penalties for the failure to possess such a permit.

3. The force of *res judicata* arising from a prior conviction arrived at on the basis of national provisions not in accordance with the requirements of Community law cannot justify an increase in the penalties to be imposed for an infringement of the provisions which a Member State has adopted to secure the application of Directive No 68/360 in its territory.

4. It is for the competent authorities of each Member State to impose penalties where appropriate on a person subject to the provisions of Community law who has failed to provide himself with one of the documents of identity referred to in Article 3 (1) of Directive No 68/360 but the penalties imposed must not be disproportionate to the nature of the offence committed.

In Case 8/77

Reference to the Court under Article 177 of the EEC Treaty by the Amtsgericht (Local Court) Reutlingen (Federal Republic of Germany) for a preliminary ruling in the criminal proceedings pending before that court against

CONCETTA SAGULO, GENNARO BRENCA and ADDELMADJID BAKHOUCHE, residing in Reutlingen,

on the interpretation of Articles 7 and 48 of the EEC Treaty relating respectively to the prohibition of discrimination on grounds of nationality and freedom of movement for workers and on the interpretation of Article 4 of 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,

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

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

I — Facts and written procedure

Mrs Concetta Sagulo-Avolio is a bookbinder of Italian nationality. On 21 November 1975 she was convicted by the Amtsgericht Reutlingen as a result of proceedings brought against her on 12 November 1975 by the Staatsanwaltschaft (Public Prosecutor's Office) for infringing the second subparagraph of Article 47 (1) of the Ausländergesetz (Aliens Law) of 28 April 1965 (Bundesgesetzblatt 1965 I, p. 353); she was fined DM 100 for having resided in the Federal Republic of Germany between 24 February and 4 September 1975 without a passport or residence permit.

On 28 November 1975 Mrs Sagulo lodged an appeal before the Amtsgericht Reutlingen against this conviction.

Mr Gennaro Brenca, a worker, is Italian. On 25 November 1976 the Amtsgericht Reutlingen fined him DM 100 for having resided in the Federal Republic of Germany between 30 February [sic] and 16 June 1976 without a passport or residence permit. Mr Brenca appealed to the Amtsgericht Reutlingen against this conviction.

Mr Addelmadjid Bakhouche, who is without occupation, is French. As a member of the French armed forces he was stationed from 22 June 1962 to 14 November 1973 in the Federal Republic of Germany; thereafter he had a valid residence permit from 12 December 1973 to 11 December 1974.

In spite of repeated requests by the competent authorities Mr Bakhouche did not endeavour to have his residence permit extended; he was remanded in custody charged with an infringement of the Ausländergesetz and on 12 March 1976 the Amtsgericht Reutlingen convicted him of this offence and fined him DM 1 200 taking into account the time spent in custody awaiting trial.

On 24 September 1976 the Staatsanwaltschaft brought further proceedings against Mr Bakhouche before the Amtsgericht Reutlingen for continuing to reside in the Federal Republic of Germany without a residence permit.

By order dated 13 January 1977 the Amtsgericht Reutlingen stayed the proceedings in the three criminal actions pending before it and referred the following questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

1. Can the special residence document which has declaratory effect and is referred to in Article 4 of Council Directive 68/360 issued as proof of a right of residence for aliens entitled thereto by virtue of Article 48 *et seq.* of the EEC Treaty be treated as being on all fours for the purposes of administrative and criminal law with the residence permit issued under the German Ausländergesetz (Aliens Law) with the result that such aliens who do not hold the document authorizing residence under the first or second subparagraph of Article 47 (1) of the Ausländergesetz or who hold such a document which has ceased to be

valid can be sentenced under Article 5 of the Ausländergesetz for residence or entry without a valid residence permit, or does such a sentence contravene the EEC Treaty?

2. Is the EEC Treaty contravened if an alien directly entitled under Article 48 of the EEC Treaty and the abovementioned Council Directive is issued only with a residence permit under Article 5 of the Ausländergesetz with the possible adverse effects of Article 47 of that Law?
3. Is there an infringement of the prohibition on discrimination laid down in Article 7 of the EEC Treaty or the letter and spirit of the Treaty (Article 5) if an alien who under Article 48 of the EEC Treaty or under one of the provisions made in implementation thereof is or originally was entitled to reside in or to enter the Federal Republic of Germany for the purposes set out therein and whose national passport or document in lieu thereof required under Article 3 of the Ausländergesetz and Article 10 of the Aufenthaltsgesetz/EWG (Law on Residence of Nationals of the Member States of the EEC) has ceased to be valid, can be sentenced within the ambit of the German Ausländergesetz under the first or second subparagraph of Article 47 (1) thereof to imprisonment for up to one year or fined up to 360 times his net daily income for an offence, whilst a German national whose identity card required under the comparable Federal or Regional Laws governing identity cards has ceased to be valid can only be fined for a minor offence (Article 47 of the Gesetz über Ordnungswidrigkeiten (Law on minor offences)) — although proceedings are not as a rule taken — up to DM 500 where the offence is committed negligently or up to DM 1 000 where it is committed intentionally?
4. Is the EEC Treaty contravened if an alien to whom Article 48 of the EEC Treaty applies who in the previous year had been fined for an offence against the Ausländergesetz committed intentionally because he had resided in the territory of the Federal Republic without a residence permit is sentenced to imprisonment for a similar offence after the judgment for the previous offence has become absolute?

The order of the Amtsgericht Reutlingen was registered at the Court on 18 January 1977.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged on 22 March 1977 by the Commission of the European Communities.

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.

II — Written observations submitted to the Court

The *Commission of the European Communities* basically makes the following observations:

First question

This question concerns the application of the criteria of the first subparagraph of Article 47 (1) (entry without a residence permit) and the second subparagraph of the same article (residence without a residence permit) of the German Ausländergesetz to the residence permit provided for by Article 4 (2) of 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).

(a) The extension of the first question to the act of entry without residence

permit is due to imprecise wording. Article 2 (1) of the German Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft (Law on entry and residence of nationals of the Member States of the European Economic Community) of 22 July 1969 (Bundesgesetzblatt 1969 I, p. 927) expressly provides that persons entitled to freedom of movement under Article 1 thereof are permitted entry and require no residence permit. The provisions of this law as a *lex specialis* have precedence over the Ausländergesetz. Entry without a residence permit by those entitled under Article 48 of the EEC Treaty is therefore not punishable under the national law of the Federal Republic.

(b) With regard to residence without a residence permit the question is whether the absence of the 'Residence Permit for a National of a Member State of the EEC' provided for in Article 4 of Council Directive No 68/360 or the expiry of its validity can be regarded as a factor capable of giving rise to the penal consequences of the second subparagraph of Article 47 (1) of the Ausländergesetz; the answer to this question depends on the legal nature of this residence permit.

It follows from the judgment of the Court of 8 April 1976 (Case 48/75, *Royer* [1976] ECR 497) that freedom of movement arises directly from Article 48 of the EEC Treaty and the provisions adopted for its implementation; the issue of a residence permit does not give rise to rights but is of a declaratory nature. On the other hand the residence permit provided generally for aliens by Article 2 (1) of the German Ausländergesetz does give rise to legal rights. Thus whereas the right to residence under Article 48 of the EEC Treaty arises independently of the residence permit provided for in Article 4 of Directive No 68/360 and continues in spite of such a permit losing its validity the right of residence under Article 2 (1) of the Ausländergesetz has its origin in and depends on a valid residence permit.

In spite of these fundamental differences the question whether the two residence permits may be assimilated for the purposes of administrative and penal law cannot be categorically answered in the negative. The concept of residence permit is ambiguous: it may stand both for the mere attestation of an existing right of residence and for the right itself.

For the application of national provisions which treat the residence permit as an attestation, that is, a means of proof of an existing right, its assimilation to the residence permit referred to in Article 4 of Directive No 68/360 does not appear to be excluded. The Court has often declared that Community law does not prevent Member States from applying their national regulations for the control of aliens including penalties appropriate to and necessary for their implementation.

On the other hand national legislative provisions governing the residence permit as a substantive right to residence cannot be assimilated to the residence document in the directive. In this respect there can be assimilation only at the level of the right of residence itself arising from Article 48 of the EEC Treaty; the question then would not be the absence or expiry of validity of the document but the absence or cessation of the preconditions for the right of freedom of movement itself.

Neither the wording nor the objective of the second subparagraph of Article 47 (1) of the Ausländergesetz nor the penalties provided for in the event of its infringement enable it to be clearly stated whether this provision is in fact applicable in the event of the absence or expiry of validity of a residence permit under Article 4 of Directive No 68/360; at most it may be assumed from the relationship existing between Article 47 and the other provisions of the

Ausländergesetz that it concerns a permit conceived as a substantive right.

Subject to the reservations set out above it may be stated that the residence permit referred to in Article 4 of Directive No 68/360 cannot be assimilated to the general residence permit referred to by the Ausländergesetz.

Second question

If the penal provision in the second subparagraph of Article 47 (1) of the Ausländergesetz refers to the substantive right of residence its application cannot depend on the kind of residence permit — that is to say, under Directive No 68/360 or the national law — decided upon by the authorities responsible for aliens: the mere issue of a general residence permit under Article 2 (1) of the Ausländergesetz cannot affect the substantive legal position of an alien directly entitled under Article 48 of the EEC Treaty. If on the other hand the second subparagraph of Article 47 (1) of the Ausländergesetz relates to the permit as an attestation then the penalty in the event of the absence or expiry of validity of either permit would be applicable.

In any event the authorities responsible for aliens are obliged, on issuing the attestation of the right of residence of aliens possessing an entitlement under Article 48 of the EEC Treaty, to have regard to the relevant provisions of Community law and the national legal provisions adopted for its implementation; this applies in particular to Article 4 of Directive No 68/360 and Article 3 of the German Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft.

Third question

Entry and residence of aliens without a valid passport required by Article 3 of the Ausländergesetz and Article 10 of the Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft is an offence punishable by imprisonment or fine under the first and second subparagraphs of Article 47 (1) whereas non-possession of a valid identity card by nationals is simply a minor offence punishable by a fine the amount of which is within the discretion of the authorities under Article 7 of the Gesetz über Ordnungswidrigkeiten (Law on Minor Offences) of 25 March 1952 (Bundesgesetzblatt 1952 I, p. 177).

The obligation in respect of identity cards for aliens who are entitled to freedom of movement under Article 48 of the EEC Treaty cannot be judged differently from that of nationals. Community law does not prevent the Member States from making special police regulations regarding the entry and residence of such aliens and providing the sanctions necessary for their implementation. Such sanctions must however be appropriate and must not be disproportionate to the seriousness of the act; otherwise they would be a limitation on freedom of movement. They must moreover have regard to the principle of equal treatment of nationals and aliens and the sanctions must be comparable with those imposed on nationals for acts of a comparable nature.

Entry and residence without a valid passport or document in place of a passport could not for the following reasons be classified as a serious offence *vis-à-vis* aliens possessing an entitlement under Article 48 of the EEC Treaty:

Disregard by nationals of the obligation to possess an identity card can under the national provisions be punished only with a fine as a minor offence; classification of the same act when committed by an alien as a more serious offence infringes the prohibition on discrimination contained in Article 7 of the EEC Teaty.

Disregard of the obligation to possess an identity card is further not by its nature a misdeed calling for punishment as a serious offence. In particular deprivation of liberty and the imposition of a fine appropriate to a serious offence would be quite disproportionate to the gravity of such an infringement of formalities in respect of control of aliens; threats of such sanctions would constitute a direct obstacle to the freedom of movement guaranteed by Community law.

The same considerations must apply to the punishable nature of the failure to possess any, or any valid, residence permit. Having regard to the purely declaratory nature of the residence permit for aliens who have this right under Article 48 of the Treaty, failure to obtain this document does not constitute a more serious criminal offence than disregard of the obligation to have an identity card.

An alien who has originally had a right of entry and residence under Article 48 of the Treaty and who has lost this right is no longer protected by the provisions of Community law as from the time when the conditions of Article 48 are no longer fulfilled; Member States are therefore not prevented from applying their general regulations for the control of aliens in respect of acts subseqent to that date.

Fourth question

The observations made in respect of the third question apply equally to the fourth. It is necessary to stress that a prior conviction contrary to Community law cannot have any effect on the assessment of the same act in the event of further proceedings.

In conclusion the Commission considers that the questions put to the Court should be answered as follows:

1. The right of residence under Article 48 of the EEC Treaty and the provisions implementing it arises without the issue of a residence permit and continues after the expiry of the permit. The sanctions provided in the law of Member States in relation to control of aliens in the event of the lack or expiry of the substantive right of residence are therefore not applicable when an alien possessing an entitlement under Article 48 of the EEC Treaty has no residence permit or it has expired.
2. Member States are obliged to issue to aliens entitled under Article 48 of the EEC Treaty a document with regard to their right of residence complying with the provisions of Council Directive No 68/360.
3. Regulations of Member States for the control of aliens infringe the prohibition on discrimination contained in Article 7 of the EEC Treaty where and so far as they make an infringement of the obligation to possess an identity card on the part of aliens entitled under Article 48 of the EEC Treaty punishable as a serious offence by imprisonment or fine whereas the same infringement on the part of nationals is punishable as a minor offence subject to a fine imposed at the discretion of the administrative authorities. Moreover the treatment of such infringements as serious criminal offences is a direct obstacle, in view of its disproportionate severity, to the freedom of movement guaranteed by Article 48 *et seq.* of the EEC Treaty. The same applies to sanctions laid down by the law of Member States for the control of aliens with respect to non-possession or expiry of validity of the residence permit.

III — Oral procedure

The Commission, represented by its Legal Adviser, Norbert Koch, submitted oral observations and replied to a question put by the Court at the hearing on 24 May 1977.

The Advocate General delivered his opinion at the hearing on 14 June 1977.

Decision

1 By order dated 13 January 1977, received at the Court Registry on 18 January 1977 the Amtsgericht Reutlingen referred to the Court four questions on the interpretation of Articles 7 and 48 of the EEC Treaty and Article 4 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 (OJ, English Special Edition 1968 (II), p. 485).

2 These questions have arisen in the context of criminal proceedings against two Italian nationals and a French national accused of contravening the German Ausländergesetz of 28 April 1965 (Bundesgesetzblatt 1965, Part I, p. 353). It appears from the file that the two Italian nationals were fined by the court for having resided in the Federal Republic of Germany without a valid passport or identity card and in consequence without a valid residence permit. The French national was in possession of a valid passport but had refused to comply with the formalities required by the German authorities to obtain a residence permit and had been remanded in custody for a short time; he is accused of not having regularized his position in accordance with the relevant provisions.

3 The first, second and fourth questions inquire essentially whether the Member States may apply their general provisions on the entry and residence of aliens and, where appropriate, the penal provisions provided in the case of non-compliance with these provisions to persons enjoying the protection of Community law. More particularly the Court is asked:

— Can the special residence document which has declaratory effect and is referred to in Article 4 of Council Directive 68/360 issued as proof of a right of residence for aliens entitled thereto by virtue of Article 48 *et seq.* of the EEC Treaty be treated as being on all fours for the purposes of administrative and criminal law with the residence permit issued under the German Ausländergesetz with the result that such aliens who do not hold the document authorizing residence under the first or second subparagraph of Article 47 (1) of the Ausländergesetz or who hold such a document which has ceased to be valid can be sentenced under Article 5 of the Ausländergesetz for residence or entry without a valid residence permit, or does such a sentence contravene the EEC Treaty?

— Is the EEC Treaty contravened if an alien directly entitled under Article 48 of the EEC Treaty and the abovementioned Council Directive is issued

only with a residence permit under Article 5 of the Ausländergesetz with the possible adverse effects of Article 47 of that Law?

— Is the EEC Treaty contravened if an alien to whom Article 48 of the EEC Treaty applies who in the previous year had been fined for an offence against the Ausländergesetz committed intentionally because he had resided in the territory of the Federal Republic without a residence permit is sentenced to imprisonment for a similar offence after the judgment for the previous offence has become absolute?

4 The rights of nationals of a Member State to enter the territory of another Member State and to reside there for the purposes mentioned in the Treaty follows, as the court making the reference rightly states, directly from the Treaty or, as the case may be, from the provisions adopted for its implementation. Nevertheless Community law has not deprived Member States of the power to adopt measures to enable the national authorities to have precise information of movements of population in its territory. To enable the Member States to obtain such data and at the same time to put those concerned in a position to prove their legal position with regard to the application of the provisions of the Treaty two formalities are provided for in Articles 2 and 4 of Directive No 68/360: the persons in question must have a valid identity card or passport and be able to prove their right of residence by a document entitled 'Residence Permit for a National of a Member State of the EEC' which must include the statement set out in the Annex to the directive. Under the third paragraph of Article 189 of the Treaty it is for the Member States to choose the form and methods to implement the provisions of the directive in their territory either by the adoption of a special law or regulations or by the application of appropriate provisions of their general regulations on aliens. The Member States are also competent to lay down penalties or to apply the penalties provided for in their general regulations in order to secure observance in their territory of the formalities provided for in Directive No 68/360.

5 If a Member State executes the directive on the basis of its general regulations on the legal status of aliens, it must naturally not adopt administrative or judicial measures which would have the effect of limiting the full exercise of the rights which the Community law guarantees to the nationals of other Member States. In particular it would be incompatible with Community law for a general residence permit to be required or issued having a different scope from the proof of the right of residence by the issue of the special 'Residence Permit' provided for in Article 4 (2) of Directive No 68/360.

6 The imposition of penalties or other coercive measures is therefore ruled out in so far as a person protected by the provisions of Community law does not

comply with national provisions which prescribe for such a person possession of a general residence permit instead of the document provided for in Directive No 68/360, since the national authorities should not impose penalties for disregard of a provision which is incompatible with Community law. On the other hand Community law does not preclude the appropriate punishment for infringement by the person concerned of national provisions adopted in conformity with Directive No 68/360.

7 The same applies to the question whether the repeated disregard of provisions which a Member State has adopted in execution of Directive No 68/360 can where appropriate justify increasing the penalties imposed. Community law does not prevent such an increase in penalties which is consistent with general principles of penal law. However this does not affect the obligation of the court to ascertain whether the conditions for such an increase in penalties are fulfilled where there has been a prior conviction on the basis of legal provisions the application of which was not justified under Community law. Even if the force of *res judicata* does not allow such a prior conviction to be completely nullified its effect cannot be extended in such a way that it is regarded as an aggravating circumstance in connexion with a subsequent conviction which is justified under Community law.

8 The questions put to the Court must therefore be answered as follows: The issue of the special residence document provided for in Article 4 of Council Directive No 68/360 has only a declaratory effect and for aliens to whom Article 48 of the Treaty or parallel provisions give rights, it cannot be assimilated to a residence permit such as is prescribed for aliens in general and in connexion with the issue of which the national authorities have a discretion. A Member State may not require from a person enjoying the protection of Community law that he should possess a general residence permit instead of the document provided for in Article 4 (2) of Directive No 68/360 in conjunction with the Annex thereto nor may it impose penalties for the failure to possess such a permit. The force of *res judicata* arising from a prior conviction arrived at on the basis of national provisions not in accordance with the requirements of Community law cannot justify an increase in the penalties to be imposed for an infringement of the provisions which a Member State has adopted to secure the application of Directive No 68/360 in its territory.

9 The third question is as follows:

Is there an infringement of the prohibition on discrimination laid down in Article 7 of the EEC Treaty or the letter and spirit of the Treaty (Article 5) if

an alien, who under Article 48 of the EEC Treaty or under one of the provisions made in implementation thereof is or originally was entitled to reside in or to enter the Federal Republic of Germany for the purposes set out therein and whose national passport or document in lieu thereof required under Article 3 of the Ausländergesetz and Article 10 of the Aufenthaltsgesetz/EWG (Law on Entry and Residence of Nationals of the Member States of the EEC) has ceased to be valid, can be sentenced within the ambit of the German Ausländergesetz under the first or second subparagraph of Article 47 (1) thereof to imprisonment for up to one year or fined up to 360 times his net daily income for an offence, whilst a German national whose identity card required under the comparable Federal or Regional Laws governing identity cards has ceased to be valid can only be fined for a minor offence (Article 47 of the Gesetz über Ordnungswidrigkeiten (Law on minor offences)) — although proceedings are not as a rule taken — up to DM 500 where the offence is committed negligently or up to DM 1 000 where it is committed intentionally?

10 This question concerns in particular the case where a person who is entitled under Community law to reside in the territory of the country in question neglects to obtain a valid identity card. Since this requirement is expressly contained in Directive No 68/360 the power of Member States to punish infringements of this duty cannot in principle be contested. The court making the reference nevertheless asks in this connexion whether it is compatible with Community law and in particular with the prohibition on discrimination in Article 7 of the Treaty to make a person who is subject to Community law liable to the relatively heavy penalties which the general law on aliens provides for such an infringement whereas a national on infringing similar legal provisions is liable only to the considerably lighter penalties which apply to minor offences.

11 The first paragraph of Article 7 of the EEC Treaty states: 'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited'. With regard to the question put by the court making the reference it should be pointed out that the general principle of Article 7 can only apply subject to the special provisions of the Treaty. These special provisions include the regulations and directives, including among these Directive No 68/360, provided for in Article 49 to bring about, by progressive stages, freedom of movement. In so far as this directive imposes special obligations (such as the possession of a passport or an identity card) on the nationals of a Member State who enter the territory of another Member State

or reside there, the persons affected thereby cannot be simply put on the same footing as nationals of the country of residence.

12 There is therefore no objection to such persons being subject to different penal provisions from those applying to nationals who infringe an obligation, possibly having its origin in a law or regulation, to obtain certain identity documents. This conclusion follows all the more forcibly in that several Member States do not impose any such obligation by law on their own nationals so that in these countries there would be no standard of comparison. In the absence of a criterion which in the present case might be based on the principle of national treatment contained in Article 7 of the Treaty it is nevertheless to be observed that although Member States are entitled to impose reasonable penalties for infringement by persons subject to Community law of the obligation to obtain a valid identity card or passport, such penalties should by no means be so severe as to cause an obstacle to the freedom of entry and residence provided for in the Treaty. To this extent it cannot be ruled out that the penalties prescribed in general provisions of laws relating to aliens, having regard to the objective of such provisions, are not compatible with the requirements of Community law which is based on the freedom of movement of persons and, apart from certain exceptions, on the general application of the principle of equal treatment with nationals. If a Member State has not adapted its legal provisions to the requirements of Community law in this sphere it is the task for the national court to use its judicial discretion to impose a punishment appropriate to the character and objective of the provisions of Community law the observance of which the penalty is intended to safeguard.

13 The answer to the question raised must therefore be that it is for the competent authorities of each Member State to impose penalties where appropriate on a person subject to the provisions of Community law who has failed to provide himself with one of the documents of identity referred to in Article 3 (1) of Directive No 68/360 but that the penalties imposed must not be disproportionate to the nature of the offence committed.

Costs

14 The costs of the Commission of the European Communities which has submitted observations to the Court are not recoverable and as these proceedings are, in so far as the parties to the main proceedings are

concerned, in the nature of a step in the criminal proceedings pending before the Amtsgericht Reutlingen, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by order of the Amtsgericht Reutlingen on 13 January 1977 hereby rules:

1. **The issue of the special residence document provided for in Article 4 of 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 has only a declaratory effect and for aliens to whom Article 48 of the Treaty or parallel provisions give rights, it cannot be assimilated to a residence permit such as is prescribed for aliens in general, in connexion with the issue of which the national authorities have a discretion.**

2. **A Member State may not require from a person enjoying the protection of Community law that he should possess a general residence permit instead of the document provided for in Article 4 (2) of Directive No 68/360 in conjunction with the Annex thereto nor may it impose penalties for the failure to possess such a permit.**

3. **The force of *res judicata* arising from a prior conviction arrived at on the basis of national provisions not in accordance with the requirements of Community law cannot justify an increase in the penalties to be imposed for an infringement of the provisions which a Member State has adopted to secure the application of Directive No 68/360 in its territory.**

4. **It is for the competent authorities of each Member State to impose penalties where appropriate on a person subject to the provisions of Community law who has failed to provide himself with one of the documents of identity referred to in Article 3 (1) of Directive No 68/360 but the penalties imposed**

must not be disproportionate to the nature of the offence committed.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Touffait Bosco

Delivered in open court in Luxembourg on 14 July 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 14 JUNE 1977 [1]

Mr President,
Members of the Court,

I – The reference for a preliminary ruling with which my opinion today is concerned relates to three independent criminal proceedings pending before the Amtsgericht Reutlingen and concerned with the interpretation of the German Ausländergesetz (Aliens Law) of 28 April 1965 and in particular with the application of the penal provisions of Article 47 of that law to nationals of the Member States of the Community. The facts of the three cases are as follows:

1. On 21 November 1975 the Amtsgericht Reutlingen on the application of the Staatsanwaltschaft (Public Prosecutor's Office) of 12 November 1975 imposed a fine of DM 100 plus costs of the proceedings and execution on Concetta Sagulo, an Italian national employed as a bookbinder, for infringing the second subparagraph of Article 47 (1) of the Ausländergesetz in that from 24 February to 4 September 1975 she had resided in the Federal Republic of Germany without a passport and without a residence permit. On 28 November 1975 Mrs Sagulo appealed against this conviction.

2. On 25 November 1976 the Amtsgericht Reutlingen on application of the Staatsanwaltschaft of 22 November 1976 imposed a fine of DM 100 plus costs of the proceedings and execution on Gennaro Brenca, an Italian worker, for infringement of the second subparagraph of Article 47 (1) of the Ausländergesetz in that from '30 February' to 16 June 1976 he had resided in the Federal Republic of Germany without a passport

1 – Translated from the German.