a document entitled 'Residence Permit for a National of a Member State of the EEC' shall be issued. This document must include a statement that it has been issued pursuant to Regulation (EEC) No 1612/68 and to the measures taken by the Member States for the implementation of the present directive . . .

3. For the issue of a residence permit for a national of a Member State of the EEC, Member States may require only the production of the following documents;

— by the worker:

(a) the document with which he entered their territory;

(b) a confirmation of engagement from the employer or a certificate of employment;

. . ."

I pause again because there too there is a slight discrepancy between the English text and most of the other texts. Your Lordships will have observed that in the English text Article 4(1) opens with the words "Member States shall grant the right . . ." In such a context "grant" can mean either "confer" or simply "recognize". The same ambiguity is present in the German text, which uses the word "gewähren". But it is absent from the texts in the other languages and they show, in my opinion, that "recognize" is the correct meaning. In Article 8 of the directive (to which I shall come) the English text unambiguously has "recognize".

Article 6 provides:

"1. The residence permit:

(a) . . .

(b) must be valid for at least five years from the date of issue and be automatically renewable.

2. . . .

3. Where a worker is employed for a period exceeding three months but not exceeding a year in the service of an employer in the host State or in the employ of a person providing services, the host Member State shall issue him a temporary residence permit, the validity of which may be limited to the expected period of the employment.

. . ."

Article 8 provides that "Member States shall without issuing a residence permit, recognize the right of residence in their territory" of three kinds of worker:

(a) "a worker pursuing an activity as an employed person, where the activity is not expected to last for more than three months" — in the case of such a person, "the document with which [he] entered the territory and a

statement by the employer on the expected duration of the employment shall be sufficient to cover his stay";

(b) "a worker who, while having his residence in the territory of a Member State to which he returns as a rule each day or at least once a week, is employed in the territory of another Member State" — the competent authority of the State where such a worker is employed may, however, issue him "a special permit valid for five years and automatically renewable";

(c) "a seasonal worker who holds a contract of employment stamped by the competent authority of the Member State on whose territory he has come to pursue his activity".

Article 10 provides that Member States shall not derogate from the provisions of the directive save on the grounds of public policy, public security or public health.

Your Lordships thus see that Article 3 of *Directive 68/360* is concerned with the right of a person to whom *Regulation No 1612/68* applies to enter a Member State's territory, whilst the subsequent articles of the directive are concerned with his right to reside there. That right exists independently of his possession of a residence permit, which is only "proof" of the right, and is not appropriate in all cases, for instance not if his stay is to be of less than three months.

The United Kingdom Government referred to a declaration recorded in the minutes of the Council when *Directive 68/360* was under consideration, to the effect that a national of a Member State seeking employment in another Member State should have a minimum of three months to achieve that purpose, and that, if he had not found employment on the expiry of that period, his stay might be terminated. That declaration does not appear to be officially published, though it is referred to in a number of published works (see for instance Hartley's *EEC Immigration Law* at pp. 105-106). In Case 48/75 the *Royer* case [1976] 1 ECR 497, this Court clearly expressed the view that such a person came within the category of those upon whom the Treaty conferred the right of free movement (see paragraph 31 of the judgment).

Directive 73/148 is, as I have said, the parallel directive about freedom of movement for persons within the Community in connexion with freedom of establishment and freedom to provide services. It replaced *Council Directive 64/220/EEC*. Essentially it applies to "nationals of a Member State who are established or wish to establish themselves in another Member State in order to pursue activities as self-employed persons, or who wish to provide services in that State", to nationals of a Member State "wishing to go to another Member State as recipients of services", and to members of the families of any of them. Its provisions, particularly Article 3 about the right of entry, and Articles 4 *et seq.* about the right of residence and residence permits, correspond closely to those of *Directive 68/360*. Your Lordships will remember that, in Case 118/75 the *Watson and*

Belmann case [1976] 2 ECR 1185, at pp. 1202-1205, Mr Advocate General Trabucchi discussed the application of the provisions of the Treaty on freedom of movement for persons to "recipients of services", and expressed doubt as to the scope of the category of recipients of services — particularly as to whether it could include tourists. He said that the practical effect of a "broad interpretation" of that concept would be to "extend the right of freedom of movement to all nationals of the Members States because everyone is actually or potentially a recipient of services". I will not take up Your Lordships' time on that, except to say that it should not be assumed that I share Mr Advocate General Trabucchi's hesitations.

I come lastly to *Directive 64/221,* which remains applicable both in relation to *Directive 68/360* and to *Directive 73/148,* and in particular in relation to the issue of residence permits under both of them. Article 5 of *Directive 64/221* provides:

"1. A decision to grant or to refuse a first residence permit shall be taken as soon as possible and in any event not later than six months from the date of application for the permit.

The person concerned shall be allowed to remain temporarily in the territory pending a decision either to grant or to refuse a residence permit.

2. . . ."

Articles 6 to 9 provide for safeguards, by way of appeal and the like, for a person who is refused a residence permit. The grounds of refusal can only be grounds of public policy, public security or public health.

Decisions of this Court to which we have been referred, in particular the *Royer* case (already cited), the *Watson and Belmann* case (already cited), and Case 8/77 the *Sagulo, Brenca and Bakhouche* case [1977] 2 ECR 1495, underline or clarify certain points:

1. Persons entitled to freedom of movement within the Community, whether it be as workers or members of their families or by virtue of the provisions relating to freedom of establishment or freedom to provide services, derive their rights — to enter the territories of Member States other than their own and to reside there — directly from the relevant provisions of the Treaty, as refined upon by the acts of the Council implementing them. Accordingly no act of any Member State is necessary to confer those rights upon such a person, and no Member State may restrict or hinder his exercise of them.

2. A residence permit of the kind provided for by *Directive 68/360* "has only a declaratory effect". It is no more than evidence of the holder's entitlement to those rights, and a Member State is under an obligation to issue such a permit to anyone who provides the appropriate documentary proof that he is entitled to them.

3. It follows among other things that a Member State must recognize the right to reside on its territory of a worker who is able to prove his entitlement to that right by producing the two documents specified in Article 4(3) of *Directive*

68/360, i.e. his identity card or passport and a confirmation of employment from his employer or a certificate of employment.

4. That is not to say that a Member State may not require the worker concerned to comply with the formalities prescribed by its own law for the control of aliens, in so far as those formalities are reasonable and do not limit the rights of entry and of residence conferred on him by the Treaty. A Member State may for instance require the worker to register with, or report his presence to, a prescribed authority in that State; and it may require him to apply for a residence permit of the kind provided for by the directive where the directive makes that appropriate, though it may not require him to have any other sort of residence permit prescribed by its law for aliens in general (the issue of which may be discretionary). Nor is a Member State precluded from prescribing sanctions for failure to comply with such formalities.

5. Those sanctions may not however include deportation, for that amounts to a denial of the right conferred by the Treaty, and may only be resorted to on grounds of public policy, public security or public health. Mere disregard of formalities relating to the control of aliens cannot constitute such grounds.

6. Other sanctions, such as fines and imprisonment, must not be so disproportionate to the gravity of the offence as to become obstacles to the exercise, by those entitled to them, of the rights conferred by the Treaty. Where a Member State has not adapted its law to the requirements of Community law in that respect, it is for the courts of that State to exercise their sentencing powers so as to avoid any conflict with those requirements.

The relevant United Kingdom law and practice are to be found in the *Immigration Act 1971* and in *"Immigration Rules"* made by the Secretary of State. Those rules lay down the practice to be followed in the administration of the Act. They do not, strictly speaking, have legislative force, but they must, by virtue of section 3(2) of the Act, be laid before Parliament and may be disapproved by resolution of either House of Parliament.

Sections 1 and 2 of the Act, between them, define a category of persons called "patrials", who have "the right of abode in the United Kingdom", and who are thereby "free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required . . . to enable their right to be established . . ." (Your Lordships will remember that I dealt with the complexities of the law in that respect in my opinion in Case 257/78 *Devred* v *Commission,* not yet reported).

Section 3(1) of the Act provides that, subject to exceptions that are not here material:

"where a person is not patrial —

(a) he shall not enter the United Kingdom unless given leave to do so in accordance with this Act;

(b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

(c) if he is given a limited leave to enter or remain in the United Kingdom, it may be given subject to conditions restricting his employment or occupation in the United Kingdom, or requiring him to register with the police, or both."

Section 3(3) provides:

"in the case of a limited leave to enter or remain in the United Kingdom —

(a) a person's leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions . . ."

Subsections (5) and (6) of section 3 are about deportation. Your Lordships are familiar with them because the Court had to consider them in Case 30/77 the *Bouchereau* case [1977] 2 ECR 1999 and they were of some relevance also in Case 131/79 the *Santillo* case (not yet reported). Those subsections are, so far as material, in these terms:

"(5) A person who is not patrial shall be liable to deportation from the United Kingdom —

(a) if, having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave; or

. . .

(6) Without prejudice to the operation of subsection (5) above, a person who is not patrial shall also be liable to deportation from the United Kingdom if . . . he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so."

The court empowered by the Act to recommend a person for deportation is, Your Lordships remember, the court empowered to sentence him for the offence in question. By virtue of section 6(2) of the Act a court may not recommend a person for deportation unless he has been given not less than seven days notice in writing of certain things specified in the subsection.

Section 4(1) of the Act provides:

"The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, and the power to give leave to remain in the United Kingdom, or to vary any leave under section 3(3) (a) (whether as regards duration or conditions), shall be exercised by the Secretary of State; and . . . those powers shall be exercised by notice in writing given to the person affected . . ."

Section 24(1) provides:

"A person who is not 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: —

(a) if contrary to this Act he knowingly enters the United Kingdom in breach of a deportation order or without leave;

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

(i) remains beyond the time limited by the leave; or

(ii) fails to observe a condition of the leave;

..."

Schedule 2 to the Act, which is entitled "Administrative Provisions as to Control on Entry etc.", provides among other things, by paragraph 2 (1):

"An immigration officer may examine any persons who have arrived in the United Kingdom by ship or aircraft ... for the purpose of determining —

(a) whether any of them is or is not patrial; and

(b) whether, if he is not, he may or may not enter the United Kingdom without leave; and

(c) whether, if he may not, he should be given leave and for what period and on what conditions (if any), or should be refused leave."

Two sets of Rules made by the Secretary of State and laid before Parliament under section 3(2) of the Act are here in point. They are the *Immigration Rules for Control on Entry, EEC and other Non-Commonwealth Nationals* and the *Immigration Rules for Control after Entry, EEC and other Non-Commonwealth Nationals.* Both were laid before Parliament on 25 January 1973. Both have been amended from time to time since, but not in ways that affect this case.

The Rules for "Control on Entry" (which do not apply to citizens of Ireland, who are afforded more favourable treatment) provide that a person must, on arrival in the United Kingdom, produce on request to the immigration officer "a valid national passport or other document satisfactorily establishing his identity and nationality" and that nationals of other Member States of the Community "may use valid national identity cards instead of passports" (see Rule 3 and the footnote thereto). The Rules also provide that nationals of certain countries, which are listed in an appendix and do not include any Member State of the Community, must produce to the immigration officer "a passport or other identity document endorsed with a United Kingdom visa and should be refused leave to enter if they have no current visa" (see Rule 8). Part V of the Rules contains special provisions as to the admission of nationals of other Member States of the Community. Those provisions, where they apply, override any other relevant provisions of the Rules (see Rule 49). They include Rules 51 and 52, which provide:

"51. 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 resident's permit.

52. 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 rules for "Control after Entry" are divided into two Parts, "Part A", which is headed "Variation of Leave to Enter or Remain", and "Part B", headed "Deportation". I need not trouble with anything in Part B. Part A has two sections, Section I, which applies generally to Non-Commonwealth nationals, and Section II, which applies specifically to EEC nationals (again other than Irish). The rules in Section II, where they apply, override those in Section I. Of the rules in Section II, Rule 34 is particularly in point. It reads:

"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 the person has not found employment at the end of the six months period for which he was admitted, nor if during that time he has become a charge on public funds."

The effect of those provisions, so far as here material, appears to be that every national of a Member State (other than Ireland) seeking entry into the United Kingdom must produce either his passport or his identity card and obtain leave to enter from the immigration officer. Unless he is a returning resident or the holder of a valid resident's permit, he will normally be given leave to enter for a period of six months, whatever the purpose of his journey to the United Kingdom may be. That leave must be given to him "by notice in writing". Thereafter he may apply to the Secretary of State for his leave to be varied, by enlarging or removing the limit on its duration. If he enters employment, the application to vary the leave will result in the issue to him of a residence permit valid for five years, or for the duration of the employment if this is expected to be less than 12 months.

It was explained to us on behalf of the United Kingdom that the object of the system was to avoid delay at the port or airport of entry. It avoided the immigration officer having to examine each national of a Member State as he arrived in order to ascertain whether the purpose of his coming to the United Kingdom was or was not one giving him a right of entry under the Treaty. It meant that there was a period of six months in which an entrant could decide whether he wished to remain longer and, if appropriate, apply for a residence permit. I confess that, to my mind, that seems a sensible system, particularly for a country that has no "population

registers", does not issue identity cards, and requires aliens to register with the police only in certain cases. That is not to say, however, that the system, as applied in the present case, accords with Community law.

The facts of the present case are set out in a statement accompanying the Order for Reference and are not in dispute. Mr Pieck is a Dutch national and the holder of a Dutch passport. He is not patrial. It appears from his passport that he first entered the United Kingdom on 3 August 1973 and that he subsequently left and re-entered it on several occasions. On 12 April 1976 his passport was renewed at the Dutch Consulate in London, on which occasion he gave his residence as "Cardiff (GB)". He entered the United Kingdom again on 3 December 1977, left on 22 July 1978 and re-entered one week later, on 29 July 1978. On each occasion that he entered the United Kingdom, including 29 July 1978, his passport was stamped by the immigration officer with the date and place of entry into the United Kingdom and with an endorsement consisting of the words "Given leave to enter the United Kingdom for six months". At all times since his entry into the United Kingdom on 3 December 1977, Mr Pieck has been, and he still is, employed as a printer by a firm called Graphic Prints at Taffs Well near Cardiff. The six months' leave of entry into the United Kingdom granted to him on 29 July 1978 expired on 29 January 1979. In March 1979 he went of his own accord 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, but he did nothing. On 3 May 1979, when required by a police officer to produce his passport, he said "I was going to send it off but I forgot". He was then charged with an offence under section 24 (1) (b) (i) of the *Immigration Act 1971* and served with a "Notice as regards liability to deportation" pursuant to section 6 (2) of the Act. The charge against him 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".

On 12 July 1979, Mr Pieck appeared before the learned Stipendiary Magistrate and pleaded not guilty to the charge. It was argued on his behalf (a) that the stamp in his passport relating to his entry into the United Kingdom on 29 July 1978 amounted to an "entry visa or equivalent document" contrary to the provisions of *Directive No 68/360*, (b) that under Article 48 (3) (b) and Article 48 (3) (c) of the Treaty, Mr Pieck had a right to move freely within and stay in the United Kingdom for the purpose of employment, and that the purported grant of leave to enter the United Kingdom limited to six months on 29 July 1978 was in derogation of those rights, and further inconsistent with Article 7 of the Treaty, (c) that the initial grant of six months' leave to enter the United Kingdom was inconsistent with the provisions of *Directive No 68/360*

and (d) that even if an initial leave of six months' stay could be imposed upon entry into the United Kingdom, breach of it could not be punished by deportation or imprisonment.

Arguments to the contrary were submitted on behalf of the Crown.

As a result, the learned magistrate has referred three questions to this Court. In slightly abbreviated form they are these:

1. What is the meaning of "entry visa or equivalent document" in Article 3 (2) of Council Directive 68/360?

2. Upon entry into a Member State by an EEC national, is the grant 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 EEC Treaty and the provisions of Directives 64/221 and 68/360?

3. 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 residence 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 argument before us on the first question was, as I mentioned earlier, coloured by the fact that the English text of Article 3 (2) of *Directive 68/360* refers to a "document" being "demanded" rather than to a requirement being imposed. This led to its being emphasized on behalf of the United Kingdom Government that EEC nationals were not called upon to "produce", on their arrival at United Kingdom ports or airports, anything other than their identity cards or passports. It also led to a learned discussion of the etymology of the word "visa", and of the meaning of that word in consular usage and in international agreements for the abolition of visas. Basing itself on the meaning of "visa" in such contexts the United Kingdom Government submitted that the phrase "entry visa or equivalent document" in Article 3 (2) connoted "a documentary clearance or consent which an intending entrant is required to obtain from the proposed host Member State's representative(s) abroad prior to arrival at the intended time and point of entry into the host country".

In my opinion that is too narrow an interpretation of the phrase. Article 3 of the directive must in my opinion be interpreted as a whole and with due regard to the purpose of the directive, which is the abolition of restrictions on the free movement of workers and their families within the Community. It appears to me, from the wording of Article 3 (2), that it is intended to do three things:

(i) to underline and reinforce the terms of Article 3 (1) which require a Member State to allow a person to whom the directive applies to enter

its territory "simply on production of a valid identity card or passport";

(ii) to make an exception to that requirement in the case of any member of a worker's family who is not a national of a Member State; and

(iii) to require a Member State to accord to such a member of a worker's family "every facility for obtaining any necessary visas".

It would therefore in my opinion be inconsistent both with the purpose and with the wording of Article 3 to interpret it as allowing a Member State to impose on a worker a requirement additional to the production of his identity card or passport so long as that requirement was to be met at the point of entry into its territory and not previously by application to its representatives abroad.

On the other hand Article 3 obviously does not envisage that, upon production of a worker's identity card or passport to the immigration officer or other responsible official of a Member State, that official should necessarily remain mute and passive. At least a smile, a nod, or a wave of the hand, must be permitted. If that be so, I can see no possible objection to a stamp in the man's passport, or to the issue to him of a separate document, acknowledging his right to enter the territory of the Member State concerned. Thus, in my opinion, if in the present case the stamp in Mr Pieck's passport had simply said "Given leave to enter the United Kingdom" and if, as a matter of United Kingdom law, that stamp had meant no more than that his right to enter the United Kingdom was acknowledged, there could have been no objection to it.

On that analysis, there are two difficulties in this case.

The first and the most obvious is that in fact the stamp in Mr Pieck's passport went on to say "for six months". I propose to leave that aside for the moment.

The second difficulty arises because it looks from the provisions of the *Immigration Act 1971* and of the *Immigration Rules for Control on Entry* as though, as a matter of United Kingdom law, the giving of leave to enter may not be a mere acknowledgement of a right, but may be discretionary. It is not of course for this Court, but for the courts of the United Kingdom, to determine whether that is so. As to the relevant Community law, with which this Court is concerned, it was submitted on behalf of the United Kingdom Government that a Member State must have such a discretion because freedom of movement for persons was, under that law, subject to limitations. It is of course subject to limitations in that, on the one hand, it does not extend to nationals of a Member State wishing to go to another Member State for a purpose not envisaged by the Treaty and in that, on the other hand, it may be denied to a particular person on grounds of public policy, public health or public security. At first sight that means that a Member State may deny entry to a person in whose case either of those limitations applies.

Does it follow that a Member State is entitled (or perhaps even bound), when a national of another Member State seeks entry into its territory, to examine his case to see whether or not he has a right to enter — to do, in other words, precisely that which the United Kingdom system, as it was explained to us, is designed to avoid? As to that Article 3 of the directive contains within itself an apparent contradiction. It applies only to persons to whom Regulation *No 1612/68* applies, yet it requires Member States to allow such persons to enter their territory simply on production of a valid identity card or passport, a document which is inherently unlikely to show whether the holder is a person to whom the regulation applies. There are two possible avenues of escape from that dilemma. One is to hold that it is implicit in Article 3 that the person concerned must, in order to obtain entry, produce, in addition to his identity card or passport, evidence that he is a person to whom the regulation applies. The other is to hold that the authors of the directive intended that, subject to possible derogation on grounds of public policy, public security or public health, Member States should allow each other's nationals to enter their territories simply on proof of their nationality and that any question as to their right to be there under the Treaty should be examined after entry. In my opinion the latter solution is to be preferred, for two reasons. Firstly, it is more consistent than the former with the terms of the directive. It is under Articles 4 and 8, which are concerned with the right of residence, that evidence is to be furnished by a person concerned that he is a person to whom the regulation applies. That that is something which he is to do after entry, and not at the time of entry, is shown by, for instance, the use of the past tense in the phrase "the document with which he entered their territory" in Articles 4 and 8 (1) (a). Secondly it accords with common sense, as indeed the United Kingdom practice evinces. The authors of the directive must have been aware that it and the successive directives relating to free movement of persons in connexion with freedom of establishment and freedom to provide services would, between them, cover many if not most nationals of Member States travelling to other Member States. They cannot have intended that all should be delayed at the internal frontiers of the Community while the sheep were sorted from the goats. Nor does it seem to me that it was beyond the powers conferred on the Council by Articles 49, 54 and 63 of the Treaty to legislate so as to avoid that result.

Thus, in my opinion, the answer to the learned magistrate's first question is that Article 3 (2) of *Directive 68/360,* in so far as it provides that "No entry visa or equivalent document may be demanded" means that a Member State may not impose on a national of another Member Stater any requirement beyond the production of a valid identity card or passport as a condition of allowing him to enter its territory.

As to the fact that the stamp in Mr Pieck's passport went on to say "for six

months", it seems to me that that cannot be relevant to any question relating to Article 3, which is concerned only with entry. It affected Mr Pieck's right to remain in the United Kingdom after entry, which is the subject-matter of the learned magistrate's second question.

As regards that question I think that I have said enough about the provisions of the Treaty and of the relevant Council legislation, and in my summary of the effect of the decisions of this Court interpreting them, to show that a Member State may not, save on grounds of public policy, public security or public health, limit the right of a worker who is a national of another Member State to remain on its territory, but that it may require him to establish, in accordance with Articles 4 *et seq.* of *Directive 68/360* and Articles 5 *et seq.* of *Directive 64/221,* his right to remain there.

We were told on behalf of the United Kingdom Government that the sole effect of a stamp such as that in Mr Pieck's passport was to indicate to the entrant that he had duly been given leave to enter and that he had a period of six months within which to obtain a residence permit, to which he would have an absolute right subject to considerations of public policy, public security and public health. The stamp was in no way, so it was said, restrictive of the entrant's rights; it allowed him a period of six months in which to decide whether, because he wished to remain, to seek a residence permit. It is of course for the courts of the United Kingdom, not for this Court, to say whether that interpretation of the stamp is correct. I confine myself to observing that the charge against Mr Pieck is that "being a person who is not patrial and only having a limited leave to remain in the United Kingdom [he] knowingly remained in the United Kingdom beyond ... the time limited by the leave". The charge is not that, being under an obligation to apply for a residence permit, he failed to do so.

In that connexion, we were handed at the hearing copies of a printed notice (HO Form IS. 120) which, we were told, has since 1 January 1980 been given to nationals of other Member States on their entry into the United Kingdom, in lieu of any stamp in their passports. No question arises in this case as to the compatibility of the terms of that notice with Community law. After some hesitation I have come to the conclusion that it will be best if I say nothing about it.

So I turn lastly to the learned magistrate's third question.

The answer to that too is to be found in the decisions of the Court the effect of which I have summarized. It could, it seems to me, possibly be relevant if the charge against Mr Pieck were to be interpreted, as the United Kingdom Government suggested that it should be, as being that he failed to apply for a residence permit when he should have done so.

For that, he clearly could not be deported. So much indeed is common ground. Whether he could be imprisoned would depend on the sentencing court's

assessment of the gravity of the offence. On behalf of the United Kingdom Government it was submitted that such an offence could be punished by imprisonment in exceptional circumstances, for instance if it were persistent and constituted a wilful refusal to comply with the law. I see no reason to differ from that.

We were told on behalf of the United Kingdom Government that Mr Pieck, when he appeared before the learned magistrate on 12 July 1979 was charged also with stealing a lady's handbag, an offence to which he pleaded guilty and for which he was placed on probation and ordered to pay compensation of £1.50 and costs of £15. The United Kingdom Government suggested, as I understood it, that his conviction for that offence could properly be taken into account by the learned magistrate in considering whether to sentence him to imprisonment for the offence under the *Immigration Act.* I think not, but, since the learned magistrate has asked this Court no question about that, I say no more about it.

In the result I am of the opinion that, in answer to the questions referred to the Court by the learned magistrate, Your Lordships should rule as follows:

(1) Article 3 (2) of *Directive 68/360,* in so far as it provides that "No entry visa or equivalent document may be demanded" means that a Member State may not impose on a national of another Member State any requirement beyond the production of a valid identity card or passport as a condition of allowing him to enter its territory.

(2) A Member State may not, otherwise than on grounds of public policy, public security or public health, limit the stay on its territory of a national of another Member State to a period shorter than that for which he is entitled to reside there by virtue of Article 48 of the EEC Treaty and of the provisions of *Directive 68/360;* but it may, in a case where the provisions of that Directive render the issue of a residence permit appropriate, require him to apply for such a permit within six months of his entry into its territory or within any other reasonable period.

(3) Where a Member State has validly imposed on a national of another Member State an obligation to apply for a residence permit, his failure to comply with that obligation may not be punished by deportation and may be punished by imprisonment only where the circumstances of the offence make it one of exceptional gravity.