

Judgment of the Court of Justice, Rutili, Case 36/75 (28 October 1975)

Caption: In the Rutili judgment, the Court of Justice provides a strict interpretation of the public policy reservation which may possibly restrict the free movement of workers in the Member States. As an exception to a fundamental principle of Community law, its application must comply with all Community rules. Accordingly, any measures which may be taken by a Member State must be based exclusively on the personal conduct of the individual posing a genuine and sufficiently serious threat, and must apply indiscriminately to nationals of the Member State and to other Community nationals.

Source: Reports of Cases before the Court. 1975. [s.l.]. "Judgment of 28 October 1975, Roland Rutili v Minister for the Interior, Case 36/75", auteur: Court of Justice of the European Communities (CJEC) , p. 1219.

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Judgment of the Court of 28 October 1975 ¹**Roland Rutili v Minister for the Interior**

(preliminary ruling requested by the Tribunal administratif Paris)

‘Public policy’

Case 36/75

Summary

1. *Workers — Freedom of movement — Limitations — National public policy Scope — National provisions — Individual decisions (EEC Treaty, Article 48)*
2. *Workers — Freedom of movement — Equality of treatment — Fundamental principles — Derogation — National public policy — Concept — Strict interpretation (EEC Treaty, Articles 7 and 48)*
3. *Workers — Freedom of movement — Nationals of Member States — Rights — Restrictions — National public policy — Threat — Reality — Gravity (EEC Treaty, Article 48)*
4. *Workers — Freedom of movement — Limitations — National public policy — Member States — Powers — Limits — Nationals of Member States — Rights — Safeguards — Rules of substantive law — Personal conduct — Exercise of trade union rights — Procedural provisions — Notification — Statement of grounds — Legal remedies (EEC Treaty, Article 48)*
5. *Workers — Freedom of movement — Right of residence — Prohibition — Restriction to part of the territory — Equality of treatment (EEC Treaty, Articles 7 and 48)*

1. The expression ‘subject to limitations justified on grounds of public policy’ in Article 48 concerns not only the legislative provisions adopted by each Member State to limit within its territory freedom of movement and residence for nationals of other Member States but concerns also individual decisions taken in application of such legislative provisions.
2. The concept of public policy must, in the Community context, and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, 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.
3. Restrictions cannot be imposed on the right of a national of any Member State to enter the territory of another Member State, to stay there and to move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy.
4. An appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.

These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned, to refrain from adopting any measures in this respect which serve ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.

5. Measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

In Case 36/75

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal administratif, Paris, for a preliminary ruling in the action pending before that court between

ROLAND RUTILI, residing at Gennevilliers,

and

THE MINISTER FOR THE INTERIOR

on the interpretation of Article 48 of the EEC Treaty

THE COURT

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

Advocate-General: H. Mayras

Registrar: A. Van Houtte

gives the following:

JUDGMENT

Facts

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Mr Roland Rutili, of Italian nationality, was born on 27 April 1940 in Loudun (Vienne), and has been resident in France since his birth; he is married to a Frenchwoman and was, until 1968, the holder of a privileged resident's permit and domiciled at Audun-le-Tiche (in the department of Meurthe-et-Moselle), where he worked and engaged in trade union activities.

On 12 August 1968, the Ministry for the Interior made a deportation order against him.

On 10 September 1968 an order was issued requiring him to reside in the department of Puy-de-Dôme.

By orders of 19 November 1968 the Minister for the Interior revoked the deportation and residence orders affecting Mr Rutili and, on the same date, informed the Prefect of the Moselle of his decision to prohibit Mr Rutili from residing in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges.

On 17 January 1970 Mr Rutili applied for the grant of a residence permit for a national of a Member State of the EEC.

On 9 July 1970 he appealed to the Tribunal administratif, Paris, against the implied decision refusing him this document.

On 23 October 1970, the Prefect of Police, acting on instructions given by the Minister for the Interior on 17 July, granted Mr Rutili a residence permit for a national of a Member State of the EEC, which was valid until 22 October 1975 but subject to a prohibition on residence in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges.

On 16 December 1970, Mr Rutili brought proceedings before the Tribunal administratif, Paris, for annulment of the decision limiting the territorial validity of his residence permit.

During the proceedings before the Tribunal administratif, it became apparent that Mr Rutili's presence in the departments of Lorraine was considered by the Minister for the Interior to be 'likely to disturb public policy'

and that there were complaints against him in respect of certain activities, the truth of which is, however, contested, which are alleged to consist, in essence, in political actions during the parliamentary elections in March 1967 and the events of May and June 1968 and in his participation in a demonstration during the celebrations on 14 July 1968 at Audun-le-Tiche.

By judgment of 16 December 1974, the Tribunal administratif, Paris, decided to stay proceedings under Article 177 of the EEC Treaty until the Court of Justice had given a preliminary ruling on the following questions:

1. Does the expression, ‘subject to limitations justified on grounds of public policy’, employed in Article 48 of the Treaty establishing the EEC concern merely the legislative decisions which each Member State of the EEC has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other Member States or does it also concern individual decisions taken in application of such legislative decisions?
2. What is the precise meaning to be attributed to the word ‘justified’?

The decision of the Tribunal administratif, Paris was entered at the Court Registry on 9 April 1975.

Written observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC were submitted on 16 June 1975 by the Commission of the European Communities, on 20 June by the Government of the French Republic and on 26 June by the Government of the Italian Republic.

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

On 2 September 1975, the Government of the French Republic supplied to the Court at the request of the latter certain details of the substantive and procedural conditions in which a prohibition on residence in part of the national territory may be issued against a French national.

II — Written observations submitted to the Court

A — The first question

The *Government of the French Republic* takes the view that this question is answered by 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 (OJ, English Special Edition 1963-1964, p. 117), which lays down the conditions on which measures based on those grounds may be taken against individuals; in particular, Article 3 (1) thereof provides as follows: ‘Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.’ This is the directive expressly referred to in the third recital of the preamble to Council Directive No 68/360 of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II), p. 485), cited in the decision of the Tribunal administratif, Paris.

The *Government of the Italian Republic* considers it desirable that regulations of a general and abstract nature adopted in the Member States of the EEC should specify the grounds of public policy which, on the basis of uniform criteria throughout the Community, are capable of limiting the rights arising under Article 48 of the EEC Treaty; this would substantially reduce the discretionary character of an individual decision taken by the administration which applies abstract regulations to a particular case. In the present state of Community law, however, limitations on the right of freedom of movement may arise from

individual administrative measures but appraisal of the grounds of public policy must, in each particular case, be made in the light of the Community regulations which have been promulgated for the very purpose of restricting this discretionary power in view of the objectives embodied in Article 48.

On the question whether an individual administrative measure may decide to prohibit residence in certain regions of a State only, it must be stated that although Article 6 (1) (a) of Directive No 68/360 provides that the residence permit of a national of a Member State of the EEC must be valid throughout the territory of the State which issued it, Article 10 of the same directive allows Member States to derogate from its provisions on grounds of public policy, public security or public health. It would, therefore, appear that a decision prohibiting residence in certain parts of the national territory may be justified on grounds of public policy.

However, it follows from the judgment of the Court of Justice of 26 February 1975 in Case 67/74 (*Bonsignore v Stadt Köln* (1975) ECR 297; reference for a preliminary ruling by the Verwaltungsgericht Köln) that derogations from the rules concerning the free movement of persons constitute exceptions which must be strictly construed; personal conduct capable of justifying such departures must, accordingly, be of a particularly serious nature. In these circumstances, the view may be taken that Community law does not permit grading of the seriousness of conduct penalized by administrative measures and that it is doubtful whether the immediate measure of a prohibition on residence in certain regions only of the national territory may be applied. Moreover, the fact that the measure imposed is not one of deportation but a partial prohibition on residence may enable the conclusion to be drawn that the conduct which gave rise to the penalty is not of the particularly serious nature required by Community regulations.

The *Commission of the European Communities* takes the view that an answer in the affirmative, though accompanied by certain details, should be given to the question whether the reservation made concerning public policy in Article 48 (3) of the EEC Treaty also covers individual decisions implementing legislative decisions taken by a Member State in order to restrict the freedom of movement and residence on its territory of the nationals of Member States.

(a) The wide discretion traditionally enjoyed by the immigration authorities is limited by Directive No 64/221, the object of which is to restrict the actions of national authorities by means both of provisions covering matters of substance (Articles 2, 3 and 4) and by procedural provisions (Articles 5 to 9). Some provisions of Community law concerning the reservation on public policy, in particular Article 48 of the Treaty and Article 3 (1) of Directive No 64/221, are directly applicable in the legal systems of the Member States. Thus, the discretionary powers of the national administrative authorities are circumscribed not only within the limits fixed by the rules of national law, supplemented as necessary by the incorporation into domestic law of the rules which appear in the directive, but also within the limits fixed by the directly applicable provisions of the Community directive.

(b) These limits are of decisive concern precisely when individual decisions are taken, as the directive requires each case to be examined individually.

(c) The expression, 'subject to limitations justified on grounds of public policy', used in Article 48 (3) of the EEC Treaty is, therefore, primarily concerned with individual decisions taken against foreigners who are nationals of a Member State of the EEC.

B — The second question

The *Government of the French Republic* takes the view that the precise meaning to be given to the word 'justified' in the expression 'subject to limitations justified on grounds of public policy' in Article 48 of the EEC Treaty follows from the judgment of the Court of 4 December 1974 in Case 41/74 (*van Duyn v Home Office*; a reference for a preliminary ruling from the Chancery Division of the High Court of Justice, [1974] ECR 1337). In its judgment, the Court ruled, *inter alia*, 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’;

and that

‘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.’

The *Government of the Italian Republic* considers that, particularly in view of Article 6 of Directive No 64/221, the term ‘justified’ in the first place means that there must be an exhaustive explanation of the reasons for measures which, on grounds of public policy, limit the rights secured by Article 48 of the Treaty, and that this seems manifestly not to have been done in the case of the decision contested in the main action

Nor is it possible to tell from the statement of reasons for that decision whether, in this particular case, the principle laid down in Article 3 (1) of Directive No 64/221 was observed, and in particular whether the contested measure is concerned only with threats to public policy and public security on the part of the person who is the subject thereof, or whether it was adopted for the unlawful purpose of deterring other foreigners.

Furthermore, limitations on the freedom of movement cannot be regarded as justified under Community law if they are imposed without guaranteeing the rights of appeal for those concerned under the terms laid down by Articles 8 and 9 of Directive No 64/221.

Finally, the limitations imposed upon workers’ freedom of movement on grounds of public policy and countenanced, exceptionally, under Article 48 (3) of the Treaty, may be regarded as justified if they fulfil the substantive and formal requirements prescribed by Directive No 64/221 which, in accordance with the case-law of the Court, must be interpreted restrictively.

According to the *Commission of the European Communities*, an appraisal of the precise meaning to be given to the word ‘justified’ may be based on three viewpoints:

(a) The measure must first of all be justified in the sense that the decision by which it is adopted against the person concerned must be reasoned.

As the measure may only be based on adequate grounds and refer exclusively to the personal conduct of the individual concerned, these grounds must be explained to him, especially to enable him to make use of the legal remedies which, under Articles 8 and 9 of Directive No 64/221, the Member States must make available to him. Under Article 6 of the Directive: ‘The person concerned shall be informed of the grounds of public policy, public security or public health upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State involved.’ In the present case, it is for the Court dealing with the substance of the case to assess whether the grounds are, in this sense, really ‘justified’.

(b) With regard to the meaning of the concept of public policy which is capable of justifying measures taken against a foreigner, in view in particular of Directive No 64/221, the case-law of the Court and the viewpoint of the French Minister for the Interior, the following considerations must be borne in mind:

— The right to enter the territory of Member States and to reside there is an indispensable element of the free movement of persons, which is itself one of the underlying principles of the Community. The exercise of this right of entry and of residence, enshrined in Article 48 of the EEC Treaty, is subject to no

reservations except those provided for by way of limitation in paragraph (3) of the article, which refer to public policy, public security or public health; since it is an exception, it must be restrictively interpreted.

— The concept of public policy must, therefore, be resorted to only in particularly serious cases.

— In the Member States of the Community, fundamental human rights, the ‘public freedoms’, are established and recognized by the State. National statutory law lays down the basic rules for each of these freedoms and prescribes their limits both to enable them to be exercised simultaneously and to protect society. These limitations form a basic criterion for determining at what point an activity may be regarded as constituting ‘a danger to society’. Thus, an activity which consists of the legitimate exercise of a freedom enjoyed by the public and recognized as such by national law can scarcely be considered to affect adversely the public policy of a State because the person responsible for it is a foreigner.

— In fields involving the exercise by the public of its freedoms, an appraisal whether a foreigner has acted contrary to public policy must be made by reference not only to the national rules of a host State which recognizes its own citizens as being entitled to those freedoms, but also of the relevant international obligations into which the State has entered.

— The exercise of trade union rights by a foreigner, under the same conditions as a national, cannot be regarded as in itself constituting an offence against public policy. The exercise of trade union rights was recognized by Article 8 of Regulation 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 embodied in several international documents. Such recognition enables foreigners, without discrimination based on national descent or origin, to make full use of collective bargaining rights including, in particular, the right to take collective action in case of dispute, and the right to strike. The exercise of trade union rights is subject to certain limitations laid down by the law and which, in a democratic society, are necessary to ensure respect for the rights and liberties of others and to safeguard public order, national security, public health and morals. In this connexion, it must be borne in mind that the concept of political neutrality, which applies particularly to foreigners, must be handled with care in the context of a Community which is trying to integrate the migrant worker more and more closely into the host country and which likes to emphasize its political aims. The host State can no doubt impose restrictions on the political activity of foreigners; at the same time, political neutrality must on no account be used to prevent the normal exercise of legitimate economic and social rights which are enshrined in Community law.

(c) On the question whether the measure adopted is justified in the present case, the following comments may be made:

— Directive No 64/221 expressly refers to refusal of entry into a territory and expulsion from a territory as special measures which may be taken against a national of a Member State; on the other hand, it contains no provision that prohibitions on residence in part of the territory may be justified on grounds of public policy.

— One might, at first, be tempted to conclude that, as the administrative authorities are justified in adopting a deportation measure against a foreigner, they may *a fortiori* adopt a less drastic measure, and that it would be to encourage them in every case to opt for deportation if they were prohibited from adopting a less radical measure.

— Nevertheless, the right to move freely within a State and to choose to reside there is a basic human right; thus, Article 6 (1) (a) of Directive No 68/360 provides that a residence permit, which is a straightforward entitlement to residence embodying, in administrative terms, the right of residence recognized by the directive, must, in principle, be valid throughout the territory of the State which issued it. It is open to question whether the French authorities were entitled to limit the scope of that Community provision by providing, in the Decree of 5 January 1970, that ‘a residence permit for a national of a Member State of the EEC shall be valid throughout French territory save in the case of an individual decision taken by the Minister for the Interior on grounds of public policy.’

— An order as to place of residence may nevertheless be made against a foreigner in certain circumstances where special restrictions on foreigners appear to be in fact justifiable on grounds of public policy. But it must be possible, in each individual case, to justify the application to a foreigner of the general rule laid down in the Decree of 5 January 1970. In the present case, however, the measure contested in the main action appears to be discriminatory or unfounded.

— Finally, refusal of a residence permit may have very serious consequences for the person concerned and also for his family.

(d) In conclusion, in order to be ‘justified’ within the meaning of Article 48 (3) of the EEC Treaty, a measure affecting an individual must:

— in accordance with the provisions of Articles 8 and 9 of Directive No 64/221, state the grounds on which it is based;

— be based on particularly serious grounds, especially when the activity for which the national of a Member State is criticized is the result of exercising a freedom expressly recognized by the State in which he resides or a fundamental right enshrined in an international document; the exercise of trade union freedom cannot constitute an offence against public order or public security within the meaning of Article 48 (3) if it takes a form which is considered lawful in the case of nationals;

— in view of the restriction on freedom of movement which it involves and the consequences which it entails for the person concerned and members of his family, in each particular case be calculated to meet the specific threat to public order posed by the person concerned.

III — Oral procedure

Mr Rutili, the plaintiff in the main action, represented by Marcel Manville, Advocate of the Paris Bar, and the Commission of the European Communities, represented by its Legal Adviser, Jean-Claude Séché, submitted their oral observations at the hearing on 1 October 1975.

During the hearing, the *plaintiff in the main action* claimed that the decision limiting the territorial validity of his residence permit is, both from the standpoint of French law and of Community law, wholly without legal justification; from the standpoint of Community law, more particularly, it is an infringement of the fundamental right of freedom of movement and of the principle of non-discrimination.

The Advocate-General delivered his opinion on 14 October 1975.

Law

1 By a decision of 16 December 1974, received at the Court Registry on 9 April 1975, the Tribunal administratif, Paris, has referred to the Court two questions under Article 177 of the EEC Treaty concerning the interpretation of the reservation made in respect of public policy in Article 48 of the EEC Treaty in the light of the measures taken for implementation of that article, especially Regulation No 1612/68 of the Council of 15 October 1968 and Council Directive No 68/360 of the same date, on freedom of movement for workers (OJ English Special Edition 1968 (I), pp. 475 and 485).

2 These questions were raised in the course of proceedings brought by an Italian national residing in the French Republic against a decision to grant him a residence permit for a national of a Member State of the EEC subject to a prohibition on residence in certain French departments.

3 The file of the Tribunal administratif and the oral procedure before the Court have established that the plaintiff in the main action was, in 1968, the subject first of all of a deportation order and then of an order directing him to reside in a particular department.

4 On 23 October 1970 this measure was replaced by a prohibition on residence in four departments including the department in which the person concerned was habitually resident and where his family continues to reside.

5 It is also clear from the file on the case and from information supplied to the Court that the reasons for the measures taken against the plaintiff in the main action were disclosed to him in general terms during the proceedings brought before the Tribunal administratif on a date subsequent to the commencement of the action, namely, 16 December 1970.

6 From information given to the Tribunal administratif by the Ministry for the Interior, which, however, is contested by the plaintiff in the main action, it transpires that his political and trade union activities during 1967 and 1968 are the subject of complaint and that his presence in the departments covered by the decision is for this reason regarded as 'likely to disturb public policy'.

7 In order to resolve the questions of Community law raised during the proceedings concerning the principles of freedom of movement and equality of treatment for workers of the Member States, the Tribunal administratif referred two questions to the Court for the purpose of ascertaining the precise meaning of the reservation regarding public policy contained in Article 48 of the Treaty.

First question

8 The first question asks whether the expression 'subject to limitations justified on grounds of public policy' in Article 48 of the Treaty concerns only the legislative decisions which each Member State has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other Member States or whether it also concerns individual decisions taken in application of such legislative provisions.

9 Under Article 48 (1), freedom of movement for workers is to be secured within the Community.

10 Under Article 48 (2), such freedom of movement is to entail the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment.

11 Under Article 48 (3), it is to entail the right for workers to move freely within the territory of Member States, to stay there for the purpose of employment and to remain there when employment has ceased.

12 Subject to any special provisions in the Treaty, Article 7 thereof contains a general prohibition, within the field of application of the Treaty, on any discrimination on grounds of nationality.

13 Nevertheless, under Article 48 (3), freedom of movement for workers, in particular their freedom to move within the territory of Member States, may be restricted by limitations justified on grounds of public policy, public security or public health.

14 Various implementing measures have been taken for the purpose of putting the above-mentioned provisions into effect, in particular Regulation No 1612/68 and Council Directive No 68/360 on freedom of movement for workers.

15 The reservation concerning public policy was laid down in 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 (OJ, English Special Edition 1963-1964, p. 117).

16 The effect of all these provisions, without exception, is to impose duties on Member States and it is, accordingly, for the courts to give the rules of Community law which may be pleaded before them precedence over the provisions of national law if legislative measures adopted by a Member State in order to limit within its territory freedom of movement or residence for nationals of other Member States prove to be

incompatible with any of those duties.

17 Inasmuch as the object of the provisions of the Treaty and of secondary legislation is to regulate the situation of individuals and to ensure their protection, it is also for the national courts to examine whether individual decisions are compatible with the relevant provisions of Community law.

18 This applies not only to the rules prohibiting discrimination and those concerning freedom of movement enshrined in Articles 7 and 48 of the Treaty and in Regulation No 1612/68, but also to the provisions of Directive No 64/221, which are intended both to define the scope of the reservation concerning public policy and to ensure certain minimal procedural safeguards for persons who are the subject of measures restricting their freedom of movement or their right of residence.

19 This conclusion is based in equal measure on due respect for the rights of the nationals of Member States, which are directly conferred by the Treaty and by Regulation No 1612/68, and the express provision in Article 3 of Directive No 64/221 which requires that measures taken on grounds of public policy or of public security 'shall be based exclusively on the personal conduct of the individual concerned'.

20 It is all the more necessary to adopt this view of the matter inasmuch as national legislation concerned with the protection of public policy and security usually reserves to the national authorities discretionary powers which might well escape all judicial review if the courts were unable to extend their consideration to individual decisions taken pursuant to the reservation contained in Article 48 (3) of the Treaty.

21 The reply to the question referred to the Court must therefore be that the expression 'subject to limitations justified on grounds of public policy' in Article 48 concerns not only the legislative provisions which each Member State has adopted to limit within its territory freedom of movement and residence for nationals of other Member States but concerns also individual decisions taken in application of such legislative provisions.

Second question

22 The second question asks what is the precise meaning to be attributed to the word 'justified' in the phrase 'subject to limitations justified on grounds of public policy' in Article 48 (3) of the Treaty.

23 In that provision, the words 'limitations justified' mean that only limitations which fulfil the requirements of the law, including those contained in Community law, are permissible with regard, in particular, to the right of nationals of Member States to freedom of movement and residence.

24 In this context, regard must be had both to the rules of substantive law and to the formal or procedural rules subject to which Member States exercise the powers reserved under Article 48 (3) in respect of public policy and public security.

25 In addition, consideration must be given to the particular issues raised in relation to Community law by the nature of the measure complained of before the Tribunal administratif in that it consists in a prohibition on residence limited to part of the national territory.

Justification of measures adopted on grounds of public policy from the point of view of substantive law

26 By virtue of the reservation contained in Article 48 (3), Member States continue to be, in principle, free to determine the requirements of public policy in the light of their national needs.

27 Nevertheless, the concept of public policy must, in the Community context and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, 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.

28 Accordingly, restrictions cannot be imposed on the right of a national of any Member State to enter the territory of another Member State, to stay there and to move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy.

29 In this connexion Article 3 of Directive No 64/221 imposes on Member States the duty to base their decision on the individual circumstances of any person under the protection of Community law and not on general considerations.

30 Moreover, Article 2 of the same directive provides that grounds of public policy shall not be put to improper use by being 'invoked to service economic ends'.

31 Nor, under Article 8 of Regulation No 1612/68, which ensures equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, may the reservation relating to public policy be invoked on grounds arising from the exercise of those rights.

32 Taken as a whole, these limitations placed on the powers of Member States in respect of control of aliens are a specific manifestation of the more general principle, enshrined in Articles 8, 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all the Member States, and in Article 2 of Protocol No 4 of the same Convention, signed in Strasbourg on 16 September 1963, which provide, in identical terms, that no restrictions in the interests of national security or public safety shall be placed on the rights secured by the above-quoted articles other than such as are necessary for the protection of those interests 'in a democratic society.'

Measures adopted on grounds of public policy: justification from the procedural point of view

33 According to the third recital of the preamble to Directive No 64/221, one of the aims which it pursues is that 'in each Member State, nationals of other Member States should have adequate legal remedies available to them in respect of the decisions of the administration' in respect of measures based on the protection of public policy.

34 Under Article 8 of the same directive, the person concerned shall, in respect, of any decision affecting him, have 'the same legal remedies ... as are available to nationals of the State concerned in respect of acts of the administration.'

35 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 measure restricting his freedom.

36 Furthermore, Article 6 of the directive provides that the person concerned shall be informed of the grounds upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State.

37 It is clear from these provisions that any person enjoying the protection of the provisions quoted must be entitled to a double safeguard comprising notification to him of the grounds on which any restrictive measure has been adopted in his case and the availability of a right of appeal.

38 It is appropriate to state also that all steps must be taken by the Member States to ensure that this double safeguard is in fact available to anyone against whom a restrictive measure has been adopted.

39 In particular, this requirement means that the State concerned must, when notifying an individual of a restrictive measure adopted in his case, give him a precise and comprehensive statement of the grounds for the decision, to enable him to take effective steps to prepare his defence.

The justification for, in particular, a prohibition on residence in part of the national territory

40 The questions put by the Tribunal administratif were raised in connexion with a measure prohibiting residence in a limited part of the national territory.

41 In reply to a question from the Court, the Government of the French Republic stated that such measures may be taken in the case of its own nationals either, in the case of certain criminal convictions, as an additional penalty, or following the declaration of a state of emergency.

42 The provisions enabling certain areas of the national territory to be prohibited to foreign nationals are, however, based on legislative instruments specifically concerning them.

43 In this connexion, the Government of the French Republic draws attention to Article 4 of Council Directive No 64/220 of 25 February 1964 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 (OJ, English Special Edition 1963-1964, p. 115) which reads: 'Subject to any measures taken in particular cases on grounds of public policy or public security, the right of residence shall be effective throughout the territory of the Member State concerned'.

44 It is clear that this provision is peculiar to the directive concerned and is exclusively applicable in respect of establishment and the provision of services and it has not been re-enacted in the directives on freedom of movement for workers, in particular Directive No 68/360, which is still in force, or, again, in Council Directive No 73/148 of 21 May 1973 concerning establishment and the provision of services (OJ L 172, p. 14), which has meanwhile replaced Directive No 64/220.

45 In the Commission's view, expressed during the oral proceedings, the absence of this provision in the directives at present applicable to employed persons or to establishment and the provision of services, does not, however, mean that Member States have absolutely no power to impose, in respect of foreigners who are nationals of other Member States, prohibitions on residence limited to part of the territory.

46 Right of entry into the territory of Member States and the right to stay there and to move freely within it is defined in the Treaty by reference to the whole territory of these States and not by reference to its internal subdivisions.

47 The reservation contained in Article 48 (3) concerning the protection of public policy has the same scope as the rights the exercise of which may, under that paragraph, be subject to limitations.

48 It follows that prohibitions on residence under the reservation inserted to this effect in Article 48 (3) may be imposed only in respect of the whole of the national territory.

49 On the other hand, in the case of partial prohibitions on residence, limited to certain areas of the territory, persons covered by Community law must, under Article 7 of the Treaty and within the field of application of that provision, be treated on a footing of equality with the nationals of the Member State concerned.

50 It follows that a Member State cannot, in the case of a national of another Member State covered by the provisions of the Treaty, impose prohibitions on residence which are territorially limited except in circumstances where such prohibitions may be imposed on its own nationals.

51 The answer to the second question must, therefore, be that an appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.

52 These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned, to refrain from adopting any measures in this respect which serve ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.

53 In particular, measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

Costs

54 The costs incurred by the Government of the French Republic, the Government of the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

55 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Tribunal administratif, Paris, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal administratif, Paris, by judgment of 16 December 1974, hereby rules:

- 1. The expression ‘subject to limitations justified on grounds of public policy’, in Article 48 concerns not only the legislative provisions adopted by each Member State to limit within its territory freedom of movement and residence for nationals of other Member States but concerns also individual decisions taken in application of such legislative provisions.**
- 2. An appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.**

These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned; to refrain from adopting any measures in this respect which serve ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.

In particular, measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

Lecourt
Kutscher
Donner
Mertens de Wilmars
Pescatore
Sørensen
Mackenzie Stuart

Delivered in open court in Luxembourg on 28 October 1975.

A. Van Houtte
Registrar

R. Lecourt
President

¹ — Language of the Case: French