the Member State which issued it, that it does not mention that its validity is limited to the national territory and, finally, that its holder was admitted to the host Member State upon production of his passport alone does not alter the situation.

REPORT FOR THE HEARING
in Case C-376/89 *

I — Facts

A — *Legislative background*

Pursuant to Article 1 of Council Directive 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 (Official Journal English Special Edition 1968 (II), p. 485), the Member States are to abolish restrictions on the movement and residence of nationals of the said States and of members of their families.

Article 2(1), (2) and (3) is worded as follows:

'1. Member States shall grant the nationals referred to in Article 1 the right to leave their territory in order to take up activities as employed persons and to pursue such activities in the territory of another Member State. Such right shall be exercised simply on production of a valid identity card or passport. Members of the family shall enjoy the same right as the national on whom they are dependent.

2. Member States shall, acting in accordance with their laws, issue to such nationals, or renew, an identity card or passport, which shall state in particular the holder's nationality.

3. The passport must be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where a passport is the only document on which the holder may lawfully leave the country, its period of validity shall be not less than five years.'

Article 3(1) of Directive 68/360/EEC is in the following terms:

'Member States shall allow the persons referred to in Article 1 to enter their

* Language of the case: German.

territory simply on production of a valid identity card or passport.'

The provisions of Article 4(1) and (3) of the directive state:

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

2. ....

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

— by the worker:

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

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

— by the members of the worker's family: ....'

B — *The facts in the main proceedings*

1. Panagiotis Giagounidis, the plaintiff in the main proceedings, is a Greek national who entered the territory of the Federal Republic of Germany in 1973 upon production of a valid passport. The authorities of the City of Reutlingen, the defendant in the main proceedings, granted him a residence permit ('Aufenthaltserlaubnis') and, from 1981, a residence permit for a national of a Member State of the EEC. Since completing his studies Mr Giagounidis has been working as a teacher in the Federal Republic of Germany.

Between 12 March 1984 and 18 June 1984, that is to say for a period of three months and six days, Mr Giagounidis was not in possession of a valid passport because the Greek authorities had temporarily refused to extend its validity on the ground that he had not complied with his national service commitments. During that period Mr Giagounidis was in possession of a Greek identity card, issued in 1967, with an unlimited period of validity. That identity card, which was in Greek, contained Mr Giagounidis's personal details, including his nationality. According to information supplied by the Greek authorities, such an identity card is to be used only as an internal identity document and cannot serve to replace a valid passport. Greek nationals may leave their country only if they hold a valid passport.

In November 1984 Mr Giagounidis applied to the German authorities for a residence entitlement ('Aufenthaltsberechtigung'), within the meaning of Paragraph

8(1) of the Ausländergesetz ((Law on Aliens), Bundesgesetzblatt 1965 I, p. 353), in addition to his residence permit for a national of a Member State of the EEC. A residence entitlement is issued without restrictions as to time and space, may not have conditions attached to it and confers greater protection against deportation. According to Paragraph 8, it may be issued when the alien has been 'lawfully resident for at least five years' in the territory to which the Law applies. The German authorities refused to issue a residence entitlement to Mr Giagounidis on the ground that for a given period (from March 1984 to June 1984) he was not in possession of the necessary identity documents.

2. Mr Giagounidis appealed against that decision to the Verwaltungsgericht (Administrative Court), which ordered the German authorities to reconsider the application. The authorities appealed to the Verwaltungsgerichtshof (Higher Administrative Court), which dismissed the plaintiff's action on the ground *inter alia* that a residence entitlement could not be issued because for a certain period Mr Giagounidis was unable to prove his identity in breach of Paragraph 3(1) of the Ausländergesetz and Paragraph 10 of the Gesetz über Einreise und Aufenthalt von Staatsangehörigen der EWG ((Law on Entry and Residence of Nationals of EEC Member States), Bundesgesetzblatt 1980 I, p. 116, hereinafter referred to as 'the Aufenthaltsgesetz EWG'). Mr Giagounidis's identity card was not an adequate substitute for a passport. Since the production of a valid identity card or passport was required under Directive 68/360/EEC both for leaving the territory of the issuing Member State and for entry into and residence in another Member State, an identity card could be recognized as a valid substitute for a passport only if it had the status of a travel document. Under Article 2(2) of Directive 68/360/EEC, that was a matter governed solely by the law of the issuing State. According to the explanations given on this point by the Greek authorities, the purpose of the plaintiff's identity card was solely to prove his identity within Greece and it was not to be used for the purpose of leaving Greece or residing abroad. The Verwaltungsgerichtshof concluded that so long as Greece had not issued identity cards valid for exit from Greece and residence in other Member States in accordance with the requirements of Community law, the German authorities were debarred from recognizing an identity card intended for use only within Greece. Such recognition would constitute interference with another Member State's sovereignty over its citizens and its passport-issuing powers.

3. Mr Giagounidis appealed on a point of law against that decision of the Verwaltungsgerichtshof to the Bundesverwaltungsgericht (Federal Administrative Court). He claimed *inter alia* that by producing his identity card he had satisfied his obligation to furnish proof of his identity. As the Commission of the European Communities stated in 1987 in a letter to the Federal Republic of Germany, neither Directive 68/360/EEC and Council Directive 73/148/EEC of 21 May 1973 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 (Official Journal L 172, p. 14) nor Paragraph 10 of the Aufenthaltsgesetz EWG laid down conditions governing the territorial validity of an identity card. If the identity card is not sufficient, Greece is

infringing Community law by its continuing failure to introduce an identity card valid for all the Member States. He must be treated as if Greece had complied with the Treaty.

C — *The questions referred to the Court for a preliminary ruling*

4. The Bundesverwaltungsgericht considered that the case raised questions on the interpretation of the provisions of Directive 68/360/EEC and by order of 17 October 1989 stayed the proceedings and referred the following questions to the Court pursuant to Article 177 of the EEC Treaty:

'Is Article 4(1) of Directive 68/360/EEC to be interpreted as meaning that a Member State may or must grant the right of residence in its territory to the class of persons referred to in Article 1 of that directive on production of an identity card, the validity of which has been restricted by the issuing State to its own territory?

Is it relevant in that connection that

(a) the identity card was issued prior to the accession of the issuing State to the European Communities and before freedom of movement for its nationals entered into force;

(b) a passport was presented at the time of entry, not the identity card;

(c) the restriction to the territory of the issuing State was not expressly mentioned on the identity card itself?'

5. In the grounds of the order for reference, the Bundesverwaltungsgericht states that Paragraph 10 of the Aufenthaltsgesetz EWG was designed to implement in national law the Community provisions relating to the abolition of restrictions on movement and residence of nationals of the Member States. It adds that the document required for the granting of the right of residence under Article 4 of Directive 68/360/EEC may also be a valid identity card sufficient for entry under Article 3(1).

The Bundesverwaltungsgericht considers that if an identity card is to be treated as a valid identity card — irrespective of whether the State of origin has, in accordance with its laws (see Article 2(2) of Directive 68/360/EEC), restricted the scope of its validity to its own territory — on the grounds that neither Article 3(1) nor Article 4(1) of Directive 68/360/EEC lay down conditions governing its territorial validity and that the identity card is in fact recognized as a travel document by virtue of Community law, then Member States are entitled, or indeed obliged, to grant a right of residence upon production of such an identity document. In that case, the appeal,

which would not otherwise fall to be determined in accordance with Community law, would have to be upheld. That result presupposes that identity cards issued even before the accession of the State concerned to the European Communities and prior to the entry into force of freedom of movement are covered and that such cards should suffice for the purpose of granting residence even in cases where entry first took place by means of a passport.

On the other hand, if a State's competence to issue identity cards under Article 2(2) of Directive 68/360/EEC includes the right to limit the scope of territorial validity of the document, even vis-à-vis other Member States, those latter States would be neither entitled nor obliged under the directive to grant residence to the holder of such an identity card. In such a case, however, it would also be important to know whether such a restriction on territorial validity must be stated expressly on the identity card itself or whether it suffices that the restriction only derives, as in the present case, from the internal legal provisions of the issuing State.

The Bundesverwaltungsgericht adds that, according to the judgment of the Court in Case 8/87 (*Sagulo, Brenca and Bakhouche* [1977] ECR 1495), Articles 2 and 4 of Directive 68/360/EEC provide *inter alia* that, irrespective of the right deriving from Community law to reside in other Member States for the purposes stated in the EEC Treaty, the persons concerned must possess a valid identity card or passport. In that connection it is for the Member States to choose the form and methods to implement the provisions of Directive 68/360/EEC in their territory. Those principles could result in disputes between Member States if, for the purpose of granting residence in its territory, one Member State is satisfied with the production of an identity card, which the issuing State intended should be used only in its own territory and not as a travel document within the Member States.

II — Procedure

6. The order for reference was received at the Court Registry on 18 December 1989.

7. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted;

— on behalf of the City of Reutlingen, by Jürgen Baum, Rechtsanwalt, Reutlingen;

— for the Commission of the European Communities, by Friedrich-Wilhelm Albrecht and Antonio Caeiro, Members of its Legal Department, acting as Agents.

8. 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.

9. By a decision of 20 September 1990, made pursuant to Article 95(1) and (2) of the Rules of Procedure, the Court decided to assign the case to the Sixth Chamber.

III — Summary of the written observations submitted to the Court

10. The *City of Reutlingen* considers that Mr Giagounidis has not fulfilled his obligation to prove his identity in accordance with Paragraph 10 of the Aufenthaltsgesetz EWG. The wording of Article 4(1) and (3) of Directive 68/360/EEC precludes a right of residence for Mr Giagounidis because he first entered the territory of the Federal Republic of Germany with his passport and not with his identity card.

11. The City of Reutlingen takes the view that Mr Giagounidis's Greek identity card does not constitute a valid identity card entitling him to enter the territory of the Member State concerned in accordance with Article 3(1) of Directive 68/360/EEC. The identity card's validity is restricted to the territory of Greece and the identity card does not therefore constitute a valid identity document for the purpose of entering another Member State's territory. Pursuant to Paragraph 10 of the Aufenthaltsgesetz EWG, a foreign national's right of entry into and residence in the Federal Republic of Germany's territory is conditional on production of a passport or official identity card valid abroad. That interpretation, which is confirmed by Article 2 of Directive 68/360/EEC, can mean only that the valid passport or identity card that is produced must have validity outside the home country.

12. The City of Reutlingen argues that Mr Giagounidis's identity card is not a valid travel document under Community law because it was issued in 1967, before the accession of Greece to the European Communities and before the rules concerning freedom of movement for persons entered into force. Prior to its accession Greece was entitled to restrict the scope of validity of the identity card at issue to its own territory in accordance with its domestic law. That restriction is evident from the identity card itself which is written only in Greek, in the Greek alphabet, and is therefore unusable outside Greece because it is unreadable.

The City of Reutlingen adds that any interpretation which accorded the identity card in question more extensive validity would constitute unacceptable interference in the sovereignty of the Hellenic Republic over its citizens and its passport-issuing powers.

13. The *Commission* considers that the documents designated 'identity card' or 'passport' are merely a prerequisite for the actual exercise of the right to leave provided for under Community legislation in Article 2(1) of Directive 68/360/EEC and Article 2(1) of Directive 73/148/EEC, the right of entry provided for in Article 3(1) of Directive 68/360/EEC and Article 3(1) of Directive 73/148/EEC and the right of residence provided for in Article 4(3) of Directive 68/360 and Article 6 of Directive 73/148/EEC. Possession of one of those documents is not therefore a precondition for the right of the person concerned to move freely. In consequence, Member States are not prevented in law from granting a right to leave, a right to enter and a residence permit in accordance with Community law to an applicant who produces neither an identity card nor a passport but who establishes his entitled status in another way (for example, by means of an identity document which has expired).

It follows from Article 2(2) of Directive 68/360/EEC and Article 2(2) of Directive 73/148/EEC that Member States are obliged to issue one of those two documents to their nationals who wish to avail themselves of the right to freedom of movement provided for under Community legislation. The reference in Article 2(2) of each directive to the laws of the Member States can refer only to the procedure for issuing the documents. That paragraph does not enable the conclusion to be drawn that those documents must be defined exclusively on the basis of national legislation so that a Member State could impair freedom of movement by restricting the geographical scope of the document. Moreover, Article 2(3) provides that, 'the passport must be valid at least for all Member States . . . '.

14. The Commission points out that Articles 2, 3 and 4 of Directive 68/360/EEC refer to 'an identity card' *or* 'a passport'. Thus, according to Community legislation, those documents are equivalent or interchangeable.

Any person in possession of those two documents may use whichever he chooses. Having entered the territory of a Member State with a passport, the person concerned may apply for a residence permit upon production of an identity card and vice versa. The phrase 'document with which he entered their territory' in Article 4(3) of Directive 68/360/EEC and Article 6 of Directive 73/148/EEC means only that the document must be a valid identity card *or* passport. It cannot mean the same document, otherwise the residence permit could be refused on the ground that after the entry of the person concerned the passport with which he entered had expired in the meantime and been replaced by a new passport.

The fact that the two documents are equivalent means that the Member States are not obliged to make available whichever of the two documents the persons concerned might choose. A Member State whose laws do not provide for an identity card is not obliged to create such a document.

15. The Commission considers that in order to define the term 'identity card' for the purposes of applying Directives 68/360/EEC and 73/148/EEC the purpose of the document must be considered, which is the same as that of a passport, and the differences between both documents should be examined.

Both documents serve as proof of the right to freedom of movement and to provide the State of residence with information about the person concerned.

Both must establish the identity and nationality of the person concerned. Thus the following information should appear: name, date of birth and so forth of the person concerned; photograph and signature; nationality; name of the issuing authority, date and period of validity.

An identity card, within the meaning of both directives, should therefore be

regarded as an official document intended to establish the identity of the holder. A document which serves other purposes (for example, a driving licence conferring the right to drive a vehicle) should not suffice, even if it contains all the necessary information. The difference between an identity card and a passport resides in the fact that by international custom a passport is a 'travel document' whereas an identity card is typically a national document whose use abroad is not possible except under special bilateral agreements, and, as far as the Community is concerned, pursuant to the two aforementioned directives. Express restriction of the validity of an identity card to national territory may well be typical for an identity card. It is Community legislation which confers on that national identity card the character of a document which facilitates freedom of movement between the Member States of the European Community. The second sentence of Article 2(3) of the two directives does not allow Member States to make provision for an identity card which, contrary to the provisions of Article 2(1) of the two directives, does not authorize the holder to leave the national territory. The second sentence of Article 2(3) applies to the case where no identity card is provided for in the legislation of a Member State.

16. With regard to the particular circumstances of this case, the Commission points out that Mr Giagounidis's identity card contains all the information needed to establish his identity and that the card is therefore a valid identity card within the meaning of both directives. It also follows from the Commission's definition of an identity card that when a Community citizen enters and resides on the territory of another Member State and when a residence permit is issued the Member States must treat any document issued by the Member State of which the person concerned is a national as an identity card within the meaning of Community law, even if the document is valid only within the national territory, in so far as the document is intended exclusively to establish its holder's identity and his nationality is made clear in the document. A geographical restriction on the validity of the document cannot therefore be taken into account, whether such a restriction ensues from provisions of national law or is mentioned on the document itself.

17. The Commission adds that since it is Community legislation which confers on an identity card the character of an exit, entry and residence document, when transposing the directives in question into national law the Member States do not need to create a new document. The Commission considers that any appearance of a restriction on the validity of the identity document in the other Member States must be removed. The other Member States cannot be expected to delay applying their legislation until the home State has formally abolished the restriction in question. The date of issue of the documents — and in particular the question whether they were issued before or after accession — does not therefore have any effect on the reply to be given to the main question. The person concerned, who entered the territory of another Member State with a passport, may establish his identity by means of a valid identity card after that passport has expired. The same should apply in the converse case. Since the host Member State of residence must recognize the identity card, even if the issuing State has restricted its scope and even if that restriction appears on the actual identity card, the fact that there was no

such reference on the document in question does not affect the reply to be given to the question referred to the Court.

18. The Commission points out that on 20 December 1988 it brought proceedings against the Hellenic Republic pursuant to Article 169 of the EEC Treaty on the ground that a restriction on the geographic validity of a national identity card is not compatible with the obligations incumbent on that Member State under the Treaty.

On the same date it brought proceedings against the Federal Republic of Germany pursuant to Article 169 of the EEC Treaty since it did not recognize the Greek identity card as a document authorizing entry into its territory.

19. The Commission considers that the transitional provisions in the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaty annexed to the Treaty concerning the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community (Official Journal 1979 L 291, p. 1) do not affect the answer to be given to the preliminary questions. Those measures allow the host Member State to restrict freedom of movement for Greek workers only until 1 January 1988. When the host Member State has consented to the entry and employment of a Greek national before or after the Hellenic Republic's accession, the provisions of both directives are applicable. Mr Giagounidis was residing lawfully in the Federal Republic of Germany and was pursuing an activity there. He should in consequence enjoy the full benefit of the provisions of Directive 68/360/EEC.

20. On the question of the refusal of a residence entitlement under Paragraph 8(1) of the Ausländergesetz in the event that the Greek identity card is not to be recognized because it is not an identity card within the meaning of Directive 68/360/EEC owing to the geographical restriction on its validity, the Commission further considers, contrary to the view taken by the Bundesverwaltungsgericht, that Community law should be taken into consideration.

The right of residence of a worker who is a national of a Member State is derived directly from the EEC Treaty (Article 48(3)(b) and (c)). Possession of a valid identity card or passport is not a condition for that right, but a means by which it may be exercised. The fact that for a brief period a worker who has entered the territory of another Member State with a valid passport is not in possession of one of the two specified documents does not deprive him of his entitlement. The host Member State is not entitled to withdraw or refuse to extend the residence permit for that reason alone. The German authorities do not appear to have envisaged such measures or the possibility of deportation in the case at issue in the main proceedings. The plaintiff continues to hold a residence permit within the meaning of the Aufenthaltsgesetz EWG.

The Member States should, however, be entitled to require permanent possession of a valid identity card or passport, needed under the two directives only for the purposes of entry and the issue of a residence permit. (That applies in particular where the host country's own nationals are required to be in constant possession of such a document.) It should therefore be possible for the Member States to penalize any breach of the national provisions laying down such a requirement. However, the penalties should comply with the principle of proportionality, which means in particular that the penalties should not be more stringent than those laid down for nationals in the case of analogous offences.

Although a refusal to issue a residence entitlement within the meaning of Paragraph 8 of the Ausländergesetz does not constitute a penalty in the technical sense, it does deprive foreigners of an advantage laid down independently by national law. The Commission believes that, here again, where measures promoting the integration of foreign workers are concerned, the principle of proportionality must apply. The plaintiff should not be blamed if the Greek authorities either choose to deny that the identity card has any validity or delay extending the validity of the passport.

21. In conclusion, the Commission suggests that the Court should reply to the questions referred to it as follows:

'Article 4(1) of Council Directive 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 must be interpreted as meaning that a Member State must recognize that the persons referred to in Article 1 of that directive have a right of residence in its territory on production of an identity card, the validity of which has been restricted by the issuing State to its own territory.

In this regard it is immaterial that the identity card was issued before the accession of the issuing State to the European Communities or the expiry of the transitional measures, that a passport instead of an identity card was presented at the time of entry into the host Member State and that the restrictions are not mentioned on the identity card itself.'

G. F. Mancini
Judge-Rapporteur