connexion with the exercise of official authority; it is not possible to give this description, in the context of a profession such as that of *avocat,* to activities such as consultation and legal assitance or the representation and defence of parties in court even if the performance of these activities is compulsory or there is a legal monopoly in respect of it.

In Case 2/74

Reference to the Court under Article 177 of the EEC Treaty by the Conseil d'État, Belgium for a preliminary ruling in the action pending before that court between

JEAN REYNERS, docteur en droit, company manager, resident at Woluwé-Saint-Lambert (Brussels),

and

THE BELGIAN STATE, represented by its Minister of Justice,

Intervening party: L'ORDRE NATIONAL DES AVOCATS DE BELGIQUE, on the interpretation of Articles 52 and 55 of the EEC Treaty with regard to the Royal Decree of 24 August 1970 derogating from the condition of nationality prescribed by Article 428 of the Code judiciaire relating to the title and exercise of the profession of *avocat,*

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore (Rapporteur), H. Kutscher, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and procedure, and the observations submitted under Article 20 of the EEC Statute of the Court, may be summarized as follows:

I — Facts and written procedure

The plaintiff, born in Brussels of Dutch parents, has retained his Dutch nationality, although resident in Belgium, where he has been educated and been made docteur en droit belge according to a diploma issued by the central selection committee on 23 July 1957 and confirmed on 13 September 1957.

It has not been possible for the plaintiff to be admitted to the practice of the profession of *avocat* [1] in Belgium; the Law of 25 October 1919 temporarily modifying the organization of the courts and the procedure before courts and tribunals provided that 'no one shall be admitted to take the oath nor inscribed on the roll unless he is Belgian'.

This provision has been replaced as from 1 November 1968 by Article 428 of the Code judiciaire (Law of 10 October 1967), whereby:

No one may hold the title of *avocat* nor practise that profession unless he is Belgian, holds the diploma of docteur en droit, has taken the oath prescribed by Law and is inscribed on the roll of the Ordre or on the list of probationers.

Dispensations from the condition of nationality may be granted in cases determined by the King, on the advice of the General Council of the Ordre des avocats.

The plaintiff has made several unsuccessful applications to the General Council of the Ordre national des avocats for dispensation from the condition of nationality.

On the advice of the General Council of the Ordre national des avocats a Royal Decree was issued on 24 August 1970 derogating from the condition of nationality prescribed by Article 428 of the Code judiciaire relating to the title and exercise of the profession of *avocat*.

Article 1 of this Decree provides that:

Dispensation from the condition of nationality prescribed by the first paragraph of Article 428 of the Code judiciaire shall be granted in favour of a foreigner:

1. who has been permanently resident in Belgium for at least six years before the date of the application for enrolment;
2. who can prove, if he was a member of a foreign Bar, that he was not disbarred for reasons casting doubt on his integrity with regard either to his private or to his professional life;
3. who can produce, except in the case specified in Article 2 (d) (recognition as a refugee), a certificate issued by the Minister for Foreign Affairs stating that national law or an international agreement accords reciprocity;
4. who, at the time of application for enrolment, has maintained abroad neither a permanent residence, nor a residence within the meaning of Article 36 of the Code judiciaire, is not a member of a foreign Bar, and

1 — Translator's note. A member of the legal profession exercising functions similar to the combined functions of English barristers and solicitors.

gives an undertaking not to become so.

The plaintiff does not satisfy the condition of reciprocity laid down by the Royal Decree of 24 August 1970, since Article 2 (1) of the Dutch 'Advocatenwet' of 16 March 1968 stipulates that an applicant for admission to the Bar must have Dutch nationality.

The plaintiff applied on 5 November 1970 to the Conseil d'État of Belgium for the annulment of Article 1 (3) of the Royal Decree of 24 August 1970, maintaining that this provision infringes Articles 52, 54, 55 and 57 of the EEC Treaty.

By order of 21 December 1973, registered at this Court on 9 January 1974, the Conseil d'État of Belgium, section d'administration, IIIe Chambre, stayed the proceedings and applied to the Court under Article 177 of the EEC Treaty for a preliminary ruling on the following questions:

1. What is to be understood by 'activities which in that State are connected, even occasionally, with the exercise of official authority' within the meaning of Article 55 of the Treaty of Rome?

   Must this Article be interpreted in such a way that within a profession like that of *avocat* only activities which are connected with the exercise of official authority are excluded from the application of Chapter II of this Treaty, or as meaning that this profession itself is to be excluded on the grounds that its exercise involves activities which are connected with the exercise of official authority?

2. Is Article 52 of the Treaty of Rome, since the end of the transitional period, a 'directly applicable provision', despite, in particular, the absence of directives as prescribed by Articles 54 (2) and 57 (1) of the said Treaty?

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 11 March 1974 by the Commission of the European Communities, on 15 March by the Government of the Federal Republic of Germany, on 18 March by the Government of the Kingdom of the Netherlands, Mr Reyners, the plaintiff in the main action, and the Government of the Grand Duchy of Luxembourg, on 21 March by the Government of the Kingdom of Belgium, on 5 April by the Government of Ireland and on 8 April by the Government of the United Kingdom of Great Britain and Northern Ireland.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without a preparatory inquiry.

II — Written observations submitted to the Court

A — Question 1

The plaintiff in the main action is of the opinion that the exception made by Article 55 of the EEC Treaty to the fundamental principle of freedom of establishment does not relate to the whole of the profession but solely to certain ancillary activities of the *avocat*, which alone are connected with the exercise of official authority.

(a) On this point, the plaintiff in the main action adduces the following facts:

— before the Law of 25 October 1919 no condition of nationality was required in Belgium for inscription on the roll of the ordre des avocats;

— at present, as a result of the Royal Decree of 24 August 1970, a British or Irish subject could, if he had a Belgian doctorate of laws and fulfilled the conditions as to

character and residence, take the oath in Belgium, since the condition of nationality does not exist in these countries;

— the Benelux Convention of 12 December 1968 relating to the practice of the profession of *avocat* enables *avocats* admitted to the Bar in Belgium or in the Netherlands to plead, subject to certain conditions, before the courts of the other country 'with the same privileges and subject to the same duties as the *avocat* assisting them'.

— Various agreements between Bars allow pleading and occasional professional practice before the courts of the other State.

These observations relating to the freedom to provide services and the freedom of establishment argue against the proposition that the whole profession of avocat is referred to by Article 55.

(b) The fact that the *avocat* may occasionally be called upon to exercise a part of official authority is irrelevant, since these activities are not at all necessary for the practice of the profession: does Article 55 apply when a citizen is required to sit on a jury, to preside or be assessor at a polling booth, when a businessman is appointed judge of a consular court or when an employer or worker is a member of a Labour Court? It is quite outside an *avocat's* profession to be an auxiliary judge.

(c) Finally it must be considered that an *avocat* can practise his profession normally even if he cannot exercise certain functions of official authority.

The *Government of the Kingdom of Belgium, the defendant in the main action,* considers that the first question must be looked at as a whole and that the first part cannot be regarded as a separate question.

(a) Article 55 excepts from the right of establishment only activities which are connected with the exercise of official authority. It is only these activities which are reserved to the nationals of the country; the exceptions referred to in Article 55 do not affect the whole of a profession which undertakes such activities.

This interpretation, which is the only logical one, is likewise the only one compatible with the spirit of the EEC Treaty and the desire of the Member States to establish among themselves a real economic community. In providing for a right of establishment they sought in fact to abolish as far as possible restrictions on freedom of establishment for their respective nationals; the exception in Article 55 should therefore be interpreted restrictively.

Logically Article 55 covers only activities and not professions. In every Member State numerous professions participate with certain of their activities in the exercise of official authority; the right of establishment would be unduly restricted if the whole of the profession were excluded from the freedom of establishment by reason of this. The use of the word 'activities' instead of 'profession' confirms that Article 55 cannot be given a broad interpretation. The words 'even occasionally' provide an additional argument in this respect.

Although sociologically the profession forms a whole, nevertheless legally — from which aspect it is proper to consider Article 55 — it must be possible to make distinctions. The determination of specific activities connected with the exercise of authority in a Member State depends on a directive; the concept of involvement in exercise of official authority cannot be interpreted on a Community level since it is different from one State to another. On the other hand the question of whether Article 55 refers only to certain specific activities or covers professions as a whole could be decided by this Court.

A profession cannot be reduced to the sum of all its activities. Even if a profession is connected with the exercise

of official authority in various respects, it is not as such automatically or entirely exempted from the right of establishment. Article 55 is of general application; it cannot be applied specifically to a particular professional category, the principal activities of which are confused with the profession itself.

(b) In the view of the Community institutions and of the majority of writers, it is proper to observe that although it would perhaps have been desirable for the Treaty to have defined more precisely the concept of activities which in a State are connected, even occasionally, with the exercise of official authority, nevertheless Article 55 refers to specific activities and not to professions as a whole.

The *Government of the Federal Republic of Germany* distinguishes two aspects of the question raised in relation to Article 55.

(a) In a general way it is right to observe that this provision relates to the situation existing in the different Member States; in one State a specific activity could therefore be referred to by Article 55 as connected, according to the law of this State, with the exercise of official authority, although it is subject, in another Member State, to the freedom of establishment.

Article 55 does not necessarily exclude professions as a whole from the freedom of establishment; it allows access by nationals of other Member States to certain activities of a profession, while excluding other activities, which are alone connected with the exercise of official authority. The activities connected with the exercise of official authority could however be so preponderant that the whole of the profession would come within the scope of Article 55.

b) As to the second and specific part of the question the fact cannot be overlooked that the common intention of the negotiators of the EEC Treaty was to exclude the profession of *avocat* from the freedom of establishment.

On the other hand there can be no single answer, valid in all the Member States of the Community, to the question raised; the rules which govern a profession such as that of *avocat* in the nine Member States are very diverse. With regard to the main action it is proper to bear in mind that under German law several essential activities of the *Rechtsanwalt* [1] are closely related to the exercise of official authority, especially before criminal courts dealing with serious crime. Article 140 (1) of the 'Strafprozeßordnung' (Rules of Procedure in Criminal Courts) makes representation of the accused, normally by a *Rechtsanwalt*, compulsory; failing such, under Article 145 no main hearing can be held and the official authority cannot therefore be exercised. Moreover, representation by counsel for the defendant in the course of proceedings of public law has various characteristics, including the right to take cognizance of the exhibits, to represent the accused during the final interrogation, to be present at the preliminary investigation, to put questions at the main hearing and to make an appeal. In the most important spheres of the administration of justice in criminal matters there is thus in Germany a very close relationship between the profession of *Rechtsanwalt* and the exercise of official authority by criminal courts; Article 55 of the EEC Treaty prohibits freeing, in this sphere at least, the exercise of the profession of *Rechtsanwalt* in the Federal Republic. It could be the same in other judicial matters where the due conduct of the proceedings is impossible under German law without a *Rechtsanwalt*.

The *Government of the Kingdom of the Netherlands* states that it shares the opinion according to which Article 55 of the EEC Treaty does not exclude the

1 — Translator's note. A member of the German legal profession exercising functions similar to those of a Belgian *avocat*.

profession of *avocat* in all its aspects from the freedom of establishment, but only the activities connected with the exercise of official authority in respect of which *avocats* may be competent, in particular, the qualification of *avocats* to act as auxiliary judges.

Article 55 refers not to professions but only to activities. The concept of activities connected with the exercise of official authority relates to activities involving particular powers of public law, which are normally vested only in public officials, but which can in certain cases likewise be accorded to other persons. These powers of a legislative, executive or judicial nature generally involve a certain power of decision or of issuing orders and entail obligations and responsibilities; their exercise is controlled and circumscribed with guarantees; the grant of these powers normally takes place by nomination or appointment by the public authority. The normal activities of the *avocat* do not satisfy these criteria and cannot therefore be regarded as connected with the exercise of official authority.

The objective of Article 55 is to make an exception for activities of an official character, the exercise of which having regard to the interests involved, it is generally admitted requires the possession of the nationality of the State concerned. Such a narrow connexion with a particular nationality is absent in the profession of *avocat*, at least as regards its main activities. The conclusion may be drawn in particular from the fact that the condition of nationality for the exercise of a profession such as that of *avocat* has been abolished or restricted in the majority of Member States of the Community; in the Netherlands, in particular, a draft law, submitted on 1 June 1973, provides for its abolition.

The condition of nationality as a condition for access to the profession of *avocat* is in truth founded on the fear of foreign competition.

Having regard to the spirit of the Treaty, an excepting provision such as Article 55 should be interpreted restrictively.

The *Government of the Grand Duchy of Luxembourg* recalls that it has always defended the point of view that Article 55 of the EEC Treaty has the effect of excluding the profession of *avocat* from all rules issued in implementation of the Treaty, since the *avocat* is connected with the exercise of official authority as an institutionally regulated organ of judicial authority. Article 55 covers all the activities of the profession of avocat, which form an indivisable and inseparable whole, since they all have the same objective, to assist the administration of justice; as a result all the professional activities of the *avocat* in all their aspects are excepted from Community rules without any possible distinction.

(a) Comparison with Article 48 (4) shows that Article 55, in excepting activities connected, even occasionally, with the exercise of official authority, refers to activities other than those of officials and employees who, by virtue of specific organs, exercise official authority and give if effect.

It appears from the preparatory work on the EEC Treaty that Article 55 clearly excludes the profession of *avocat* from the scope of the chapter relating to the right of establishment and freedom to provide services.

(b) The Luxembourg administration of justice comprises, apart from the actual organs of judicial authority (judges, officials of the department of the public prosecutor, registrars), public agents whose function is to give service to the judges and to the parties, called generically auxiliaries of justice (bailiffs, notaries and *avocats*). Although forming part of the professions, these auxiliaries of justice are subject to strict constitutional rules intended to govern their relations with the judiciary in the interest both of the parties and of the proper functioning of the public administration of justice; these rules

come under public law and determine their rights and duties so long as they are directly connected with the administration of justice.

As regards the role of *avocats* more particularly, it is right to stress that their functions are inseparable from the administration of justice and are indispensable to it. Parties are required to be represented by an *avocat-avoué* before the supreme court and before the local courts, unless these latter are sitting in commercial matters; they must be represented by an enrolled *avocat* in cases brought before the Conseil d'État, unless there is legislative exemption to the contrary; the services of an *avocat* in criminal courts are either required or indispensable in the interests of the defence.

The profession of *avocat* is inseparable from the office of *avoué* and the two functions are exercised in practice by the same person without it being possible to distinguish in which capacity he is acting in a particular instance.

The *avocat-avoué* is necessarily connected with the judicial function, since he can be officially called upon to fill a vacancy in a court without being able to refuse without good reason. Moreover, the professional training of an *avocat* is the same as that of a judge and the examination at the end of the probationary period is also the condition for entry to the judiciary.

Even in civil cases the court can of its own motion appoint an *avocat* for a party who states he is unable to find someone to represent him; in the same way the Bar provides for the defence of the poor by organizing a free advice bureau and ensuring the representation in court of persons without resources.

The involvement of the *avocat* in the exercise of a public service is outwardly formalized by the taking of the oath at the time of his reception before the Cour supérieure de justice; the *avocat,* like an official, swears obedience to the Constitution and loyalty to the Grand Duke.

The detailed rules governing the profession of *avocat,* although generally preserving its liberal character, brings out its connexion with a public service: it is thus that the roll of *avocats,* drawn up as a rule by the disciplinary council, could likewise in certain cases be drawn up by the local court; entry on the roll of *avocats* takes place after the candidate is admitted at a public hearing at the Cour supérieure de justice after the submissions of the representative of the State; professional integrity is guaranteed by legal rules prescribing that certain conduct and activities are incompatible with it; *avocats* joining together to refuse to perform their duties would be punished by having their names removed permanently from the roll; *avocats* are required to exercise their functions in the defence of justice and truth; disciplinary power is exercised by the Council of the Ordre under the surveillance of the procureur général, who can bring matters before it by means of a 'requisition' and challenge its decisions before the Cour supérieure de justice.

The *avocat,* therefore, does not only exercise a profession in the conventional sense of the word; he is intimately connected with the exercise of judicial authority; he is an indispensable auxiliary in the administration of justice. It follows from the position occupied by the *avocat* in the judicial organization that the activity of the *avocat* is connected with the exercise of official authority and consequently fulfills the conditions required by Article 55 for exemption from the application of the provisions of Articles 52 to 66 of the EEC Treaty.

(c) All the complex activities constituting the exercise of the profession of *avocat* come under the exemption of Article 55; they are so closely and inseparably connected that they form an inseparable whole.

The word 'activities' must receive a wider and not a narrower interpretation than the word 'profession'. Its use

cannot mean that a profession may be dissected into several activities and have applied to it under the EEC Treaty different legal treatment according as certain of its activities are or are not connected with the exercise of official authority; its objective is to permit the extension of the exemption contained in the first paragraph of Article 55 not only to professions which, through one of their aspects, are connected with such exercise, but also to any activity which, on whatever ground and in whatever way, is connected with public power without being attached to an organized profession.

The applicability of the first paragraph of Article 55 to the profession of *avocat* is confirmed by Article 57 (3): although the medical and allied and pharmaceutical professions are not normally connected with the exercise of official authority, and are practised under similar conditions and have an identical aim in all Member States, Article 57 (3) makes the progressive abolition of restrictions in their case dependent upon coordination of the conditions for their exercise. The absence of such a requirement in the case of the profession of *avocat,* in spite of its special characteristics and although the *avocat* is normally and sometimes permanently called upon to play a part in the exercise of official authority, is logically explained by the fact that the profession of *avocat* comes within the exemption contained in the first paragraph of Article 55.

The interpretation suggested is the only one capable of giving effect to the whole wording of the first paragraph of Article 55. To understand the word 'activities' as a dissection of the profession would deprive the words 'even occasionally' of any use or meaning. If an activity could be separated and removed from the whole of the activities of a profession, its connexion with the exercise of official authority could only be normal and not occasional.

The *Government of Ireland* considers that the first paragraph of Article 55 must be interpreted as meaning that within a profession such as that of *avocat* it refers only to those activities which are connected with the exercise of official authority; thus the exemption which it provides does not apply to the profession itself but only to those specific functions exercised by certain members of the profession in the context of activities connected with the exercise of official authority.

The *Government of the United Kingdom* considers that the spirit and objective of the Treaty imposes a restrictive interpretation on the exemptions provided to the free movement of workers, the freedom of establishment and the freedom to provide services. As to Article 55, its objective is manifestly, in the case of a profession which embraces many activities capable of being exercised separately and of which certain ones only are connected with the exercise of official authority as understood by the Member State concerned, to enable each Member State to maintain restrictions, if it considers it proper, as regards activities which it considers to be connected with the exercise of official authority; it would exceed that objective to permit the maintenance of restrictions with regard to any other activity. Article 55 should therefore be interpreted as exempting only those specific activities of a profession which are connected with the exercise of official authority in the Member State concerned.

The *Commission of the European Communities* considers that the concept of official authority must be defined as part of Community law. Since it is a question of an exemption from a fundamental right in the Treaty, it cannot be left to Member States to determine themselves the nature and scope of this exemption and thus to alter as they please the scope of the right of establishment and the right to provide services. Article 55 does not permit an activity exercised under the same

objective conditions to be treated differently in one or other Member State.

The meaning and scope of the concept of the exercise of official authority must be sought in the light of the system of the Treaty. In this respect it is right to consider that all exceptions to the fundamental principles of freedom of movement and equality of treatment within the Community can only receive a very strict interpretation which, in the event of doubt, must give preference to the meaning which ensures protection for the fundamental right. The principle of the free movement of self-employed persons and undertakings has as its objective to ensure that economic activities (industrial, commercial, craft and professions) may be carried on within the whole of the Community without obstacles erected by the public authorities for reasons of nationality or residence. The sovereignty of the Member States in their political and adminstrative organization is not infringed; in particular the sphere of action of the public power, legally exercised with regard to citizens in the relationship 'authority-subjects', is reserved to them. The State may delegate tasks arising from this function, and the prerogatives of public power necessary to assure it, to individuals, without thereby integrating them in the apparatus of the public service. The sole objective of the exemption in Article 55 is to prevent foreign nationals from exercising prerogatives of public power with regard to citizens of a State as an ancillary effect of the benefit of the right of establishment or the provision of services. Connexion with the exercise of official authority can be a legitimate reason for exemption from the fundamental rights recognized by the Treaty only if he who exercises it does so by virtue of prerogatives of public power and for this purpose has powers outside the general law. All which goes beyond this exceeds the objective with which the exemption clause was inserted. In this respect it is proper to distinguish between an activity which may help to fulfil a certain public purpose, but without the power of imposing acts or findings and declarations on ordinary citizens, and the activity which employs for this purpose means involving the exercise of such powers.

It is thus possible to define the concept of the exercise of official authority as involving the exercise of prerogatives outside the general law, powers of constraint with regard to persons und possessions, which ordinary citizens do not have and which enable him on whom they are conferred to act independently of the consent or even against the will of the other person.

(a) As regards Article 55, only the interpretation which distinguishes between 'activities' and 'professions' and allows the exemption only for the separate activities within a particular profession is compatible with the system of the Treaty and with the wording of the provisions in question.

— As to the wording, it should be observed that the Treaty exonerates, from the right both of establishment (second paragraph of Article 52 and second paragraph of Article 54 (1)) and of provision of services (second paragraph of Article 60), activities and not professions. Moreover, since the Treaty uses the term 'profession', it must be recognized that the use of the word 'activities' in Article 55 means something else. The words 'even occasionally' mean that there is always exemption for the exercise of official authority wheter such exercise is permanent or occasional.

— As to the system of the Treaty and its objectives, it is necessary to maintain the interpretation which ensures protection of the fundamental principle of free movement of persons; to exempt the whole of a prefession from the right of establishment or of provision of services because a member may be required, even occasionally, to exercise a share of

official authority would undoubtedly mean giving to Article 55 a scope which would exceed the aim which was intended by the insertion of this exemption clause. It is necessary, of course, for the activity involving the exercise of official authority to be ancillary and separable from the normal activities of the profession and that the profession may therefore be practised normaly even though this activity is excluded.

(b) As regards more particularly the profession of *avocat,* it is proper to mention that to accord to *avocats* the benefit of the right of establishment and freedom to provide services is quite in keeping with the objectives of the Treaty and necessary for their attainment.

Moreover, the *avocat* practises a profession, characterized by independence, particularly as regards the public authorities; it would therefore be paradoxical to accept that he is connected with the exercise of official authority.

The contribution which the *avocat* makes to the administration of justice, which is a public service, cannot be treated as equivalent to the exercise of official authority.

The *avocat* no doubt facilitates the administration of justice when he ensures the defence of the interests of the subject before the courts and tribunals; but his vocation there is that of a legal expert, and as such he sometimes enjoys a monopoly, an expert, moreover, who gives guarantees of confidence, morality and independence appropriate to his membership of a professional body, these guarantees being contained in the rules of professional conduct which he is required to observe and which enable the judiciary to have special confidence in him. In doing this, however, he is not undertaking a public charge or function; he is not commissioned to assert the public interest or that of the State; he remains a member of a free profession who provides a service to a layman in the defence of his particular interest.

Compulsory membership of a professional body, in which the authorities exercise disciplinary power over the *avocat,* under the control of the judiciary, is irrelevant, for there are other professions with professional bodies with similar powers, established and organized by law, but these professions do not come under the exemption of Article 55.

The effect of taking the oath is not to confer on the *avocat* powers outside the general law; it only solemnizes his membership of the brotherhood of the Bar and gives the courts and tribunals a moral guarantee which determines the confidence they have in him.

If the profession of *avocat* involved the exercise of official authority, it would be incomprehensible that the condition of nationality does not exist in all the countries of the Community and has not always existed in certain of them, whereas a profession such as that of *avocat* and the conditions of its practice are not fundamentally different from one country to another and have changed only little with time.

As to the alleged intention of the draftsmen of the Treaty, it is right to say that the observations or reservations made during the course of the preparatory work on the Treaty cannot prevail over the wording of the provision in question; this rule applies with even greater force since the signatories to the Treaty have voluntarily excluded recourse to the preparatory work. As for the opinions expressed in national parliaments during the process of ratification, it would be necessary, at least, to find interpretations which were in harmony to be able to derive any conclusion.

A decisive factor is that the majority of governments and Bars allow, in law and in fact, foreigners practising a profession such as that of *avocat* to be heard at the Bar of the national courts and tribunals: such is the case in particular in Belgium under Article 428 of the Code judiciaire, the Royal Decree of 24 August 1970, the

Benelux Convention of 12 December 1968 relating to the practice of the profession of *avocat,* in force between the Netherlands and Belgium since 1 September 1971, and Protocols concluded in 1965/66 between the Bars of Brussels and Paris.

It is however indisputable that in certain Member States the *avocat* may be called upon to exercise a part of official authority; the question therefore arises whether these activities are necessary to the practice of the profession or connected with it in such a way that they are inseparable.

When an *avocat* is called upon to fill a vacancy in a tribunal, he directly exercises the power of judging, which is a part of official authority. But it is an exceptional situation, and moreover the role of judge is obviously not a normal activity of the profession of *avocat,* but foreign to it; the activity connected with the exercise of official authority is not only separable but indeed separate from the profession of *avocat,* which may be exercised quite normally without it.

Pleading is not connected with the exercise of official authority by the sole fact that procedural acts made in their name do not have to be signed by the plaintiff or defendant to bind them: it is a question only of the exercise of authority *ad litem,* which the advocate does not normally have to justify; there is no power here which lies outside the general law.

Participation in the election of members of the organs of the professional body does not involve the exercise of official authority; it is the same, saving exceptions, with the activity of members of these organs.

In conclusion, the second part of the first question calls for the following reply: Within a profession like that of *avocat* only the activities which are connected with the exercise of official authority are excluded from the application of Chapter 2 of the Treaty when, as is the case, these activities are ancillary and perfectly separable from the normal practice of the profession.

B — Question 2

The *plaintiff in the main action* makes the preliminary observation that in his case there is no question of the equivalence of diplomas or the harmonization of rules of professional conduct; the question of the direct effect of Article 52 relates only to the condition of nationality as a restriction on the freedom of establishment.

(a) In any event, Article 52 is a clear, precise and unconditional provision; since the end of the transitional period it has become directly applicable and replaces measures which should have been taken to eliminate the discriminations which is prohibits.

(b) If, against all possibility, it were accepted that Article 52 is not a legally perfect provision and that it is applicable only in so far as directives have been issued to deal in particular with the questions of harmoniziation of national laws, the equivalence of diplomas and the coordination of rules of professional conduct, it would be right to observe that none of these problems arises in the present case. The objection under the Royal Decree of 24 August 1970 is made on the sole ground of the plaintiff's nationality. Put thus — as it must be to enable the Conseil d'État of Belgium to resolve the litigation which it has pending — the question must certainly be answered in the affirmative. No preliminary measure, either Community or national, is required to preclude a Member State from maintaining a nationality condition against the nationals of another Member State. A provision of the Treaty prohibiting on a particular date discrimination based on nationality produces direct effects on that date.

The second question must therefore receive an affirmative reply as regards the prohibition on discrimination based

on nationality; a wider answer is of no concern to the plaintiff in the main action.

The *Government of the Kingdom of Belgium, the defendant in the main action,* is of the opinion that, having regard to the criteria adopted by this Court, the provisions of Article 55 of the EEC Treaty do not appear to be of such a nature as to produce direct effects in favour of the nationals of Member States.

Article 52 is not self-sufficient: it refers to other provisions to perfect it; it establishes only a principle, the conditions of which must be given effect by subsequent Articles.

Article 52 establishes the right of establishment as a principle and does not provide for the details: as regards certain activities the right of establishment requires a directive relating to the mutual recognition of diplomas, certificates and other evidence of formal qualifications or to the coordination of provisions laid down by law, regulation or administrative action of the Member States relating to the right to take up and pursue activities as self-employed persons. A court of a Member State cannot directly apply Article 52 to the subject; if it did this it would assume a discretionary power which it does not possess and would act *ultra vires*.

Nor is it possible to consider Article 52 as directly applicable, at least, in so far as it requires the unconditional abolition of restrictions on the freedom of establishment based on nationality. Article 52 is one of the special provisions referred to in Article 7 of the EEC Treaty, and it involves much more than a simple prohibition on discrimination based on nationality. Moreover, abolition only of nationality as a restrictive condition would have the effect of bringing about a hybrid right of establishment, in which the other restrictions would be maintained, thus creating a discriminatory system from State to State.

Nor has Article 52 become directly applicable as a result solely of the expiration of the transitional period. Against this there is the fact that the Community measures stipulated in Articles 54 (2) and 57 (1) are indispensable further elements, which cannot be rendered unnecessary by the expiration of any period.

It is therefore right to observe that Article 52 does not directly create subjective rights in favour of nationals of Member States, enabling them to rely on them before the national courts, by the sole fact of the expiration of the transitional period and in the absence of the directives provided for in Articles 54 (2) and 57 (1).

The *Government of the Federal Republic of Germany* recalls that according to the case law of this Court provisions which impose an obligation on Member States to be fulfilled within a precisely defined period become directly applicable when the obligation has not been fulfilled at the expiration of this period; it must however be a complete and legally perfect provision, which must not be subject to the act of any Community institution or of the Member States for its implementation and effects. As regards Article 52 Member States can no longer issue rules themselves on the expiration of the transitional period; subject to the sphere referred to by Article 57 (3), Article 52 is therefore self-sufficient and legally perfect.

The fact that the directives referred to in Article 54 (2) and Article 57 (1) have not yet been issued is not decisive. The directives in the first case were foreseen only for the different stages of the transitional period; so long as those in the second case have not been issued, Member States have the right to make the establishment on their territory dependent on compliance with the conditions of access to the profession provided for by their national law, save that as from the end of the transitional period they can no longer object to the nationals of other Member States on the

grounds of their nationality. The criterion of nationality alone can no longer be regarded as a factor of differentiation as regards the freedom of establishment. To this extent Article 52 is a directly applicable Community provision. As regards a profession such as that of *avocat,* a national of another Member State who fulfills the conditions laid down by the host country can no longer be refused access to this profession by reason of his nationality, in so far at least as the profession or the professional activities do not come under the scope of the first paragraph of Article 55 of the EEC Treaty.

The *Government of the Grand Duchy of Luxembourg* states that it shares the opinion of the Belgian Government according to which Articles 52 *et seq.* of the EEC Treaty are not directly applicable.

The *Government of Ireland* is of the opinion that the very wording of Article 52 is not of such a nature as to suggest that it is directly applicable; further, it refers to the provisions which follow it as regards its implementation and, by requiring the intervention of the Council, establishes that the obligation is not complete in itself nor capable of producing immediate effects in the relations between Member States and their subjects. It does not create rights which the national courts must safeguard.

For the implementation of Article 52 on a national level by the Member States, Article 54 provides for the issue of directives, which leaves national authorities with the choice as to the form and means to be adopted to attain the required result.

The Council has the power of excluding certain activities from the system of the right of establishment. It is responsible, in the last resort, for the implementation of the general programme and is invested with all the powers, especially where coordination and uniformity of the practices of Member States are regarded as having a particular importance.

It thus follows from the wording of Article 52, the structure of the chapter on the right of establishment, the procedure for implementing the principle of freedom of establishment as well as the spirit of certain of the provisions in question that the draftsmen of the Treaty did not intend to confer at any stage the character of a directly applicable provision on Article 52, and this Article does not have this quality.

The *Commission of the European Communities,* after having stressed the scope of the reply which the Court would be giving to this question to complete the implementation of the free movement of self-employed persons, makes the following observations with regard to the criteria brought out by the case law of this Court:

(a) Article 52 is undoubtedly a clear and precise provision, in the same way as Article 53, for which this Court has recognized direct effects; the difficulties which a trial judge could perhaps meet in a particular case in uncovering the existence of a restriction cannot be an obstacle to the direct effect of Article 52.

(b) Article 52 is an unconditional provision: apart from its progressive nature, the obligation which it imposes is not subject to any other particular condition of substance, any more than Article 53. The exemptions provided for in Articles 55 and 56 and the additional condition imposed in a particular sector by Article 57 (3) are no obstacle to this unconditional character; Article 52 is the counterpart of Article 48.

(c) On the question of whether its implementation or effects do not depend on the intervention of subsequent measures, either on the part of Member States or of Community institutions, Article 52, on analysis, is different from the other provisions of the Treaty for which this Court has recognized a direct effect. It basically refers, as regards the restrictions which are to be abolished in

progressive stages, to Article 54, which foresees the intervention of Community acts under two forms. The Council must draw up a programme which shall set out the general conditions under which freedom of establishment is to be attained in the case of each type of activity and in particular the stages by which it is to be attained; once this programme has been adopted by the Council within the period laid down, there need be no further intervention by the Community institutions in this respect and this ground can no longer be an obstacle to the direct effect of Article 52. Further, the Council, in order to implement the general programme, has to issue directives. The question arises whether this possible intervention by intermediate acts of the institutions is not an obstacle to the recognition of a direct effect in Article 52, even if they had not been adopted during the period provided for this purpose; in particular it is necessary to know whether Article 52, otherwise a clear and unconditional rule — leaves a margin of discretion to the Community institutions. The following considerations tend to show the existence of such a margin: since Article 54 empowers the Community institutions to fix not only the stages for attaining the right of establishment within the transitional period but also the general conditions, it may be concluded that the institutions also have the power to lay down by way of directives particular conditions in the case of each type of activity; several directives based on Article 54 require Member States to introduce into their law express rules calculated to prevent concealed restrictions; under the second paragraph of Article 55 the Council is empowered to rule that the right of establishment shall not apply to certain activities; on the question of entry and stay the directives have necessarily had to give details as to the beneficiaries and the documents which have to be submitted.

In favour of the argument according to which, on the contrary, since the end of the transitional period, the rule contained in Article 52 replaces the measures which the Community institutions should have imposed on Member States and which the latter should have taken to eliminate discrimination contrary to this rule, the following arguments are advanced:

Since freedom of movement of persons is a fundamental principle of the Common Market in the same way as the free movement of goods, there is no reason to apply different criteria to them nor to give a different scope to the Articles in the Treaty which contain these principles.

Article 52 has, at the very least, set a time limit for the elimination of restrictions on freedom of establishment; in the analogous case of Articles 13 (1) (2), 16 and the third paragraph of 95 the Court considered that the fact that a period was fixed by the Treaty for the complete application of the rule showed that the rule had a direct effect. Moreover, Article 52 is just as capable as Articles 13, 16, 30 and 95 of producing direct effects without the intervention of positive acts either by the institutions of the Community or by the national law and, by analogy with the case law relating to Article 53, Article 52 requires only that a Member State should refrain from placing obstacles in the way of the right of nationals of other Member States to take up and pursue activities as self-employed persons, which obstacles are more severe than those in respect of nationals. In the case in question, since the Royal Decree was issued after 31 December 1969, all the national judge need do to give direct effect to Article 52 is not to apply to the plaintiff in the main action the discriminatory condition to which he has been subjected; no positive act of law is needed.

The intervention of the institutions of the Community is no more necessary than that of the Member States after the end of the transitional period. So long as the transitional period had not expired

the States were bound to abolish or no longer to apply the existing restrictions only if the institutions of the Community required them to do so; the fact that they had not done so does not in any way change the ultimate time limit established by this Article, and their intervention then becomes superfluous.

To conclude the examination of the arguments for and against the direct effect of Article 52 as from the end of the transitional period, the balance is in favour of the direct effect, although this is not entirely free from doubt. The question raised by the Belgian Conseil d'État needs to be defined more precisely; to resolve the main action clarification is needed not of the prohibition on all possible forms of restrictions but solely on those which relate to the condition of nationality. This condition is of patent simplicity; no act of Community or national law is needed for the host country not to impose it on nationals of other Member States and its prohibition as from the date laid down in the Treaty for its abolition is perfectly capable of producing direct effects as from this date. It is therefore possible to reply as follows to the second question:

Article 52 of the EEC Treaty produces as from the end of the transitional period direct effects in the relations between the Member States and their subjects and confers on individuals rights which the national courts must protect in so far as concerns the prohibition on discrimination based on nationality.

III — Oral procedure

The oral observations of the plaintiff in the main action, the Government of the Kingdom of Belgium, the defendant in the main action, the Ordre national des avocats de Belgique, the intervening party, the Government of the Federal Republic of Germany, the Government of Ireland, the Government of the Grand Duchy of Luxembourg, the Government of the United Kingdom and the Commission of the European Communities were made at the hearing on 7 May 1974.

At this hearing the new matters hereafter summarized were submitted to the Court:

A — Question 1

The *Ordre national des avocats de Belgique, the intervening party in the main action,* maintains that the application of freedom of establishment to the pursuit of the activities of the *avocat* was not intended by the parties to the EEC Treaty; the preparatory work, the wording and the context of Article 55 bear witness to this. Moreover, the right in the various Member States for foreigners to take up a profession such as that of *avocat* could be decided and provided for only by a legislative act which, in the present state of the legal order, could be the work only of the national legislature. In the present case the question for discussion should be put in the context of freedom of establishment and not from the aspect of certain occasional provision of services.

As regards the interpretation of Article 55 it is right to point out that this refers to a 'connexion', even occasional, of professional activities with the exercise of official authority and not the actual exercise of this authority; it is thus a question of professional activities, the practice of which involves in itself a connexion with the exercise of official authority, without entailing the possession of the quality of organ or officer of authority. Moreover, the concept of official authority cannot be reduced to that of public power, with its powers to issue orders and of constraint; public power is only one of the attributes of authority, in particular of executive power. Although the profession of *avocat* is a liberal profession, it is organized in such a way that it is

connected with the functioning of the public service of the administration of justice. The profession of *avocat* is connected in an organic way with the judicial order and the exercise of its powers: the Bars and the Ordre des avocats are subject to legal control; the *avocat* takes an oath before the court, which oath integrates him in the judicial apparatus and covers all the acts of his profession. The profession of *avocat* is likewise connected with the functioning of the public service of the administration of justice in a functional way: not only can the *avocat* be required to assume the functions of judge, but he incarnates and expresses on the one hand the right of action of the subject and on the other the right of defence. He alone has the power to ask for judgment, to bind the judge and to constrain him by his claims, defences and objections; he alone assumes the right of defence, without which there would be lacking an essential factor, necessary for the exercise of the official authority vested in the judiciary. It is not possible to separate the different activities of the profession of *avocat,* which profession is excluded as a whole from the freedom of establishment.

B — Question 2

The *Government of the United Kingdom* is of the opinion that Article 52 of the EEC Treaty does not have direct effect: it lays down a fundamental principle, but its implementation requires a coordination of measures necessary for the practical attainment of the freedom of establishment. The necessity of such coordination remains even after the end of the transitional period; to recognize that Article 52 was directly applicable at the present stage would mean denying the institutions of the Community at the expiration of the transitional period the power of issuing directives and would mean giving the whole of the powers in this field back to the Member States. Nor can Article 52 be regarded as having become only partially of direct application, at least as regards the question of nationality; such an attitude would create considerable difficulties since the Treaty itself does not define which part of the provision in question has a direct effect and, besides, the question of discrimination on grounds of nationality is the subject of a specifie provision of the Treaty.

The Advocate-General delivered his opinion on 28 May 1974.

In the proceedings before the Court, the plaintiff in the main action was represented by Jacques Veldekens, *avocat* of the Cour d'appel, Brussels, the Government of the Kingdom of Belgium by Mrs A. M. Delvaux, Legal Adviser to the Legislation Department of the Ministry of Justice, acting as agent, assisted by S. Marcus Helmons, of the Faculty of Law at the University of Louvain, acting as adviser, the Ordre national des avocats de Belgique by Cyr Cambier and Jacques Van Compernolle, *avocats* of the Cour d'appel, Brussels, the Government of the Federal Republic of Germany by Erich Bülow, Ministerial dirigent of the Federal Ministry of Justice, the Government of Ireland by Liam J. Lysaght, Chief State Solicitor, acting as agent, assisted by John D. Cook, of the Irish Bar, the Government of the Grand Duchy of Luxembourg by Edouard Molitor, Legation Adviser in the Ministry of Foreign Affairs, acting as agent, assisted by Tony Biever and Alex Bonn, *avocats* of the Cour supérieure de Justice of Luxembourg, the Government of the Kingdom of the Netherlands by E. L. C. Schiff, General Secretary of the Ministry of Foreign Affairs, acting as agent, the Government of the United Kingdom by W. H. Godwin, Assistant Treasury Solicitor, acting as agent, assisted by Peter Gibson, Junior Counsel to the Treasury, and the Commission of the European Communities by its Legal Adviser, Paul Leleux, acting as agent.

Law

1 By judgment dated 21 December 1973, filed at the Registry on 9 January 1974, the Conseil d'État of Belgium raised two questions under Article 177 of the EEC Treaty on the interpretation of Articles 52 and 55 of the EEC Treaty relating to the right of establishment in relation to the practice of the profession of *avocat*.

2 These questions had been raised in the context of an action brought by a Dutch national, the holder of the legal diploma giving the right to take up the profession of *avocat* in Belgium, who has been excluded from that profession by reason of his nationality as a result of the Royal Decree of 24 August 1972 relating to the title and exercise of the profession of *avocat* (*Moniteur Belge* 1970, p. 9060).

On the interpretation of Article 52 of the EEC Treaty

3 The Conseil d'État inquires whether Article 52 of the EEC Treaty is, since the end of the transitional period, a 'directly applicable provision' despite the absence of directives as prescribed by Articles 54 (2) and 57 (1) of the Treaty.

4 The Belgian and Irish Governments have argued, for reasons largely in agreement, that Article 52 does not have such an effect.

5 Taken in the context of the Chapter on the right of establishment, to which reference is expressly made by the wording 'within the framework of the provisions set out below', this Article, in view of the complexity of the subject, is said to constitute only the expression of a simple principle, the implementation of which is necessarily subject to a set of complementary provisions, both Community and national, provided for by Articles 54 and 57.

6 The form chosen by the Treaty for these implementing acts — the establishment of a 'general programme', implemented in turn by a set of directives — confirms, it is argued, that Articles 52 does not have a direct effect.

7 It is not for the courts to exercise a discretionary power reserved to the legislative institutions of the Community and the Member States.

8 This argument is supported in substance by the British and Luxembourg Governments, as well as by the Ordre national des avocats de Belgique, the intervening party in the main action.

9 The plaintiff in the main action, for his part, states that all that is in question in his case is a discrimination based on nationality by reason of the fact that he is subject to conditions of admission to the profession of *avocat* which are not applicable to Belgian nationals.

10 In this respect (he submits) Article 52 is a clear and complete provision, capable of producing a direct effect.

11 The German Government, supported in substance by the Dutch Government and citing the judgment given by this Court on 16 June 1966 in Case 57/65, *Lütticke* (Rec. 1966, p. 293), considers that the provisions which impose on Member States an obligation which they have to fulfil within a particular period, become directly applicable when, on the expiration of this period, the obligation has not been fulfilled.

12 At the end of the transitional period, the Member States no longer have the possibility of maintaining restrictions on the freedom of establishment, since Article 52 has, as from this period, the character of a provision which is complete in itself and legally perfect.

13 In these circumstances the 'general programme' and the directives provided for by Article 54 were of significance only during the transitional period, since the freedom of establishment was fully attained at the end of it.

14 The Commission, in spite of doubts which it experiences on the subject of the direct effect of the provision to be interpreted — both in view of the reference by the Treaty to the 'general programme' and to the implementing directives and by reason of the tenor of certain liberalizing directives already

taken, which do not attain in every respect perfect equality of treatment — considers, however, that Article 52 has at least a partial direct effect in so far as it specifically prohibits discrimination on grounds of nationality.

15 Article 7 of the Treaty, which forms part of the 'principles' of the Community, provides that within the scope of application of the Treaty and without prejudice to any special provisions contained therein, 'any discrimination on grounds of nationality shall be prohibited'.

16 Article 52 provides for the implementation of this general provision in the special sphere of the right of establishment.

17 The words 'within the framework of the provisions set out below' refer to the Chapter relating to the right of establishment taken as a whole and require, in consequence, to be interpreted in this general context.

18 After having stated that 'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period', Article 52 expresses the guiding principle in the matter by providing that freedom of establishment shall include the right to take up and pursue activities as self-employed persons 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected'.

19 For the purpose of achieving this objective by progressive stages during the transitional period Article 54 provides for the drawing up by the Council of a 'general programme' and, for the implementation of this programme, directives intended to attain freedom of establishment in respect of the various activities in question.

20 Besides these liberalizing measures, Article 57 provides for directives intended to ensure mutual recognition of diplomas, certificates and other evidence of formal qualifications and in a general way for the coordination of laws with regard to establishment and the pursuit of activities as self-employed persons.

21 It appears from the above that in the system of the Chapter on the right of establishment the 'general programme' and the directives provided for by the Treaty are intended to accomplish two functions, the first being to eliminate obstacles in the way of attaining freedom of establishment during the transitional period, the second being to introduce into the law of Member States a set of provisions intended fo facilitate the effective exercise of this freedom for the purpose of assisting economic and social interpenetration within the Community in the sphere of activities as self-employed persons.

22 This second objective is the one referred to, first, by certain provisions of Article 54 (3), relating in particular to cooperation between the competent authorities in the Member States and adjustment of administrative procedures and practices, and, secondly, by the set of provisions in Article 57.

23 The effect of the provisions of Article 52 must be decided within the framework of this system.

24 The rule on equal treatment with nationals is one of the fundamental legal provisions of the Community.

25 As a reference to a set of legislative provisions effectively applied by the country of establishment to its own nationals, this rule is, by its essence, capable of being directly invoked by nationals of all the other Member States.

26 In laying down that freedom of establishment shall be attained at the end of the transitional period, Article 52 thus imposes an obligation to attain a precise result, the fulfilment of which had to be made easier by, but not made dependent on, the implementation of a programme of progressive measures.

27 The fact that this progression has not been adhered to leaves the obligation itself intact beyond the end of the period provided for its fulfilment.

28 This interpretation is in accordance with Article 8 (7) of the Treaty, according to which the expiry of the transitional period shall constitute the latest date

by which all the rules laid down must enter into force and all the measures required for establishing the common market must be implemented.

29 It is not possible to invoke against such an effect the fact that the Council has failed to issue the directives provided for by Articles 54 and 57 or the fact that certain of the directives actually issued have not fully attained the objective of non-discrimination required by Article 52.

30 After the expiry of the transitional period the directives provided for by the Chapter on the right of establishment have become superfluous with regard to implementing the rule on nationality, since this is henceforth sanctioned by the Treaty itself with direct effect.

31 These directives have however not lost all interest since they preserve an important scope in the field of measures intended to make easier the effective exercise of the right of freedom of establishment.

32 It is right therefore to reply to the question raised that, since the end of the transitional period, Article 52 of the Treaty is a directly applicable provision despite the absence in a particular sphere, of the directives prescribed by Articles 54 (2) and 57 (1) of the Treaty.

On the interpretation of Article 55 of the EEC Treaty

33 The Conseil d'État has also requested a definition of what is meant in the first paragraph of Article 55 by 'activities which in that State are connected, even occasionally, with the exercise of official authority'.

34 More precisely, the question is whether, within a profession such as that of *avocat*, only those activities inherent in this profession which are connected with the exercise of official authority are excepted from the application of the Chapter on the right of establishment, or whether the whole of this profession is excepted by reason of the fact that it comprises activities connected with the exercise of this authority.

35 The Luxembourg Government and the Ordre national des avocats de Belgique consider that the whole profession of *avocat* is exonerated from the rules in the Treaty on the right of establishment by the fact that it is connected organically with the functioning of the public service of the administration of justice.

36 This situation (it is argued) results both from the legal organization of the Bar, involving a set of strict conditions for admission and discipline, and from the functions performed by the *avocat* in the context of judicial procedure where his participation is largely obligatory.

37 These activities, which make the advocate an indispensable auxiliary of the administration of justice, form a coherent whole, the parts of which cannot be separated.

38 The plaintiff in the main action, for his part, contends that at most only certain activities of the profession of *avocat* are connected with the exercise of official authority and that they alone therefore come within the exception created by Article 55 to the principle of free establishment.

39 The German, Belgian, British, Irish and Dutch Governments, as well as the Commission, regard the exception contained in Article 55 as limited to those activities alone within the various professions concerned which are actually connected with the exercise of official authority, subject to their being separable from the normal practice of the profession.

40 Differences exist, however, between the Governments referred to as regards the nature of the activities which are thus excepted from the principle of the freedom of establishment, taking into account the different organization of the professions corresponding to that of *avocat* from one Member State to another.

41 The German Government in particular considers that by reason of the compulsory connection of the *Rechtsanwalt* with certain judicial processes, especially as regards criminal or public law, there are such close connexions between the profession of *Rechtsanwalt* and the exercise of judicial authority

that large sectors of this profession, at least, should be excepted from freedom of establishment.

42 Under the terms of the first paragraph of Article 55 the provisions of the Chapter on the right of establishment shall not apply 'so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority'.

43 Having regard to the fundamental character of freedom of establishment and the rule on equal treatment with nationals in the system of the Treaty, the exceptions allowed by the first paragraph of Article 55 cannot be given a scope which would exceed the objective for which this exemption clause was inserted.

44 The first paragraph of Article 55 must enable Member States to exclude non-nationals from taking up functions involving the exercise of official authority which are connected with one of the activities of self-employed persons provided for in Article 52.

45 This need is fully satisfied when the exclusion of nationals is limited to those activities which, taken on their own, constitute a direct and specific connexion with the exercise of official authority.

46 An extension of the exception allowed by Article 55 to a whole profession would be possible only in cases where such activities were linked with that profession in such a way that freedom of establishment would result in imposing on the Member State concerned the obligation to allow the exercise, even occasionally, by non-nationals of functions appertaining to official authority.

47 This extension is on the other hand not possible when, within the framework of an independent profession, the activities connected with the exercise of official authority are separable from the professional activity in question taken as a whole.

48 In the absence of any directive issued under Article 57 for the purpose of harmonizing the national provisions relating, in particular, to professions such

as that of *avocat*, the practice of such professions remains governed by the law of the various Member States.

49 The possible application of the restrictions on freedom of establishment provided for by the first paragraph of Article 55 must therefore be considered separately in connexion with each Member State having regard to the national provisions applicable to the organization and the practice of this profession.

50 This consideration must however take into account the Community character of the limits imposed by Article 55 on the exceptions permitted to the principle of freedom of establishment in order to avoid the effectiveness of the Treaty being defeated by unilateral provisions of Member States.

51 Professional activities involving contacts, even regular and organic, with the courts, including even compulsory cooperation in their functioning, do not constitute, as such, connexion with the exercise of official authority.

52 The most typical activities of the profession of *avocat*, in particular, such as consultation and legal assistance and also representation and the defence of parties in court, even when the intervention or assistance of the *avocat* is compulsory or is a legal monopoly, cannot be considered as connected with the exercise of official authority.

53 The exercise of these activities leaves the discretion of judicial authority and the free exercise of judicial power intact.

54 It is therefore right to reply to the question raised that the exception to freedom of establishment provided for by the first paragraph of Article 55 must be restricted to those of the activities referred to in Article 52 which in themselves involve a direct and specific connexion with the exercise of official authority.

55 In any case it is not possible to give this description, in the context of a profession such as that of *avocat*, to activities such as consultation and legal assistance or the representation and defence of parties in court, even if

the performance of these activities is compulsory or there is a legal monopoly in respect of it.

Costs

56 The costs incurred by the Government of the Kingdom of Belgium, the Government of the Federal Republic of Germany, the Government of Ireland, the Government of the Grand Duchy of Luxembourg, the Government of the Kingdom of the Netherlands, the Government of the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

57 Since these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before a national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Conseil d'État of Belgium, section d'administration, IIIe Chambre, by judgment dated 21 December 1973, hereby rules:

1. **Since the end of the transitional period Article 52 of the Treaty is a directly applicable provision, despite the absence, in a particular sphere, of the directives prescribed by Articles 54 (2) and 57 (1) of the Treaty.**

2. **The exception to freedom of establishment provided for by the first paragraph of Article 55 must be restricted to those of the activities referred to in Article 52 which in themselves involve a direct and specific connexion with the exercise of official authority; it is not possible to give this description, in the context of a profession such as that of *avocat*, to activities such as consultation and legal assistance or the representation and defence of parties in court, even if the performance**

of these activities is compulsory or there is a legal monopoly in respect of it.

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 21 June 1974.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 28 MAY 1974 [1]

Mr President,
Members of the Court,

Introduction

Economic integration, which the Treaty of Rome basically seeks to attain, involves the development of trade in a single market as well as the free movement of goods and persons. For undertakings and workers it opens a field of action enlarged into the whole Community, multiplies business relations and thus contributes to breaking the national framework, which is henceforth too narrow.

It therefore requires not only that all restriction on freedom to provide services within this Community be abolished, but also that the right be recognized for nationals of any Member State to establish themselves in another Member State and to practise there, under the same conditions as nationals, their professional activities, be they industrial, commercial, agricultural or liberal.

With economic integration must obviously come the development of legal relations, that is, the growth and diversification of the services which individuals and undertakings need for purposes of consultation and in disputes.

They must further be able to have free recourse to these services and to choose, without consideration of nationality, the lawyers whom they consider the best qualified to advise them and to defend their interests.

Avocats, by their education and competence, their traditions and the professional rules to which they are subject, are in the first place the best able to meet these needs and to exercise this responsibility at a Community level.

1 — Translated from the French.