of the family of a migrant worker by virtue of the fact that as a result of a new event the family's housing can no longer be regarded as suitable according to the criteria applied in that regard in the place of residence, where sanctions of comparable severity are not provided for in regard to nationals of the State in question even having regard to the powers which the Member States retain in connection with public order and public security.

REPORT FOR THE HEARING
delivered in Case 249/86 *

I — Legal framework

1. Article 10 of Regulation (EEC) No 1612/68 of the Council provides as follows:

'(1) The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

(a) his spouse and their descendants who are under the age of 21 years or are dependants;

(b) dependent relatives in the ascending line of the worker and his spouse.

(2) Member States shall facilitate the admission of any member of the family not coming within the provisions of paragraph 1 if dependent on the worker referred to above or living under his roof in the country whence he comes.

(3) For the purposes of paragraphs 1 and 2, the worker must have available for his family housing considered as normal for national workers in the region where he is employed; this provision, however, must not give rise to discrimination between national workers and workers from the other Member States.'

2. Paragraph 7(1) of the Aufenthaltsgesetz EWG (Law on the residence of EEC nationals) in the version in force since 31 January 1980 (*Bundesgesetzblatt* I, 1980, 6.2.1980, p. 117) provides as follows:

'(1) A residence permit shall be granted on demand to members of the family (Paragraph 1(2)) of a person who has such a permit and has housing for himself and the members of his family of a nature considered appropriate according to the critera applied in that regard in the place of residence.'

* Language of the case: German.

The penultimate sentence of Paragraph 7(5) of the law provides that:

'A residence permit granted to members of the family of workers shall be extended on demand for a period of at least five years if the conditions for the issue thereof continue to be fulfilled.'

Finally, Paragraph 7(9) contains the following provision:

'The period of validity of a residence permit may subsequently be reduced if the conditions required for its issue are no longer fulfilled.'

II — Facts

3. The Commission received a series of complaints, particularly in 1982, which led it to consider that Paragraph 7 of the Aufenthaltsgesetz EWG (in the version in force since 31 January 1980) was incompatible with Article 48 of the Treaty establishing the European Economic Community and with Article 10(3) of Regulation No 1612/68. According to its information, the authoritites of the Federal Republic of Germany have, in a series of cases, refused to renew residence permits for members of the family of a migrant worker who had already, sometimes for a fairly long period, lawfully lived with him and have threatened them with measures such as expulsion to their country of origin when, for one reason or another (for example, the birth of a child, or a child reaching the age of majority), the housing occupied by the worker and his family was no longer appropriate according to the criteria in force in the place of residence.

4. On 11 September 1984, the Commission addressed a letter to the Federal Republic of Germany in which it stated that it considered Paragraph 7 of the abovementioned German law to be incompatible with Article 48 of the EEC Treaty and with Article 10(3) of Regulation No 1612/68. The Commission called on the Government of the Federal Republic of Germany in accordance with Article 169 of the EEC Treaty to submit its observations on that subject within 30 days from the date of receipt of that letter.

5. By letter of 6 November 1984, the Federal Republic of Germany replied that the German legislation was not incompatible with Community law and that no discriminatory administrative practice existed in regard to workers from other Member States.

6. Since the Commission considered that the reply was not satisfactory, it delivered a reasoned opinion to the Federal Republic of Germany on 9 September 1985 in which it declared that the Federal Republic of Germany had failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 10(3) of Regulation No 1612/68. The Commission called upon the Federal Republic of Germany to adopt the necessary measures within one month from the date of notification of the reasoned opinion.

7. By letter of 4 December 1985 in reply to the reasoned opinion the Federal Republic of Germany essentially reaffirmed its position to the effect that its legislation was compatible with Community law.

III — Written procedure and conclusions of the parties

8. Since it considered that the replies by the Federal Republic of Germany were not convincing, the Commission, by an application lodged at the Court Registry on 29 December 1986, brought the present action.

9. The written procedure followed the normal course. Upon 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. However, it asked the Federal Republic of Germany to reply in writing to certain questions. The Federal Republic of Germany replied within the prescribed period.

10. The Commission claims that the Court should:

(i) declare that the Federal Republic of Germany has failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 10(3) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 inasmuch as it has adopted and retained provisions which make the renewal of the residence permit of members of the family of Community migrant workers conditional on their living in appropriate housing not only at the time when they install themselves with the migrant worker concerned in the territory of the Federal Republic of Germany but for the entire duration of their residence;

(ii) order the Federal Republic of Germany to pay the costs.

11. The Federal Republic of Germany contends that the Court should:

(i) dismiss the application;

(ii) order the Commission to pay the costs.

IV — Submissions and arguments of the parties

A — *General*

(a) *Article 48 of the EEC Treaty*

12. The Commission claims that Paragraph 7 of the abovementioned German law is incompatible with Article 48 of the EEC Treaty because the legal basis of Regulation No 1612/68 is Article 49 of the EEC Treaty, under which the Council is to adopt 'the measures required to bring about . . . freedom of movement for workers, as defined in Article 48'. Consequently, by adopting Regulation No 1612/68 on the basis of Article 49 of the

EEC Treaty, the Council necessarily and unavoidably accepted that the right of migrant workers to bring their families to live with them was 'required' to bring about freedom of movement of workers within the meaning of Article 48.

13. The Federal Republic of Germany replies that Article 48 of the Treaty grants no direct rights to members of the family of migrant workers, because no mention is made of the installation of such persons. Consequently, the Treaty confers no right to freedom of movement on members of families as such. Community law permits accompaniment by family members only as an element of the worker's freedom of movement. The Federal Republic of Germany concludes that that right on the part of members of workers' families is a secondary right of a lesser degree arising under subordinate legislation, namely Article 10 of Regulation No 1612/68.

(b) *Article 10(3) of Regulation No 1612/68*

14. The Commission claims that Article 10(3) of Regulation No 1612/68 refers solely to the moment when the members of the family of the migrant worker concerned come to live with him. The condition concerning housing contained in Article 10(3) of the regulation must therefore be interpreted as meaning that it may be required by Member States when members of the worker's family are admitted for the first time.

15. According to the Federal Republic of Germany, the purpose of Article 10(3) is to regulate the right of residence during the entire period of the presence of the worker in the host Member State, in this case, the Federal Republic of Germany. The Federal Republic of Germany is of the opinion that the requirement in Article 10(3) that the worker should have available for his family housing regarded as normal consequently applies to the entire period of residence. It must be verified not only when the right of entry is exercised but also throughout the exercise of right of residence. The verification must be carried out separately in respect of each new member of the family who arrives, in particular when residence permits are extended. Consequently, Paragraph 7 of the Aufenthaltsgesetz EWG does not infringe Community law.

B — *Specific aspects*

(a) *The restrictive interpretation of Article 10(3)*

16. The Commission claims that Article 10(3) of the regulation must be interpreted restrictively because it introduces a derogation from a fundamental right guaranteed by Community law. The fundamental right results from Article 48 of the Treaty, other provisions of Regulation No 1612/68, such as Article 11, and from Council Directive 68/360/EEC of 15 October 1968 (Official Journal, English Special Edition 1968 (II) p. 485), from which it follows that members of a worker's family have a permanent right to live with him in the host country.

Furthermore, the Commission claims that according to the restrictive interpretation, the derogation provided for in Article 10(3)

must be limited in time. If the legislature had wished to make that derogation permanent, it should have said so clearly. Derogations from a directly applicable fundamental rule cannot be presumed.

Furthermore, the Commission claims that the expressions 'install themselves' and 'facilitate the admission' in Article 10 of the regulation in issue must refer to the time when the members of the worker's family arrive in the host country for the first time. The same is true of the expression 'to be joined' contained in the fifth recital in the preamble to Regulation No 1612/68. That recital emphasizes the need to eliminate all obstacles to the mobility of workers, in particular as regards the worker's right to be joined by his family and the conditions for the integration of that family into the host country.

17. The Federal Republic of Germany contends that Article 10(3) of the said regulation must not be interpreted restrictively because it deals with a right which is based only on secondary legislation. It refers to the judgment of the Court of 13 February 1985 in Case 267/83 *Diatta* v *Land Berlin* [1985] ECR 567, in which the Court decided that Article 10 of Regulation No 1612/68 must not be interpreted strictly. Furthermore, it draws attention to the principle that a restrictive interpretation of derogations is required only where there is doubt, and cannot determine the interpretation from the start.

The Federal Republic of Germany emphasized that if the legislature had wished to limit the application of the condition laid down in Article 10(3) solely to the time of first admission, it would have expressly said so.

Furthermore, the Federal Republic of Germany contends that the language of Article 10 and of the fifth recital in the preamble to Regulation No 1612/68 does not contradict its view.

18. In its reply, the Commission argues that the judgment in Case 267/83, cited above, does not support the argument put forward by the defendant because, first, that judgment is concerned with the right set out in detail in Article 10(1) and (2) of Regulation No 1612/68 and not with the limitation of that right laid down in Article 10(3), which was not at issue in that case, and, on the other hand, the abovementioned judgment refutes the arguments of the German authorities in favour of a strict interpretation of the expression 'members of the family' in Article 10(2).

(b) *The preparatory documents for Regulation No 1612/68*

19. The Commission refers both in its application and in its reply to the preparatory documents for Regulation No 1612/68. It annexes to its reply extracts from Council documents concerning the discussions which took place at the meeting of the social questions working party of the Council and of Coreper and the minutes of the meeting of the Council of 29 July 1968. It claims that it has found nothing in the Council minutes indicating that Article 10(3) lays down a permanent requirement.

According to the Commission, the discussion shows that the Council's intention was to prevent migrant workers from jumping the queue of domestic applicants for housing but its intention was certainly not that members of the families of migrant workers should be constantly in danger of losing housing which had been allocated to them. The Commission has found no evidence to support the proposition that the latter was the Council's intention. If such was the case, it is for the defendant to produce evidence of it.

20. The Federal Republic of Germany contends both in its defence and in its rejoinder that it in no way follows from the origins of the said provision that the right of residence may not permanently be linked to a condition requiring adequate housing. The Commission has not succeeded in producing sufficient evidence in support of its argument to the effect that the origins of the provision argue in favour of its interpretation of Regulation No 1612/68. Moreover, an analysis of the documents does not of itself make it possible to conclude that it was the intention of the authors of the regulation at the time to require that the availability of appropriate housing could be verified only when a migrant worker was joined for the first time by a member of his family. The working party report says essentially (Annex 1 to the reply) that the delegations which insisted that the provision should remain applicable were generally favourable to the idea that the condition that the worker should have available to him appropriate housing did not in any way discriminate against workers who were nationals of other Member States. It cannot be concluded from the fact that the question of appropriate housing as a permanent requirement was not raised does not make it possible to conclude that such a requirement must be excluded. The Federal Republic of Germany therefore concludes, in view of those differences of opinion when the provision was adopted, that no argument may be derived from the origins of the said provision.

(c) *The purpose of Article 10(3) of Regulation No 1612/68*

21. In its defence, the Federal Republic of Germany contends that the true meaning of the requirement that the worker should have suitable housing flows from the meaning and purpose of that requirement itself. The condition concerning suitable housing contained in Article 10(3) of Regulation No 1612/68 provides the worker with protection. It is clear that social and health considerations, among others, justify the need for appropriate housing. According to the Federal Republic of Germany, that protection is not provided if the requirement is restricted to the time of arrival in the host country. The obligation concerning appropriate housing during the entire stay of the members of the family of a migrant worker is intended to avoid overcrowding of the worker's housing, with all the difficulties which could result.

The Federal Republic of Germany also contends that the article in question grants an advantage not at a particular moment but for a specific period. Moreover, the concept of installation includes, in the Federal Republic of Germany's view, an element of duration. The purpose of the regulation is that a member of the migrant worker's family can live permanently with him. The fact that the requirement of 'normal housing conditions' applies to the entire stay also flows from the limited duration of the residence permit, the purpose of which is precisely to make it possible to verify from time to time whether the conditions for its

issue continue to be fulfilled. The Federal Republic of Germany also refers to the Court's decisions to the effect that provisions must be judged with regard to their basic general objectives and less in terms of their literal meaning, and it refers, by way of example, to the judgment of 30 October 1975 in Case 23/75 *Rey Soda* v *Cassa Conguaglio Zucchero* [1975] ECR 1279.

22. In its reply, the Commission claims that to interpret Article 10(3) in the way in which the German Government does is quite simply to allow a secondary consideration, in this case integration as interpreted by the national authorities, to take precedence over the right of free movement itself, which thus becomes no more than the means by which integration is approached. In the Commission's view, it is absurd to claim that a worker is enjoying protection when a member of his family is threatened with expulsion even though the persons concerned wish to remain in the Federal Republic of Germany. The Commission adds that the fact that certain family rights are guaranteed permanently by Regulation No 1612/68 does not mean that exceptions to one of those rules, namely the requirement of housing regarded as normal, must be extended to cover the entire period of residence.

(d) *Arguments based on Directive 68/360/EEC*

23. In support of its argument the Commission also relies on Council Directive 68/360/EEC of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 485), Article 4(1) of which makes the grant of a right of residence subject to the production of the documents listed in Article 4(3), to the exclusion of all other documents. The residence permit must be valid for at least five years (Article 6(1)(b) of Directive 68/360/EEC) and must, with certain listed exceptions, be automatically renewable, as can be seen from the different language versions of the said directive. According to the Commission, no exception is provided for in respect of inadequate lodgement.

24. According to the Federal Republic of Germany, by providing that the residence permit is to be granted for a period limited to five years, Article 6 of Directive 68/360/EEC provides an opportunity to verify, when a residence permit is extended, whether that condition continues to be fulfilled. Renewal cannot be automatic; the meaning of the provision is that the extension of the permit must be subject to no condition in addition to those permitted at the beginning of the period of residence. The German language text of the directive is just as binding as the other language versions and does not lead to different solutions. The directive does not mention housing. That condition must therefore be verified when the residence permit for members of the family of the migrant worker is renewed.

(e) *Limits on freedom of movement imposed for reasons of public security and public policy*

The Federal Republic of Germany also contends that according to Article 48(3) of the Treaty the right to freedom of

movement must be limited when public security and public policy are threatened. The lack of suitable housing is contrary to public security and public policy. The determination of those concepts must be made on the basis of national criteria. That follows first from the terms of Article 10(3) of Regulation No 1612/68, which uses regional standards as a criterion for assessing whether or not housing is suitable. The Federal Republic of Germany also refers to the judgment of 4 December 1974 in Case 41/74 *van Duyn* v *Home Office* [1974] ECR 1337, in particular at p. 1350, in which the Court held that the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary to allow the competent national authorities an area of discretion within the limits imposed by the Treaty.

In the view of the Federal Republic of Germany, the permanent requirement of appropriate housing is also justified on grounds of public security and public policy by reference to the stricter conditions laid down by the Court in its judgment of 27 October 1977 in Case 30/77 *R.* v *Bouchereau* [1977] ECR 1999, in particular at p. 2013. The Court decided in that case, at least in regard to restrictions on freedom of movement, that in addition to the perturbation of the social order which any infringement of the law involves, there must be a genuine and sufficiently serious threat affecting one of the fundamental interests of society. The Federal Republic of Germany considers that such a fundamental interest exists in this case.

26. In its reply, the Commission submits that the Federal Republic of Germany's argument cannot be accepted. The conclusion concerning the interpretation of Article 10(3) of Regulation No 1612/68 is the same even if the general rules are applied to such exceptions because:

(i) no repressive measure may be adopted against migrant workers if no effective measures have been adopted in respect of the same conduct on the part of nationals of the Member State concerned (Joined Cases 115 and 116/81 *Adoui and Cornuaille* v *Belgium* [1982] ECR 1665, paragraph 8). Essentially, the latter part of Article 10(3) of Regulation No 1612/68 merely repeats the general prohibition of discrimination;

(ii) when a problem may be resolved by the application of measures less restrictive of freedom of movement, the application of more restrictive sanctions for the protection of public order are not justified.

The Commission contests neither the arguments relied on by the defendant in regard to Cases 41/76 (*van Duyn*) or 30/77 (*Bouchereau*) nor its conclusion that national authorities may apply local criteria when deciding what is to be understood by 'normal housing'. However, it emphasizes that the submission on which the application is based is that German law transforms the requirement of appropriate housing into a permanent criterion, whereas it should only be temporary.

Finally, the Commission does not deny that the question whether housing is appropriate constitutes a fundamental interest of society, but in its opinion the point at issue in this

case is the inequality of treatment between workers who are nationals of the Member State concerned and those who are nationals of other Member States.

(f) *Discrimination against migrant workers in general*

27. The Commission points out that under Article 9 of Regulation No 1612/68, migrant workers and their families are to enjoy the same rights as national workers in matters of housing. However, leaving aside possible exceptions in regard to three *Länder*, the family of a migrant worker residing in the Federal Republic of Germany is liable to sanctions where no equivalent measures, in so far as such measures could exist, are laid down in regard to workers who are German nationals. The absence of an equivalent sanction for German workers constitutes discrimination contrary to Article 10(3) of the regulation.

28. The Federal Republic of Germany contends that in administrative practice there is no discrimination against workers who are nationals of other Member States and that where housing is unlawfully overcrowded German citizens are also liable to legal sanctions not merely in part of the Federal Republic of Germany but in all the *Länder*. In Hamburg, Bavaria and Hessen, there are special regulations permitting the authorities to intervene where housing is unlawfully overcrowded by German nationals. In other *Länder* (Rheinland-Pfalz, Nordrhein-Westfalen and Bremen), the authorities may intervene on the basis of building legislation or general provisions against dangers to public security and public order.

With regard to Baden-Württemberg, to which the Commission principally refers, the Federal Republic of Germany points out first that rules concerning the minimum dimensions of housing are contained in the *Empfehlungen für das Obdachlosenwesen* (Recommendations for dealing with the problem of the homeless) of 10 June 1976. Furthermore, the Landesbauordnung (Baden-Württemberg Building Code) permits the authorities responsible for buildings to take measures against the overcrowding of housing when abnormal situations arise. The Federal Republic of Germany also observes that administrative measures adopted to deal with unlawful overcrowding of housing are limited to isolated cases and that, as a general rule, it is the municipal authorities which exercise such powers. The higher authorities of the *Länder* and the Federal Government thus are not in general aware of the practices applied in that regard. The fact that the rules laid down are different in each of the *Länder* is a necessary consequence of the federal structure.

(g) *Discrimination resulting from expulsion*

29. In its reply, the Commission claims that the measures which the Federal Republic of Germany adopts against the families of migrant workers are the non-renewal of the residence permit, followed by the threat of

expulsion from the territory of the Federal Republic of Germany. Consequently, even if Article 10(3) required that the condition should remain permanently fulfilled (contrary to the Commission's interpretation), that provision cannot be relied upon to justify expulsion, because there is another solution which is less restrictive of the right of free movement, namely to permit those families to obtain housing on the same conditions as German nationals. If forced removal to other accommodation is the sanction which is genuinely applied to Germans living in overcrowded housing, it must also be applied to members of the families of migrant workers.

The Commission emphasizes that according to the Court's case-law (judgment of 11 March 1986 in Case 121/85 *Conegate* v *HM Customs and Excise* [1986] ECR 1007, paragraph 18), the internal and external measures need not be absolutely equivalent; there is no real equivalent to expulsion. That is why the Court stated in its judgment of 18 May 1982 in Joined Cases 115 and 116/81 *Adoui and Cornuaille* v *Belgium* [1982] ECR 1665, in particular at p. 1707, that in order to avoid applying an arbitrary distinction to the detriment of nationals of other Member States, it must be shown that genuine and effective measures intended to combat the same conduct have been adopted both in respect of migrant workers and of nationals of the Member State concerned.

30. In its rejoinder, the Federal Republic of Germany argues that refusal to renew a residence permit in respect of members of a migrant worker's family does not lead to an immediate expulsion order but has the result, from the point of view of the law concerning foreigners, that administrative confirmation of the right to reside has been refused in respect of those persons on the ground that they do not fulfil one of the requirements for the exercise of that right. That does not necessarily mean their residence is definitively brought to an end. The refusal to extend a residence permit is subject to the condition subsequent that the person concerned take the necessary steps to fulfil the conditions required, whereupon his right to continue to reside in the country will be recognized. The persons concerned are not expelled, they are merely required to put an end to their failure to meet those conditions.

With regard to expulsion of its own nationals, the Federal Republic of Germany contends that such a sanction is prohibited by its constitution and by public international law (judgment of 4 December 1974 in Case 41/74 *van Duyn* v *Home Office* [1974] ECR 1337). Furthermore, the Federal Republic of Germany contends that for reasons of public policy a Member State may, if necessary, refuse to permit a national of another Member State to enjoy the right of freedom of movement even though it does not impose a similar restriction on its nationals, so long as the application of such a principle does not create an arbitrary distinction to the detriment of nationals of other Member States; it cites in that regard the judgment of the Court of 18 May 1982 in Joined Cases 115 and 116/81 *Adoui and Cornuaille* v *Belgium*, cited above.

V — Answers to the questions put by the Court

31. The Court asked the Government of the Federal Republic of Germany to set out the applicable provisions in detail and to explain fully the measures which may be taken against German nationals if they do not have available to them housing regarded as

normal in the region in which they are employed. The Court also asked the Government of the Federal Republic of Germany to state why such measures are not sufficient in regard to nationals of other Member States.

32. In a letter of 31 October 1988, received at the Court Registry on 3 November 1988, the Federal Republic of Germany refers to a series of provisions to be found in municipal directives and guidelines in force in the various *Länder* and also the provisions of various laws. It also produces for the first time a law in force in Berlin, annexed to its reply. Furthermore, it cites, by way of example, certain provisions contained in laws laying down general rules for the maintenance of public safety and public order. In several of the provisions cited, the penalties provided for in the case of overcrowding of housing or living space are partial or total removal or a fine. All those measures are applicable both to German nationals and foreign nationals.

33. With regard to the question why those measures are not sufficient in regard to nationals of other Member States, the Federal Republic of Germany makes the following observations:

(a) The condition in regard to housing is an essential means of ensuring the social integration of the families of workers coming from other Member States; the realization of the objective of equal treatment provided for in Community law necessarily requires the integration of the families of such workers. However, the prohibition of discriminatory measures is not in itself sufficient to achieve substantive social equality as it achieves merely formal legal equality. In practical terms, substantive equality presupposes, in addition to the existence of national measures applicable to everyone, an obligation on the part of the families of workers coming from other Member States to adapt to the conditions of life and housing existing in the host Member State, which permits their integration and therefore brings about substantive equality.

(b) When the families of workers coming from other Member States comply with the requirement in regard to housing, no problem arises. Furthermore, the workers concerned enjoy the same treatment as German workers on the German housing market and they are entitled to the same assistance in the form of social benefits, the same housing allowances and other supplementary allowances as German nationals.

(c) However, if the workers concerned do not comply with the requirement in regard to housing, the measures to be taken by the authorities, which are purely prohibitive in nature, are not intended to create a different situation but merely to put an end to situations which are unlawful and contrary to public order. Consequently, those measures are not sufficient to bring about the positive housing requirement provided for in Article 10(3) of Regulation No 1612/68, since that provision does not contain an applicable prohibition on the occupation of living space but requires conduct on the part of the workers as a condition for their families being permitted to reside with

them, namely that they obtain suitable housing.

Since the criterion is determined in regard to the actual situation in the region in which the worker is living with his family, in the Federal Republic of Germany there are naturally no measures or provisions requiring German nationals to adapt to the housing conditions for German workers in the region in which they reside.

Whereas in regard to workers coming from other Member States, Community law need not require adequate housing, since the integration of the worker himself takes place in the work environment, the situation is different in regard to members of his family, in regard to whom the home constitutes the centre of their personal and social relations. The consequence of permitting workers' families not to adapt to the housing conditions existing in the region in which they live would be to create foreign ghettos in which people live in inferior housing conditions, a result which would be the contrary of the social equality which Community law seeks to achieve.

(d) Article 10(3) of Regulation No 1612/68, as interpreted and implemented by the Federal Republic of Germany, makes it possible to avoid the creation of distinct areas of housing for German nationals and foreigners. In particular, the article in question is not applied by the German authorities for the purpose of terminating the period of residence of the family of workers coming from other Member States. Expulsion on the basis of that provision can be envisaged only as a last resort in cases in which the worker refuses to provide his family with adequate housing. As applied by the German authorities, the provision thus essentially has a preventive rather than a punitive role, the effectiveness of which naturally presupposes that in extreme cases it will be possible to terminate the period of residence of members of the worker's family. Because foreign workers have a tendency to economize on the cost of housing, it is an indispensable means of inducing them to comply with the condition concerning housing and, in certain cases, cause them to do so by drawing their attention to the steps which may be taken against them.

(e) The fact that the requirement of adequate housing may be enforced with regard to the family members of workers from other Member States by measures concerning the right of residence which cannot be applied to German nationals is not discriminatory. By virtue of the provisions of the German constitution, Germans have a primary and unconditional right to reside on German territory, which cannot be withdrawn from them, whereas nationals of other Member States are entitled to freedom of movement under Community law on condition that the obligations arising under Community rules are fulfilled. That difference in position in regard to the right of residence is implicit in the Community prohibition of discrimination. Consequently, the fulfilment of the conditions provided for in Community law in regard to residence is a precondition for the application of the prohibition of discriminatory measures in that domain.

C. N. Kakouris
Judge-Rapporteur