3. In so far as such rules do not entail restrictions on freedom of movement for persons, they do not constitute discrimination prohibited under Article 7 of the Treaty.

Lecourt Kutscher O'Keeffe

Mertens de Wilmars Pescatore Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 7 July 1976.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 2 JUNE 1976 [1]

Mr President,
Members of the Court,

1. On the subject of the movement of workers, the provision of services and the right of establishment, the Court has hitherto had occasion to concern itself with the application, in particular cases, of the clause safeguarding public policy. The Judgments in Cases 41/74, *Van Duyn,* 67/74, *Bonsignore,* 36/75, *Rutili* and 48/75, *Royer,* laid down basic principles and criteria on this subject and began to outline the limits of the powers of derogation exceptionally allowed to the States in carrying out the task of safeguarding public policy on their territory.

In each of those cases, the references to this Court for a preliminary ruling were intended to enable the court of reference to determine the compatibility with Community law of a single national administrative act (denial of entry, expulsion order, territorial restriction on freedom of residence) adopted by the national authorities in the case of aliens under the wide powers of discretion conferred upon them by national legislation concerning aliens.

In the present case, on the other hand, the decision which the Italian court is called upon to make regarding compatibility with Community law is directly and exclusively concerned with national legislative acts. It must also, and at once, be emphasized that these acts were not adopted in exercise of an exceptional power of derogation, as in the case of the state measures with which the abovementioned cases were concerned, but were the expression of a

1 — Translated from the Italian.

general power, which is a normal and permanent attribute of the Member States, to keep track of the movements of persons on their national territory.

This case is concerned with Article 142 of the consolidated public security laws, approved by Royal Decree No 773 of 18 June 1931 and Article 2 of Decree Law No 50 of 11 February 1948 concerning, respectively, the duty of an alien to report, within three days of his entry into the territory of the State, to the public security authorities of the place where he is in order to make his presence known and to make a declaration of residence, and the duty of anyone who provides board or lodging for a foreign national, including his own kith and kin, to inform the public security authorities of the fact within 24 hours.

Non-observance of the provisions is, in the case of an alien, punishable by detention for up to three months or a fine of up to Lit. 80 000, in addition to possible deportation from the State and, in the case of a national of the State, by detention of up to six months with or without a fine of up to Lit. 240 000.

Criminal proceedings in which it was sought to apply these penalties were originated before the Pretore, Milan, against both an Italian national and a woman, a British subject, for whom he had provided accommodation without observing the aforesaid requirements. In order to establish the compatibility or otherwise of these national legislative provisions with the Treaty, the Pretore di Milano has referred to this Court under Article 177 of the Treaty a series of questions of interpretation designed in essence to establish first, whether these laws infringe fundamental principles of Community law, particularly in respect of the safeguards of the rights of man with special reference to the right to privacy; secondly, whether they constitute a restriction of or impediment to the movement and the residence of nationals of Member States within the Community, having regard especially to the very short time laid down in which to effect the said notification; and, finally, whether, again, these requirements do not involve discrimination which is prohibited between the nationals of the Member States.

The duty imposed upon anyone who gives board and lodging to an alien to report the fact to the police authorities applies to both nationals of the State concerned and to aliens. However, the duty and the related penalties are closely connected with the supervision of aliens and it is, consequently, in this context that the national court has submitted the questions of interpretation of the Treaty, indicated above, also in so far as they concern the duty of the host. In view of this, the national laws laying down the duty may reasonably be considered at the same time as those which in this context are directly concerned with aliens.

2. Unfortunately, the Milan court has not stated for what reason the accused woman was in Italy as the guest of the Italian defendant. In the absence of this information, the Court can only act on the basis of assumptions. If, as was stated before the Court by Counsel for the two defendants, she was there as an *'au pair'* employed as a family help to look after the children of the co-defendant, she would undoubtedly come into one of the categories of person upon whom the Treaty confers the right to move freely within the Community. As this would in fact be work performed for a consideration (board and lodging), she could be classified as coming within a master and servant relationship or, if this were not the case, she would at least come under the alternative heading of provision of services.

But on the assumption that the Pretore di Milano were to find, on the other hand, that the defendant was in Italy as on ordinary tourist, the question arises whether the protection conferred by the Treaty on the subject of freedom of movement for workers applies to her.

It must be borne in mind that, in connexion with the free movement of natural persons, the Treaty recognizes two general categories of persons: employed persons and persons providing services. The latter are envisaged either as being in the position of wishing to establish themselves as self-employed persons in another Member State, in which case they are covered by the provisions on the right of establishment, or in relation to occasional work in a State as self-employed persons on the part of persons established in another Member State, in which case they are appropriately provided for in the chapter on the abolition of restrictions on freedom to provide services. Article 59 of the Treaty prescribes the abolition of restrictions on freedom to provide services in respect of nationals of Member States who are established in a state of the Community other than that of the person for whom the services are intended. In respect of the free movement of persons, the EEC Treaty refers only to those providing services but makes no reference to the persons for whom the services are intended. There is a reference to tourism only in Annex III to the Treaty where, in relation to the movement of capital, it is classified under the 'invisible transactions', the liberalization of payments connected therewith being provided for under Article 106 (3).

There can be no doubt that tourists normally make use of services in the places which they visit. The Commission contends that, in the capacity of persons for whom services are intended, they must be protected by the provisions of the Treaty on the free movement of persons who provide services. Notwithstanding the silence of the Treaty on this subject, the Commission has always considered tourism to be an activity able to avail itself of the provisions on the free movement of persons. This emerges above all from the report which it made on the General Programme for the abolition of restrictions on freedom to provide services, dated 28 July 1960. This document divides the provision of services into three categories according to whether it involves the movement of the person providing services towards the person receiving them, or the movement of the person receiving services towards the person providing them, or, lastly, according to whether it involves no movement on the part of either, and places the provision of services for the benefit of tourists in the second of these categories.

Nor is it possible to ignore the importance of the fact that, from the beginning, both the Council and the European Parliament seem to have regarded tourism as one of the activities to be freed from restriction not only in respect of the movements of capital connected with this economic activity but also in respect of services. This emerges from, in particular, the General Programme adopted by the Council on 18 December 1961 which, under Title V, makes an express reference to tourism in a provision for the abolition of restrictions on payments *relating to the services to be freed from restriction.* Although what is involved is liberalization in relation to movements of capital, it is abundantly clear from the context that provision to this effect refers to the liberalization of services.

The wide interpretation of the effect of the provisions of the Treaty concerning the abolition of restrictions on the provision of services appears, therefore, to have been accepted by the Council which, in Directive No 64/220/EEC of 25 February 1964 and, subsequently, in Directive No 73/148 of 21 May 1973, which were adopted under the aforementioned General Programme and concerned, respectively, 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, required the States to abolish

restrictions on the movement and residence of *inter alia* 'nationals of Member States wishing to go to another Member State as recipients of services'.

But if a broad interpretation is placed upon this provision, namely, by including all those who are likely to be recipients of services (which, of course, is a residual concept embracing any self-employment in the tertiary sector), the practical effect is to extend the right of freedom of movement to all nationals of the Member States because every one is actually or potentially a recipient of services. This does not accord with the wording of Article 59 and is inconsistent with the very structure of the Treaty, which provides for freedom of movement in respect of specific categories of professional or trade activities. Within the limits of an interpretation which is wide but does not break new ground, the most that can be done is to recognize freedom of movement for recipients of services also but only in so far as it appears to be indissolubly linked with the right to movement of those who have to provide those services.

By placing a wide interpretation upon Article 48, notwithstanding the tenor of subparagraphs (a) and (b) of paragraph (3) thereof (since it is a question here solely of defining the scope of a right which the Treaty expressly confers on the category of person involved and of ensuring that it is given practical effect), it is, in my opinion, possible to recognize workers who have not previously received an offer of employment in another Member State as also having the right to move freely, for this is the effect of Articles 1 and 5 of Regulation No 1612/68 of the Council. However, an extension of the right to freedom of movement, the provision for which is specifically applicable only to persons providing services, to all nationals of the Member States (that is to say, regardless of their capacity as persons providing services) could not be validly justified in law even by placing a wide interpretation upon the rules concerning the abolition of restrictions on the provision of services. In view of its scope, it would even result in removing any consistency from the definition laid down by the Treaty of the categories of persons who can avail themselves of the right to freedom of movement which it secures.

In saying this, I am not saying that *a priori* it is impossible for the Community legislature to extend the privileges of free movement to categories of persons not covered by the Treaty, because provision for this is made in Article 235 of the Treaty itself. But, in order to do so, the Council must act on the basis of that provision and in accordance with the procedure laid down therein. This was not done in the case of the abovementioned Directives, Nos 64/220 and 73/148.

This is the conclusion which one reaches on the basis of the wording of the Treaty. In any event, if it is to be recognized that the Community system can evolve of its own accord by, for example, widening the range of persons to whom the provisions of the Treaty apply, even without recourse to the procedure in Article 235, it is essential that the change should meet operational requirements of the system, that it should, accordingly, come within the scope of the aims of the Treaty and, above all, that it should rest on general agreement.

In the present case it must be borne in mind that, since the first stages of application of the Treaty, the three Community institutions which participate in the legislative and executive process have expressly considered tourism to be, as such, an acitivity for which freedom of movement is safeguarded by provisions of the Treaty which from that time forward have been directly applicable. No State or other party subject to Community law has ever challenged this situation, at least until the present proceedings in which, however, the only two States who

intervened have expressly taken the opposite view. It is true that the recognition of the unrestricted right to enter any Member State enjoyed by the nationals of other Member States seeking employment may in practice lead to the application of the same system to all Community citizens but the question which we have to decide is whether they have a corresponding right.

Is it possible to conclude that, in this way, there has been established in the Community legal order a rule of custom and practice on the basis of which tourists can assert a right to claim the same treatment as the States are bound to give to persons providing services? If it were possible to establish that all the States had fully applied to tourists also the provision of the two abovementioned directives concerning recipients of services (on which I have no information), it might not be difficult to draw this conclusion.

It is for the Court to decide whether it ought to look at the present state of Community law on this point on the basis of the wording of the Treaty as I have intepreted it, or whether it is possible to indentify elements which suffice to create a new right, if necessary going on, as a preliminary step, to obtain further information on the actual way in which the directives mentioned have been carried out. In any case, it would be a sound rule to avoid the fiction of using the actual wording of the Treaty to justify the extension to all citizens of the Community of a right to freedom of movement which the Treaty intended to apply only to clearly defined categories of persons.

The Court which, while fully conscious of the requirements of progress, has always fulfilled its task as guardian of the law, will, of course, reply in a manner which takes due account of all the factors in determining the limits of Community jurisdiction within the framework of the powers laid down, directly or indirectly, by the Treaty.

3. As soon as this legal point is settled and assuming that the foreign national who is accused in the proceedings pending before the Pretore di Milano can, on the basis of their application to the concrete case which the court dealing with the substance of the case is called upon to make, avail herself of the provisions of the Treaty concerning the free movement of persons, the national court must then decide whether the national provisions, considered earlier, do not conflict with such a right in imposing the said obligations either directly upon the alien or upon any person who gives him accommodation on the national territory. In this connexion, consideration must be given to other questions of interpretation raised by the Pretore di Milano.

The first question is whether, in the present case, it is possible to discern an infringement of the right to privacy or of respect for private and family life which is guaranteed under Article 8 of the European Convention of Human Rights and must be regarded as part of the totality of fundamental rights which are protected under the Community system as well.

We have seen that neither the Treaty nor Community legislation adopted thereunder prevents the States from adopting measures for checking the presence of foreign citizens on their territory; and that in fact, Article 8 (2) of Council Directive No 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families expressly provides that the competent authorities of the host Member State may require the worker to report his presence in the territory. Despite the silence of Community instruments on the subject, the existence of analogous rights must be recognized as existing also in the case of anyone who may be on the territory of a Member State for another reason. This is because the provision in Article 8 of the

directive referred to does not constitute a derogation clause of the kind which enables States to limit the right of movement on grounds of public policy but confines itself, in the interests of clarity, to noting the retention by the States of their normal powers of supervision which, in themselves, do not constitute any derogation from the rights of free movement conferred by the Treaty. There is no question even of seeking authorization but only of notifying a fact which is of relevance to the requirements of the administrative structure of the State.

These general powers of supervision may serve a multiplicity of purposes. While the exercise of these powers is not unconnected with the general need to safeguard public policy, it may be based on other more specific grounds which are sufficient in themselves to justify the existence of supervision procedures, from mere interest in the statistics of movements of aliens on the national territory to supervision of shifts in the concentrations of aliens and the activities in which they are engaged and the need to trace their addresses, a task which, in the case of nationals and other permanent residents, is generally carried out by local registries.

Nor should we forget that all these cases involve the exercise of powers which is not considered to imply derogations from Community law. Nor, when they are appropriate to the aim being lawfully pursued, so as not to affect the substance of the right to free movement, can the obligations which the normal exercise of such powers may impose on aliens and on the persons, nationals or aliens, who accommodate them, be regarded as incompatible with the right to respect for private life which, without doubt, individuals are acknowledged to have under the constitutional systems of democratic States, which make no claim to exercise authoritative control over every aspect of human relations.

All the Member States make appropriate arrangements for the supervision of aliens on their territory and these also apply to the nationals of the other Member States of the Community. As a rule the arrangements include the duty of notification, referred to above, and are usually enforced by sanctions, in the majority of cases of a penal character, which in various States, for example in France and the United Kingdom, may also mean deprivation of liberty (up to two months in France, up to six months in the United Kingdom). In some cases, on the other hand, as in the Federal Republic of Germany, only civil penalties are provided for. In some cases, legislation comparable to that of Italy (for example, the French) imposes a corresponding duty on all those who, in whatever capacity, provide accommodation for an alien. In its judgment of 8 April of this year in *Royer,* Case 48/75, the Court held that 'Community law does not prevent the Member States from providing, for breaches of national provisions concerning the control of aliens, any appropriate sanctions — other than measures of expulsion from the territory — necessary in order to ensure the efficacy of those provisions' (Ground of judgment No 42).

The question concerning the existence in Community law of a provision safeguarding the right to respect for private life must, in the present case, be viewed in relation to the incursion into the private affairs of Community citizens which might be constituted by a duty to report the presence on their premises of any person who is of foreign nationality although there is no obligation to do so in the case of a fellow national. This point also impinges on the other question submitted by the Pretore di Milano concerning the existence of discrimination between nationals and aliens.

4. In the present case, any infringement of a fundamental right would be the outcome not of a Community measure,

in reviewing the legality of which this Court has largely developed its case-law on fundamental rights, but from a measure adopted by the State. This is why the question has been raised whether the principles laid down by the Court on this subject can also be applied to establishing whether there is anything incompatible between the measure or conduct of the State and Community law.

The judgement in Case 36/75 *(Rutili,* [1975] ECR 1232), which reviewed certain limitations placed on the powers of Member States in respect of control of aliens by Council Directive No 64/221 and by Regulation No 1612/68, referred to above, states that those limitations are a specific manifestation of the more general principle, enshrined in the European Convention of 1950 for the Protection of Human Rights and Fundamental Freedoms, to the effect that no restrictions in the interests of national security or public safety shall be placed on the rights secured thereunder other than such as are necessary for the protection of those interests in a democratic society.

On the basis of this analogy between rules of Community law and rules of international law accepted by all the Member States, some learned writers have felt justified in concluding that the provisions of the said Convention must be treated as forming an integral part of the Community legal order, whereas it seems clear to me that the spirit of the judgment did not involve any substantive reference to the provisions themselves but merely a reference to the general principles of which, like the Community rules with which the judgment drew an analogy, they are a specific expression.

In fact, in that judgment, the Court substantially reaffirmed the principle which had already emerged from its previous decisions that the fundamental human rights recognized under the constitutions of the Member States are also an integral part of the Community legal order.

The extra-Community instruments under which those States have undertaken international obligations in order to ensure better protection for those rights can, without any question of their being incorporated as such in the Community order, be used to establish principles which are common to the States themselves.

On the other hand, what is really new in the said reference to fundamental rights made in the *Rutili* judgment is the context to which it relates, namely, a situation the essential feature of which was that there existed a right to freedom enshrined in the Community system and a discretionary act by a State severely restricting that right.

The conclusion can be drawn that respect for the fundamental principles governing the protection of the rights of man as they have been embodied in international instruments binding all the Member States of the Community as well as in the constitutions of the countries concerned may, within the sphere of application of Community law, also be of importance in determining the legality of a State's conduct in relation to a freedom which the Treaty accords to individuals.

Of course, in contrast to what happens in the case of acts of the Community executive, the acts of the States are subject to review by their own national courts which, together with the European Court of Human Rights, already provide effective protection for fundamental rights. However, without impinging upon the jurisdiction of other courts, this Court too, can look into an infringement of a fundamental right by a State body, if not to the same extent to which it could do so in reviewing the validity of Community acts, at least to the extent to which the fundamental right alleged to have been infringed may involve the protection of an economic right which is

among the specific objects of the Treaty. In fact, if there were no such connexion, State action affecting individuals would be incapable of coming under the Community system, under any available procedure.

5. The protection of the rights of man accordingly forms part of the Community system, even as against the States, inasmuch as the fundamental right relied upon involves a relationship or a legal situation the regulation of which is among the specific objects of the Treaty.

The widest possible interpretation has, as we know, been placed on the prohibition of discrimination by the case-law of this Court, which has extended the principle to cover provisions and circumstances which are unconnected with the master and servant relationship at least with the persons to which the provisions apply in their capacity as workers. Where, accordingly, the Treaty, in connexion with the free exercise of an economic activity within the territorial confines of the Community, accords to the nationals of the Member States the right of freedom of movement and of residence on the territory of other States and forbids any discrimination whatsoever on grounds of nationality, the conclusion must, in principle, be drawn that a restriction placed upon an alien as such, for which there is no objective justification connected with the exercise of powers retained by the State, must be treated as an interference with that freedom which is contrary to Community law. And this is true also as regards a decision concerning the extent to which the restriction is proportionate to the objective being lawfully pursued.

Though, in the present case, we are concerned with a national measure other than those involved in the cases cited at the beginning of this Opinion, concerning the application of the reservation relating to public policy in respect of the movement and residence of workers or persons providing services, I consider that certain principles laid down by the Court on this point may be borne in mind in the exercise of a power normally retained by the States, such as the power to undertake supervision of aliens on their territory, not necessarily in order that these principles may be rigorously enforced, which would be justified in the case of measures derogating from the fundamental principles of the common market, but at least so that they may serve as authoritative guidelines in defining the limit beyond which, during the exercise of that function, the State would no longer be justified in interfering with the exercise of the individual rights to freedom guaranteed by the Treaty.

In this context, special importance attaches to the principle that the obligation imposed should be proportionate to the legal objective sought by public authorities. Indeed, the principle is not confined to cases of derogation from such rights but is of general application and constitutes one of the principles which must govern action by public authorities, Community or national, within the Community legal order. This follows clearly from the precedents established by the court, in particular by the judgments in Case 19/61, *Mannesmann* v *High Authority,* [1962] ECR 357, Case 8/74, *Dassonville,* [1974] ECR 852; Case 33/74 *Van Binsbergen,* [1974] ECR 1310 (Ground of judgment No 16) and Case 39/75, *Coenen,* [1975] ECR 1555 (Grounds of judgment Nos 9 and 10).

More generally, it must be concluded that whenever, without any possible justification based on objective requirements, the State authorities subject the nationals of other Member States to greater intrusion into their private lives and movements than that to which the nationals of that State are legally subjected, such unjustified intrusion constitutes illegal interference with the rights of the individual and one which

thereby makes it more difficult to exercise them. It would be *a fortiori* illegal if the action of the State were found to be in breach of a fundamental personal right. The case-law of the Court on the free movement of goods has laid down rather strict guidelines concerning the interference to which decisions or conduct of the State may give rise. There is no reason for it to adopt a more tolerant attitude towards the States on the subject of the movement of persons even though, as this case demonstrates, this inevitably gives rise to very much wider and more complicated problems.

But the national law relating to the supervision of aliens on the territory concerned could be regarded as unjustified interference only when this involved the imposition of obligations contrary to a superior rule of law specifically designed for the protection of individuals or was at least manifestly disproportionate to the object being pursued and, therefore, in conflict with the general principle that the means must be proportionate to the end.

As regards that aspect of the question which concerns the alleged violation of a fundamental right to respect for privacy and private and family life, it must be borne in mind that, as it has already been necessary to point out in a previous case, concerned with the right of property, recognition of a right as a feature of personality does not wholly preclude any possibility of restricting it. The requirements of life in a community and the fulfilment of the tasks incumbent on the State may call for adjustments in the definition of that degree of freedom which the subjective right of the individual represents. To constitute violation of the right, it is not enough that there should be any limitation whatever; the substance of the right must be affected. It does not seem to me that the duty to report one's presence and one's address can be regarded as a violation of a right to privacy. This is the usual means of supervision employed in Member States and it is not clear by what other means the police authorities could exercise their legitimate powers in this matter. Nor, moreover, can I conceive that the communication of these simple facts to the police can possibly compromise respect for the private life of any honest and law-abiding person.

6. The question which may present greater difficulty concerns the onerousness of the conditions in which the report must be made and of the penalties provided for non-observance.

On the first point I cannot regard a time-limit of three days for an alien or of 24 hours for a resident of the State as making an excessive demand. To be obliged to act with a certain urgency could at most be inconvenient but, except in a case of manifest abuse, can this Court judge the determination of a time-limit which, by its nature, is necessarily discretionary?

With the appropriate amendments, and excluding the deportation of an alien, which impinges on the very substance of freedom of movement and residence conferred upon him by the Treaty and which, for this reason, the Court, in its judgment, referred to above, in the case of *Royer,* held to be improper when based solely on failure to fulfil a duty to provide information, what I have said also holds good in the case of the whole of the penalties provided for failure to comply with a duty on the part both of an alien and of the person who furnishes him with accommodation. The fixing of the penalties applicable to the same course of conduct may vary from State to State because it depends on an appraisal of the preventive measures which the national legislature seeks to adapt to the situation and to the peculiar needs of the national community. This involves value judgments which, apart from the fact that they may vary from place to place in accordance with the situation, cannot be calculated with accuracy on the basis of

precise and objective criteria. In a matter of this kind, in which the degree of discretion accorded to the national legislature is necessarily very wide, the greatest care must be exercised in making any judgment on the scheme of penal sanctions fixed by the legislation except in cases where they are manifestly disproportionate. In my opinion, it is not possible in a case such as that with which we are dealing to make such a judgment. On the basis of a wholly subjective judgment and reaction, it might perhaps even be possible to hold that the penalties appeared to be severe, even very severe, but would this suffice to establish the illegality of national legislation providing for them? On what basis could we lay down acceptable limits? And would it be proper to lay down the same limits for every State, ignoring any differences in local circumstances?

I should regard it as wholly unwise, not to mention rash, to attempt to revise the judgments of a national legislature on this point. As far as this Court is concerned, there is no need to say more than that, heavy as the penalties are, they are certainly not discriminatory as between the various categories of person to whom they are applicable, not least because they bear more heavily upon the person who provides accommodation for the alien, even if he is a national, than upon the alien himself. This demonstrates the genuine public interest which the Italian legislature exhibited in checking the presence of aliens on the national territory. The Court does not know whether special needs which made themselves felt in the State concerned are not such as to justify heavier penalties for breach of the obligation to provide information than in other States (except, as we have seen, in the United Kingdom). A judgment of this kind would require information which this Court does not have on a number of points and which in any case the Court, in exercising the jurisdiction which it possesses under the present procedure, would find difficulty in appraising satisfactorily.

Reference has been made to the disproportion between the penalties provided for in the case of the national and the alien: in the event of the former failing to fulfil the duty to have himself entered on the register of local residents and of the latter failing in his previously mentioned duty to provide information. In fact, in Italy, an Italian national would in this case be liable to a simple civil penalty involving a very small amount of money.

I believe, however, that it would be difficult to make a comparison between the two situations and the two duties. So long as there is no Community nationality, nationals of other Member States will always have a different status from that of a national of the State concerned even where he enjoys the right of free movement and residence on conditions of parity with such a national. Just as that status justifies appropriate supervision of his presence on the national territory, not by the local authorities responsible for maintaining the register of local inhabitants but by the police authorities, it also helps to give, in each case, a varying degree of importance to failure to give information.

It is certainly to be hoped that, at least in the States where they have particularly strict provisions governing the supervision of aliens, nationals of other Member States are not on that account treated on the same basis as any other alien. But this has greater relevance to the process of the approximation of national laws which, inasmuch as they are not directly incompatible with the Treaty, can be effected only through the appropriate procedure provided for under Article 100 *et seq.* As far as Italian legislation is concerned, it is a fact that Article 142 of the consolidated public security laws was amended in such a way as to exempt from the duty of reporting workers who are nationals of other

Member States and are in paid employment in Italy for a period in excess of three months, while the remainder continued to be subject to the duty. The reason for this difference is probably to be found in the fact that, while a worker who is in employment for a period greater than three months is subject to the obligation concerning a residence permit and this provides the means whereby information may be obtained relating to his presence on the national territory, this permit is not required for those who are in employment for a period less than three months.

To sum up, I am of the opinion that, in its replies to the questions submitted for a preliminary ruling by the Pretore di Milano, the Court should reaffirm the fundamental importance, under the Community system of freedom of movement for persons, of the prohibition of discrimination on ground of nationality and of the supremacy over national law of the Community provisions in which these principles have been embodied, and should, in particular, give a definition of the persons covered by the rules on freedom to offer services, selecting a middle way between a strict interpretation of the provisions of the Treaty and a wider one based on recognition of a new self-generated rule of law extending the scope of those provisions.

In respect of the questions which relate more specifically to the case under consideration, I recommend the Court to declare that unjustified intrusions by the States, even if they arise through the exercise of powers retained by them, into the privacy of individuals in their capacity as aliens or at least by reason of the relationship which may exist between a person and a foreign guest, may be contrary to Community law inasmuch as they infringe a principle governing respect for privacy and thereby and for that very reason constitute unjustified interference with the actual exercise of a right to freedom of movement in circumstances in which this is recognized and guaranteed by Community law. This does not mean, however, that the legislation of a State which imposes on every alien and upon anyone who gives him accommodation on the national territory the duty, on pain of coercive measures, which may even include detention, to inform police authorities accordingly within a short but not unreasonable time constitutes an infringement of those principles and rights except in cases of manifest abuse, to the detriment of the alien, of the discretionary powers which the legislature possesses in fixing those periods and penalties.

As was stated in the *Royer* judgment, the expulsion of an alien merely for failure to comply with a duty to give information must in every case be regarded as disproportionate to the purpose being pursued and on that account incompatible with the right conferred on individuals under the Community legal system to move about and reside within the confines of the Community.