Judgment of the Court of Justice, van Duyn, Case 41/74 (4 December 1974)

Caption: In this judgment, the Court recognises the direct effect not only of the provisions of the Treaties (Article 39 –ex Article 48– of the EC Treaty), but also of the directives laid down for their application (Article 3 of Directive No 64/221 of the Council). It interprets the notion of 'public policy' as a justification for derogating from a fundamental principle of Community law: the freedom of movement of workers.

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Judgment of the Court of 4 December 1974 [1]

Yvonne van Duyn v Home Office

(preliminary ruling requested by the Chancery Division of the High Court of Justice)

'Public policy'

Case 41/74

Summary

1. Workers — Freedom of movement — Direct effect
(EEC Treaty, Article 48)

2. Acts of an institution — Direct effect — Directive
(EEC Treaty, Article 177, Article 189)

3. Workers — Freedom of movement — Restrictions — Article 3 of Directive No 64/221 of the Council — Direct effect

4. Community law — Fundamental principle – Derogation — National public policy — Strict interpretation — Discretionary power of national authorities

5. Workers — Freedom of movement — Derogation — Threat to national public policy — National of another Member State — Personal conduct — Association with a body which is not illegal — Activities of that body considered to be socially harmful
(EEC Treaty, Article 48; Council Directive No 64/221, Article 3 (1))

1. As the limitations to the principle of freedom of movement for workers which Member States may invoke on grounds of public policy, public security, or public health are subject to the control of the courts, the proviso in paragraph (3) does not prevent the provisions of Article 48 from conferring on individuals rights which they may enforce in the national courts and which the latter must protect.

2. It would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directives, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before the national courts and if the latter were prevented from taking it into consideration as an element of Community law. Article 177, which empowers national courts to refer to the Court questions concerning the validity and interpretation of all acts of the Community institutions, without distinction, implies furthermore that these acts may be invoked by individuals in the national courts.

It is necessary to examine in every case whether the nature, general scheme and wording of the provision in question are capable of having direct effects on the relations between Member States and individuals.

3. Article 3 (1) of Council Directive No 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health confers on individuals rights which are enforceable by them in the national courts of a Member State and which the latter must protect.

4. The concept of public policy in the context of the Community and where, in particular, it is used as a justification for derogating from a fundamental principle of Community law, must be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community. Nevertheless, the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within the limits imposed by the Treaty.

5. Article 48 of the EEC Treaty and Article 3 (1) of Directive No 64/221 must be interpreted as meaning that a Member State, imposing restrictions justified on grounds of public policy, is entitled to take into account, as a matter of personal conduct of the individual concerned, the fact that the individual is associated with some body or organization the activities of which the Member State considers socially harmful but which are not unlawful in that State, despite the fact that no restriction is placed upon nationals of the said Member State who wish to take similar employment with the same bodies or organizations.

In Case 41/74

Reference to the Court under Article 177 of the EEC Treaty by the Chancery Division of the High Court of

Justice, England, for a preliminary ruling in the action pending before that court between

YVONNE VAN DUYN

and

HOME OFFICE

on the interpretation of Article 48 of the EEC Treaty and Article 3 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health. (OJ of 4.4.1964, p. 850).

THE COURT

composed of: R. Lecourt, President C. Ó Dálaigh and Mackenzie Stuart, Presidents of Chambers A. M. Donner, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher and M. Sørensen (Rapporteur), Judges.

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

gives the following

JUDGMENT

Facts

The order for reference and the written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. The Church of Scientology is a body established in the United States of America, which functions in the United Kingdom through a college at East Grinstead, Sussex. The British Government regards the activities of the Church of Scientology as contrary to public policy. On 25 July 1968, the Minister of Health stated in the House of Commons that the Government was satisfied that Scientology was socially harmful. The statement included the following remarks: 'Scientology is a pseudo-philosophical cult … The Government are satisfied having reviewed all the available evidence that Scientology is socially harmful. It alienates members of families from each other and attributes squalid and disgraceful motives to all who oppose it; its authoritarian principles and practice are a potential menace to the personality and well-being of those so deluded as to become its followers; above all its methods can be a serious danger to the health of those who submit to them. There is evidence that children are now being indoctrinated. There is no power under existing law to prohibit the practice of Scientology; but the Government have concluded that it is so objectionable that it would be right to take all steps within their power to curb its growth … Foreign nationals come here to study Scientology and to work at the so-called College in East Grinstead. The Government can prevent this under existing law … and have decided to do so. The following steps are being taken with immediate effect …

……

(e) Work permits and employment vouchers will not be issued to foreign nationals … for work at a Scientology establishment.'

No legal restrictions are placed upon the practice of Scientology in the United Kingdom nor upon British nationals (with certain immaterial exceptions) wishing to become members of or take employment with the Church of Scientology.

2. Miss van Duyn is a Dutch national. By a letter dated 4 May 1973 she was offered employment as a secretary with the Church of Scientology at its college at East Grinstead. With the intention of taking up that offer she arrived at Gatwick Airport on 9 May 1973 where she was interviewed by an immigration officer and refused leave to enter the United Kingdom. It emerged in the course of the interview that she had worked in a Scientology establishment in Amsterdam for six months, that she had taken a course in the subject of Scientology, that she was a practising Scientologist and that she was intending to work at a Scientology establishment in the United Kingdom.

The ground of refusal of leave to enter which is stated in the document entitled 'Refusal of Leave to Enter' handed by the immigration officer to Miss van Duyn reads: 'You have asked for leave to enter the United Kingdom in order to take employment with The Church of Scientology, but the Secretary of State considers it undesirable to give anyone leave to enter the United Kingdom on the business of or in the employment of that organization'.

The power to refuse entry into the United Kingdom is vested in immigration officers by virtue of section 4 (1) of the Immigration Act 1971. Leave to enter was refused by the immigration officer acting in accordance with the policy of the Government and with Rule 65 of the relevant Immigration Rules for Control of Entry which Rules have legislative force. Rule 65 reads:

'Any passenger except the wife or child under 18 of a person settled in the United Kingdom may be refused leave to enter on the ground that the exclusion is conducive to the public good where —

(a) the Secretary of State has personally so directed, or

(b) from information available to the Immigration Officer it seems right to refuse leave to enter on that ground — if, for example, in the light of the passenger's character, conduct or associations it is undesirable to give him leave to enter.'

3. Relying on the Community rules on freedom of movement of workers and especially on Article 48 of the EEC Treaty, Regulation 1612/68 and Article 3 of Directive 64/221, 2 Miss van Duyn claims that the refusal of leave to enter was unlawful and seeks a declaration from the High Court that she is entitled to stay in the United Kingdom for the purpose of employment and to be given leave to enter the United Kingdom.

Before deciding further, the High Court has stayed the proceedings and requested the Court of Justice, pursuant to Article 177 of the EEC Treaty, to give a preliminary ruling on the following questions:

1. Whether Article 48 of the Treaty establishing the European Economic Community is directly applicable so as to confer on individuals rights enforceable by them in the Court of a Member State.

2. Whether Directive 64/221 adopted on 25 February 1964 in accordance with the Treaty establishing the European Economic Community is directly applicable so as to confer on individuals rights enforceable by them in the Courts of a Member State.

3. Whether upon the proper interpretation of Article 48 of the Treaty establishing the European Economic Community and Article 3 of Directive 64/221/EEC a Member State in the performance of its duty to base a measure taken on grounds of public policy exclusively on the personal conduct of the individual concerned

is entitled to take into account as matters of personal conduct

(a) the fact that the individual is or has been associated with some body or organization the activities of which the Member State considers contrary to the public good but which are not unlawful in that State

(b) the fact that the individual intends to take employment in the Member State with such a body or organization it being the case that no restrictions are placed upon nationals of the Member State who wish to take similar employment with such a body or organization.

4. The order of the High Court of 1 March 1974 was registered at the Court on 13 June 1974.

Written observations have been submitted on behalf of Miss van Duyn by Alan Newman, on behalf of the United Kingdom by W. H. Godwin and on behalf of the Commission by its Legal Adviser, A. McClellan.

Having heard the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

On the First Question

Miss van Duyn and the *Commission* submit that Article 48 of the EEC Treaty is directly applicable. They rely in particular on the judgments of the Court of 4 April 1974 in *Commission* v *French Republic* (Case No 167/73, [1974] ECR 359) and of 21 June 1974 in *Reyners* v *Belgian State* (Case No 2/74, not yet published).

In the light of the judgment in Case No 167/73 the *United Kingdom* makes no submission on this question.

On the Second Question

Miss van Duyn submits that Article 3 of Directive 64/221 is directly applicable. She observes that the Court has already held that, in principle, directives are susceptible of direct application. She refers to the judgments of the Court of 6 October 1970 in *Grad* v *Finanzamt Traunstein* (Case No 9/70, Recueil 1970, p. 825) and of 17 December 1970 in *Spa SACE* v *Italian Ministry of Finance* (Case No 33/70, Recueil 1970, p. 1213).

She submits that the criterion as to whether a directive is directly applicable is identical with the criterion adopted in the case of articles in the Treaty itself, and she observes that the Court has not felt itself constrained to hold that a given article in the Treaty is not directly applicable merely because in its formal wording it imposes an obligation on a Member State. She refers to the judgments of the Court of 19 December 1968 in *Salgoil* v *Italian Ministry* (Case No 13/68, Recueil 1968, p. 661) and of 16 June 1966 in *Lütticke GmbH* v *Hauptzollamt Sarrelouis* (Case No 57/65, Recueil 1966, p. 293).

Miss van Duyn further submits that a directive which directly affects an individual is capable of creating direct rights for that individual where its provisions are clear and unconditional and where, as to the result to be achieved, it leaves no substantial measure of discretion to the Member State. Provided that these criteria are fulfilled it does not matter

(a) whether the provision in the directive consists of a positive obligation to act or of a negative prohibition, or

(b) that the Member State has a choice of form and methods to be adopted in order to achieve the stated result.

As to (a), it is implicit in the Court's judgments in the cases of *Lütticke* and *Salgoil* (already cited) that an article of the Treaty which imposes a positive obligation on a Member State to act is capable of direct applicability and the same reasoning is valid in relation to directives.

As to (b), she notes that Article 189 of the Treaty expressly draws a distinction in relation to directives between binding effect of the result to be achieved and the discretionary nature of the methods to be adopted.

She contends that the provisions of Article 3 fulfil the criteria for direct applicability. She refers to the preamble to the Directive which envisages a direct applicability when it states: 'whereas, in each Member State, nationals of other Member States should have adequate legal remedies available to them in respect of the administration in such matters …' (i.e. when a Member State invokes grounds of public policy, public security or public health in matters connected with the movement or residence of foreign nationals).

The only 'adequate legal remedy' available to an individual is the right to invoke the provisions of the Directive before the national courts. A decision to this effect would undoubtedly strengthen the legal protection of individual citizens in the national courts.

The Commission submits that a provision in a directive is directly applicable when it is clear and unambiguous. It refers to the judgments in the *Grad* and *SACE* cases (already cited).

The Commission observes that a Community Regulation has the same weight with immediate effect as national legislation whereas the effect of a directive is similar to that of those provisions of the Treaty which create obligations for the Member States. If provisions of a directive are legally clear and unambiguous, leaving only a discretion to the national authorities for their implementation, they must have an effect similar to those Treaty provisions which the Court has recognized as directly applicable.

It therefore submits that

(a) the executive of a Member State is bound to respect Community law

(b) if a provision in a directive is not covered by an identical provision in national law, but left, as to the result to be achieved, to the discretion of the national authority, the discretionary power of that authority is reduced by the Community provision

(c) in these circumstances and given that to comply with a directive it is not always indispensable to amend national legislation it is clear that the private individual must have the right to prevent the national authority concerned from exceeding its powers under Community law to the detriment of that individual.

According to the Commission, Article 3 is one of the provisions of Directive 64/221 having all the characteristics necessary to have direct effect in the Member State to which it is addressed. And it further recalls that the difficulty of applying the rules in a particular case does not derogate from their general application.

In this context the Commission examines the Judgment of 7 October 1968 of the Belgian Conseil d'État in the *Corveleyn* case (CE 1968, No 13.146 arrêt 7.10.1968, p. 710).

As the British authorities have not adopted the wording of Article 3 of the Directive to achieve the required result, the Commission submits, by virtue of Article 189 of the Treaty and in the light of the case-law of the Court, that Article 3 is a directly applicable obligation which limits the wide discretion given to immigration officers under Rule 65 in the 'Statement of Immigration Rules'. The Commission proposes the following answer to the question: Where a provision is legally clear and unambiguous as is Article 3 of Directive 64/221, such a provision is directly applicable so as to confer on individuals rights enforceable by them in the Courts of a Member State.

The United Kingdom recalls that Article 189 of the EEC Treaty draws a clear distinction between regulations and directives, and that different effects are ascribed to each type of provision. It therefore submits that *prima facie* the Council in not issuing a regulation must have intended that the Directive should have an effect other than that of a regulation and accordingly should not be binding in its entirety and not be directly applicable in all Member States.

The United Kingdom submits that neither the *Grad* nor the *SACE* decision is authority for the proposition that it is immaterial whether or not a provision is contained in a regulation, directive or decision. In both cases the purpose of the directive in question was merely to fix a date for the implementation of clear and binding obligations contained in the Treaty and instruments made under it. Those cases show that in special circumstances a limited provision in a directive could be directly applicable. The provisions of the Directive in the present case are wholly different. Directive 64/221 is far broader in scope. It gives comprehensive guidance to Member States as to all measures taken by them affecting freedom of movement for workers and it was expressly contemplated in Article 10 that Member States would put into force the measures necessary to comply with the provisions of the Directive. Indeed the very terms of Article 3 (1) itself contemplate the taking of measures.

The United Kingdom examines the only four cases in which national courts to its knowledge have considered the question of the direct applicability of the Directive. It submits that little assistance can be obtained from these cases. *Inter alia* it points out that the true effect of the *Corveleyn* case (already cited) has been the subject of considerable debate among Belgian jurists and the better view appears to be that the Conseil d'État did not decide that the Directive was directly applicable but applied the Belgian concept of public order which itself required international obligations of Belgium to be taken into account.

On the Third Question

Miss van Duyn points out that the first part of the question assumes a situation where an organization engages in activities which are lawful in the State. The question does not necessarily assume that the individual concerned intends to continue this association. It is sufficient that he has in the past been associated. In this respect Miss van Duyn recalls that even if the individual had been associated with an illegal organization and, by virtue of his activities therein, had been convicted of a crime, that circumstance would not, by virtue of the provisions of Article 3, paragraph 2, of Directive 64/221, in itself be sufficient grounds for the Member State to take measures based on public policy to exclude the individual.

Merely belonging to a lawful organization, without necessarily taking part in its activities, cannot, in her submission, amount to 'conduct'. Conduct implies 'activity.' Moreover, the activities of the organization in question are not, merely because the individual is or has been a passive member, 'personal' to the individual concerned. To hold otherwise would mean that a Member State could exclude an individual merely because, in the distant past, he had for a brief period perfectly lawfully belonged to a somewhat extreme political or religious organization in his own Member State.

In regard to the second part of the question, Miss van Duyn recalls that freedom of movement of persons is

one of the fundamental principles established by the Treaty and that discrimination on grounds of nationality is prohibited in Article 7. Exemptions to these fundamental principles must be interpreted restrictively.

She points out that the question assumes discrimination on grounds of nationality and that it assumes a situation where an individual whose past activity has been blameless seeks entry into a Member State in order to work for an organization in whose employment the nationals of the Member State are perfectly free to engage. She submits that if an organization is deemed contrary to the public good the Member State is faced with a simple choice: either to ban everyone, including its own nationals, from engaging in employment with that organization, or to tolerate nationals of other Member States as it tolerates its own nationals engaging in such employment.

The Commission asserts that the concepts 'public policy' and 'personal conduct' contained in Article 48, paragraph 3 of the Treaty and Article 3 of Directive 64/221 are concepts of Community law. They must first be interpreted in the context of Community law and national criteria are only relevant to its application.

In practice, if each Member State could set limits to the interpretation of public policy the obligations deriving from the principle of freedom of movement of workers would take a variety of forms in different Member States. It is only possible for this freedom to be maintained throughout the Community on the basis of uniform application in all the Member States. It would be inconsistent with the Treaty if one Member State accepted workers from another Member State while its own workers did not receive uniform treatment as regards the application of the rules in respect of public order in that other State.

The Commission submits that the discrimination by a Member State on grounds of public policy against nationals of another Member State for being employed by an organization the activities of which it considers contrary to the public good when it does not make it unlawful for its own nationals to be employed by such an organization is contrary to Article 48, paragraph 2 of the Treaty. Article 3 (1) of the Directive is precise in stating that measures taken on grounds of public policy shall be based exclusively on the personal conduct of the individual concerned. Personal conduct which is acceptable when exercised by a national of one Member State cannot be unacceptable, under Community law, when exercised by a national of another Member State.

It is for consideration that Article 3 precludes a Member State, as a general contingency against some potential harm to society, from invoking public policy as a ground for refusing entry when the personal conduct of the individual is or was not contrary to public policy in the Member States concerned. It is not denied that membership of a militant organization proscribed in the host Member State would be an element to be taken into account in assessing personal conduct for the purpose of justifying a refusal of entry on grounds of public policy or public security.

As to the first part of the question *the United Kingdom* deals with three problems.

The first problem is whether an individual's past or present association with an organization can be regarded as an aspect of his personal conduct. The United Kingdom asserts that it is of importance that a Member State in relation to public policy should be entitled to consider a person's associations with a body or organization. The Member State should be entitled to exclude that person in appropriate cases, i.e. if the organization is considered sufficiently undesirable from the viewpoint of public policy and the association by that person with that organization is sufficiently close.

Secondly the United Kingdom submits that a measure which is taken on grounds of public policy and which provides for the exclusion from a Member State of an individual on the grounds of that individual's association with an organization is compatible with the requirement of Article 3 (1). It accepts that the intention underlying that Article must have been to exclude collective expulsions and to require the consideration by the national authorities of the personal circumstances of each individual in each case. Nevertheless it is not inconsistent with that intention for a Member State to take into account an individual's association with an organization and, in appropriate cases, to exclude the individual by reason of that association. Whether, in any given case, such exclusion is justified will depend on the view the Member

State takes of the organization.

As a practical matter the processes of admitting persons to enter a Member State must be administered by a large number of officials. Such officials cannot be expected to know all that the Government may know about a particular organization and it is inevitable that such officials must act in accordance with directions given by the Government and laying down broad principles on which the officials are to act. It is inevitable also that such directions may relate to particular organizations which a Government may consider contrary to the public good.

Thirdly the United Kingdom submits that the fact that the activities of the organization are not unlawful in a Member State though considered by the Member State to be contrary to the public good does not disentitle the Member State from taking into account the individual's association with the organization. It must be a matter for each State to decide whether it should make activities of an organization, or the organization itself, illegal. Only the State is competent to make such evaluation and it will do so in the light of the particular circumstances of that State. Thus, as is common knowledge, the United Kingdom practises a considerable degree of tolerance in relation to organizations within the United Kingdom. In the case of Scientology the reasons why the United Kingdom regards the activities of the Scientologists as contrary to public policy were explained in the statement made in Parliament on 25 July 1968. The Scientologists still have their World Headquarters in the United Kingdom so that Scientology is of particular concern to the United Kingdom.

The United Kingdom notes that two problems arise in connection with the matter referred to in subparagraph (b) of the question.

The first problem is whether the fact that an individual intends to take employment with such an organization is an aspect of that individual's personal conduct. It is submitted that such an intention is a very material aspect of the individual's personal conduct.

The second problem is whether the fact that no restrictions are placed upon nationals of the Member State who wish to take similar employment with such an organization disentitles the Member State from taking this intention into account.

The United Kingdom points out that it is inevitable that in respect of the entry into a state of persons, there must be some discrimination in favour of the nationals of that state. For a national, however undesirable and potentially harmful his entry may be, cannot be refused admission into his own state. A state has a duty under international law to receive back its own nationals. The United Kingdom refers *inter alia* to Article 5 (b) (ii) of the Universal Declaration of Human Rights which states: 'Everyone has the right to leave any country, including his own, and to return to his country'. It observes that, for example, a Member State would be justified in refusing to admit a drug addict who is a national of another State even though it would be obliged to admit a drug addict who was one of its own nationals.

Miss van Duyn, represented by Alan Newman, the United Kingdom, represented by Peter Gibson, and the Commission, represented by Anthony McClellan, submitted oral observations at the hearing on 23 October 1974.

The Advocate-General delivered his opinion at the hearing on 13 November 1974.

Law

1 By order of the Vice-Chancellor of 1 March 1974, lodged at the Court on 13 June, the Chancery Division of the High Court of Justice of England, referred to the Court, under Article 177 of the EEC Treaty, three questions relating to the interpretation of certain provisions of Community law concerning freedom of movement for workers.

2 These questions arise out of an action brought against the Home Office by a woman of Dutch nationality

who was refused leave to enter the United Kingdom to take up employment as a secretary with the 'Church of Scientology'.

3 Leave to enter was refused in accordance with the policy of the Government of the United Kingdom in relation to the said organization, the activities of which it considers to be socially harmful.

First question

4 By the first question, the Court is asked to say whether Article 48 of the EEC Treaty is directly applicable so as to confer on individuals rights enforceable by them in the courts of a Member State.

5 It is provided, in Article 48 (1) and (2), that freedom of movement for workers shall be secured by the end of the transitional period and that such freedom shall entail 'the abolition of any discrimination based on nationality between workers of Member States as regards employment, remuneration and other conditions of work and employment.'

6 These provisions impose on Member States a precise obligation which does not require the adoption of any further measure on the part either of the Community institutions or of the Member States and which leaves them, in relation to its implementation, no discretionary power.

7 Paragraph 3, which defines the rights implied by the principle of freedom of movement for workers, subjects them to limitations justified on grounds of public policy, public security or public health. The application of these limitations is, however, subject to judicial control, so that a Member State's right to invoke the limitations does not prevent the provisions of Article 48, which enshrine the principle of freedom of movement for workers, from conferring on individuals rights which are enforceable by them and which the national courts must protect.

8 The reply to the first question must therefore be in the affirmative.

Second question

9 The second question asks the Court to say whether Council Directive No 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health is directly applicable so as to confer on individuals rights enforceable by them in the courts of a Member State.

10 It emerges from the order making the reference that the only provision of the Directive which is relevant is that contained in Article 3 (1) which provides that 'measures taken on grounds of public policy or public security shall be based exclusively on the personal conduct of the individual concerned.'

11 The United Kingdom observes that, since Article 189 of the Treaty distinguishes between the effects ascribed to regulations, directives and decisions, it must therefore be presumed that the Council, in issuing a directive rather than making a regulation, must have intended that the directive should have an effect other than that of a regulation and accordingly that the former should not be directly applicable.

12 If, however, by virtue of the provisions of Article 189 regulations are directly applicable and, consequently, may by their very nature have direct effects, it does not follow from this that other categories of acts mentioned in that Article can never have similar effects. It would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before their national courts and if the latter were prevented from taking it into consideration as an element of Community law. Article 177, which empowers national courts to refer to the Court questions concerning the validity and interpretation of all acts of the Community institutions, without distinction, implies furthermore

that these acts may be invoked by individuals in the national courts. It is necessary to examine, in every case, whether the nature, general scheme and wording of the provision in question are capable of having direct effects on the relations between Member States and individuals.

13 By providing that measures taken on grounds of public policy shall be based exclusively on the personal conduct of the individual concerned, Article 3 (1) of Directive No 64/221 is intended to limit the discretionary power which national laws generally confer on the authorities responsible for the entry and expulsion of foreign nationals. First, the provision lays down an obligation which is not subject to any exception or condition and which, by its very nature, does not require the intervention of any act on the part either of the institutions of the Community or of Member States. Secondly, because Member States are thereby obliged, in implementing a clause which derogates from one of the fundamental principles of the Treaty in favour of individuals, not to take account of factors extraneous to personal conduct, legal certainty for the persons concerned requires that they should be able to rely on this obligation even though it has been laid down in a legislative act which has no automatic direct effect in its entirety.

14 If the meaning and exact scope of the provision raise questions of interpretation, these questions can be resolved by the courts, taking into account also the procedure under Article 177 of the Treaty.

15 Accordingly, in reply to the second question, Article 3 (1) of Council Directive No 64/221 of 25 February 1964 confers on individuals rights which are enforceable by them in the courts of a Member State and which the national courts must protect.

Third question

16 By the third question the Court is asked to rule whether Article 48 of the Treaty and Article 3 of Directive No 64/221 must be interpreted as meaning that

‘a Member State, in the performance of its duty to base a measure taken on grounds of public policy exclusively on the personal conduct of the individual concerned is entitled to take into account as matters of personal conduct:

(a) the fact that the individual is or has been associated with some body or organization the activities of which the Member State considers contrary to the public good but which are not unlawful in that State;

(b) the fact that the individual intends to take employment in the Member State with such a body or organization it being the case that no restrictions are placed upon nationals of the Member State who wish to take similar employment with such a body or organization.’

17 It is necessary, first, to consider whether association with a body or an organization can in itself constitute personal conduct within the meaning of Article 3 of Directive No 64/221. Although a person’s past association cannot, in general, justify a decision refusing him the right to move freely within the Community, it is nevertheless the case that present association, which reflects participation in the activities of the body or of the organization as well as identification with its aims and its designs, may be considered a voluntary act of the person concerned and, consequently, as part of his personal conduct within the meaning of the provision cited.

18 This third question further raises the problem of what importance must be attributed to the fact that the activities of the organization in question, which are considered by the Member State as contrary to the public good, are not however prohibited by national law. It should be emphasized that the concept of public policy in the context of the Community and where, in particular, it is used as a justification for derogating from the fundamental principle of freedom of movement for workers, must be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions

of the Community. Nevertheless, the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within the limits imposed by the Treaty.

19 It follows from the above that where the competent authorities of a Member State have clearly defined their standpoint as regards the activities of a particular organization and where, considering it to be socially harmful, they have taken administrative measures to counteract these activities, the Member State cannot be required, before it can rely on the concept of public policy, to make such activities unlawful, if recourse to such a measure is not thought appropriate in the circumstances.

20 The question raises finally the problem of whether a Member State is entitled, on grounds of public policy, to prevent a national of another Member State from taking gainful employment within its territory with a body or organization, it being the case that no similar restriction is placed upon its own nationals.

21 In this connexion, the Treaty, while enshrining the principle of freedom of movement for workers without any discrimination on grounds of nationality, admits, in Article 48 (3), limitations justified on grounds of public policy, public security or public health to the rights deriving from this principle. Under the terms of the provision cited above, the right to accept offers of employment actually made, the right to move freely within the territory of Member States for this purpose, and the right to stay in a Member State for the purpose of employment are, among others all subject to such limitations. Consequently, the effect of such limitations, when they apply, is that leave to enter the territory of a Member State and the right to reside there may be refused to a national of another Member State.

22 Furthermore, it is a principle of international law, which the EEC Treaty cannot be assumed to disregard in the relations between Member States, that a State is precluded from refusing its own nationals the right of entry or residence.

23 It follows that a Member State, for reasons of public policy, can, where it deems necessary, refuse a national of another Member State the benefit of the principle of freedom of movement for workers in a case where such a national proposes to take up a particular offer of employment even though the Member State does not place a similar restriction upon its own nationals.

24 Accordingly, the reply to the third question must be that Article 48 of the EEC Treaty and Article 3 (1) of Directive No 64/221 are to be interpreted as meaning that a Member State, in imposing restrictions justified on grounds of public policy, is entitled to take into account, as a matter of personal conduct of the individual concerned, the fact that the individual is associated with some body or organization the activities of which the Member State considers socially harmful but which are not unlawful in that State, despite the fact that no restriction is placed upon nationals of the said Member State who wish to take similar employment with these same bodies or organizations.

Costs

25 The costs incurred by the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable, and as these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the High Court of Justice, by order of that court, dated 1 March 1974, hereby rules:

1. Article 48 of the EEC Treaty has a direct effect in the legal orders of the Member States and confers on individuals rights which the national courts must protect.

2. Article 3 (1) of Council Directive No 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health confers on individuals rights which are enforceable by them in the national courts of a Member State and which the national courts must protect.

3. Article 48 of the EEC Treaty and Article 3 (1) of Directive No 64/221 must be interpreted as meaning that a Member State, in imposing restrictions justified on grounds of public policy, is entitled to take into account as a matter of personal conduct of the individual concerned, the fact that the individual is associated with some body or organization the activities of which the Member State considers socially harmful but which are not unlawful in that State, despite the fact that no restriction is placed upon nationals of the said Member State who wish to take similar employment with the same body or organization.

Lecourt
Ó Dálaigh
Mackenzie Stuart
Donner
Monaco
Mertens de Wilmars
Pescatore
Kutscher
Sørensen

Delivered in open court in Luxembourg on 4 December 1974.

A. Van Houtte
Registrar
R. Lecourt
President

1 — Language of the Case: English.
2 — Article 3 (1) of the Directive reads: ‘Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.’