

In Case 41/74

Reference to the Court under [Article 267 TFEU] 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 45 TFEU] 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. O. Dalaigh and Mackenzie Stuart, Presidents of Chambers A. M. Donner, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher and M. Sorensen (Rapporteur), Judges.

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

gives the following

## JUDGMENT

### 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 267 TFEU], three questions relating to the interpretation of certain provisions of [Union] 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 45 TFEU] 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 45(1) and (2) TFEU], 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 [Union] 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 45 TFEU], 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 co-ordination 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.<sup>1</sup>

- 11 The United Kingdom observes that, since [Article 288 TFEU] 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 288 TFEU] 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 288 TFEU] to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the [Union] 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 [Union] law. [Article 267 TFEU], which empowers national courts to refer to the Court questions concerning the validity and interpretation of all acts of the [Union] 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 [Union] 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 267 TFEU].
- 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 45 TFEU] 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 [Union], 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 [Union] 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 [Union]. 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 45(3) TFEU], 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 [FEU] 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 45 TFEU] 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 [Union], 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 45 TFEU] 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 45 TFEU] 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	Sorensen

Delivered in open court in Luxembourg on 4 December 1974.

A. Van Houtte  
Registrar

R. Lecourt  
President

Robert Schütze European Union Law Lisbonised Cases