impose on nationals of other Member States exercising their right to freedom of movement the obligation, subject to a penal sanction for failure to comply, to make a declaration of residence within three days of entering that State's territory.

REPORT FOR THE HEARING
delivered in Case C-265/88 *

I — Facts and procedure

Lothar Messner, a German national, entered Italy on 27 April 1987 in order to work as a consultant with the Italian subsidiary of Jug. Knauf, which has its registered office in Germany and of which he is an employee.

On 4 June 1987 the State police in Volterra summoned him to appear in court on a charge of having infringed Article 142 of Royal Decree No 773 of 18 June 1931, which approved the 'Testo unico delle leggi di pubblica sicurezza' (consolidated text of Italian public security laws, hereinafter referred to as 'the Consolidation Act') by not having made, within three days of entering Italy, the declaration of residence required by the abovementioned article.

The Pretura di Volterra (Magistrates' Court), Volterra, took the view that a proper interpretation of the Treaty of Rome was necessary in order to resolve the case. It therefore stayed the proceedings and referred the following question to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

'May Article 3(c) in conjunction with Article 56(1) of the EEC Treaty be interpreted as meaning that it is lawful for Italy to impose on nationals of another Member State of the Community an obligation to make a formal declaration of residence within three days of entering Italian territory, failing which they are liable to a criminal penalty, in view of the fact that a feudal obligation of that kind, whose nature and purpose are manifestly oppressive and which is clearly inspired by xenophobia, cannot be justified on any specific ground of public policy, public security or public health?'.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted

on 27 December 1988, by the Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department;

* Language of the case: Italian.

on 5 January 1989, by the Italian Republic, represented by Ivo Braguglia, avvocato dello Stato.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to assign the case to the First Chamber and to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

The Italian Government proposes that the Court should reply in the affirmative to the question referred by the national court.

It points out first of all that the purpose of Article 142 of the Consolidation Act is to ensure public order and public security. It enables the national authorities to be informed in good time of the movements of foreigners in the national territory, which is an important part of ensuring public order and public safety — a function which is still within the Member States' province.

In the opinion of the Italian Government, the duty to report imposed by Article 142 of the Consolidation Act does not in any way affect the freedom of movement and the right of residence of nationals of other Member States of the Community. In support of that view it refers to the judgment of 7 July 1976 in Case 118/75 *Watson and Belmann* [1976] ECR 1185, in which the Court recognized that the duty laid down in Article 142 is in principle compatible with the EEC Treaty and with Community secondary legislation. The Italian Government considers that the reasons which led the Court to reach that conclusion remain valid and that, therefore, that conclusion must be confirmed in the present case.

The Italian Government also points out that the three-day period allowed for reporting to the public security authorities strikes a fair balance between the requirements of a foreigner who has entered the national territory and the aims of providing information and public protection which the rule seeks to meet.

Finally, according to the Italian Government, the criminal penalties for failing to comply with the obligation to report to the competent authorities cannot be regarded as an obstacle to the free movement of persons since it conforms to the principle that the penalty must not be disproportionate to the gravity of the offence, emphasized by the Court in its judgment in Case 118/75, cited above.

Consequently, the Italian Government considers that the relevant provisions of the EEC Treaty and of Community secondary legislation do not preclude a Member State from maintaining in force an obligation for nationals of other Member States to make their presence known, such as the one contained in Article 142 of the Consolidation Act.

The Commission points out first of all that the question referred has already been answered by the Court in its judgment in Case 118/75. In that judgment the Court stated that an obligation imposed on nationals of other Member States to make their presence on the national territory

known is in principle compatible with the provisions of Articles 48 to 66 of the EEC Treaty, provided that the period fixed for the discharge of the said obligation is reasonable and that the penalties attaching to a failure to discharge it are not disproportionate to the gravity of the offence and do not include deportation.

The Commission then considers the period fixed for the discharge of the obligation and the penalties attaching to a failure to discharge it in order to see whether, in the present case, they remain within the bounds of what is reasonable and proportionate.

In that regard, the Commission emphasizes, with regard to the time-limit fixed, that at the present stage of development of the common market the movement of persons is increasing continually, which could make the time-limit of three days very difficult to observe.

The Commission also considers that the time-limit is too short to enable a foreigner to have sufficient time to make inquiries concerning the various administrative formalities which his residence in the host Member State entails.

Finally, the Commission points out that the three-day time-limit is not even necessary for verification of the presence of foreigners in the national territory since anyone who provides accommodation for a foreigner in Italy is required to notify the arrival or departure of the traveller within 24 hours. According to the Commission, those provisions ensure that the Italian State already has available the necessary information concerning the presence of foreigners on its territory, independently of the foreigners' personal declaration.

The Commission concludes from the above that the three days allowed for foreigners to report their presence in Italy is not justified.

With regard to the penalties attaching to a failure to report within the time allowed, the Commission points out that in its judgment in Case 118/75 *Watson and Belmann*, the Court stated that whilst the national authorities were entitled to impose, in respect of a failure to comply with the terms of provisions requiring foreign nationals to notify their presence, penalties comparable to those attaching to infringements of provisions of equal importance by nationals, they were not justified in imposing a penalty so disproportionate to the gravity of the infringement that it became an obstacle to the free movement of persons.

However, according to the Commission, in the present case not only are the sanctions imposed more severe than those attaching to infringements of equivalent provisions of national law, but they are also disproportionate to the gravity of the infringement.

Thus, for example, the Commission points out that the penalty imposed, both on foreigners and Italians, for failure to discharge the obligation to register a foreigner with the host commune after his arrival is, at most, only LIT 10 000, whereas the penalty imposed on a foreigner for failure to make a declaration within three days of his arrival on Italian territory may be as much as LIT 80 000.

With regard to detention for up to three months for a national of another Member State who has not discharged the obligation

to declare his presence on Italian territory within three days of his arrival, the Commission emphasizes that in its view it is very difficult to maintain that that penalty is not excessive and likely by definition to be an obstacle to the free movement of persons.

The Commission also claims that Community citizens may not be treated in the same way as other foreigners because, as a result of the growth of the interior market and increasing close cooperation between the national authorities, measures which might formerly have appeared justified in order to protect public order are now no longer justified when they are applied to persons protected by Community law.

In conclusion, the Commission proposes that the reply to the question referred by the national court should be that Community law does not preclude rules of national law which impose on nationals of other Member States an obligation to make declarations of residence, provided that the period fixed for the discharge of that obligation is reasonable and that the penalties laid down for failing to discharge it are not disproportionate and not likely to be an obstacle to the free movement of persons.

III — Oral procedure

During the oral procedure, the representative of the Italian Government stated that the fines incurred by those who do not discharge the obligation to declare their presence on Italian territory has been increased, along with fines in general, to LIT 400 000, pursuant to Article 113 of Law No 689 of 24 November 1981 (ordinary supplement to the GURI No 329, 30. 11. 1981).

G. C. Rodríguez Iglesias
Judge-Rapporteur