liberal professions, according to which the right of establishment includes freedom to set up and maintain, subject to observance of the professional rules of conduct, more than one place of work within the Community.

3. Even in the absence of any directive coordinating national provisions governing access to and the exercise of the legal profession, Article 52 *et seq.* of the EEC Treaty prevent the competent authorities of a Member State from denying, on the basis of the national legislation and the rules of professional conduct which are in force in that State, to a national of another Member State the right to enter and to exercise the legal profession solely on the ground that he maintains chambers simultaneously in another Member State.

In Case 107/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the French Cour de Cassation [Court of Cassation] for a preliminary ruling in the proceedings pending before that court between

ORDRE DES AVOCATS AU BARREAU DE PARIS [the Paris Bar Assocation]

and

ONNO KLOPP, of the Düsseldorf Bar,

on the interpretation of Article 52 *et seq.* of the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, A. O'Keeffe, G. Bosco, O. Due and U. Everling, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. On 20 January 1981 Mr Klopp, who is a German national and a member of the Düsseldorf Bar, applied to take the oath as an *avocat* and to be registered for the period of practical training at the Bar in Paris, where he plans to establish chambers whilst remaining a member of the Düsseldorf Bar and retaining his residence and his chambers in Düsseldorf. It appears from the documents before the Court that in 1969 Mr Klopp was awarded a doctorate by the Faculty of Law and Economics of the University of Paris and that on 17 November 1980 he passed the examination for the Certificat d'Aptitude à la Profession d'Avocat [qualifying certificate for the profession of *avocat*].

By order of 17 March 1981 the Conseil de l'Ordre des Avocats au Barreau de Paris [Paris Bar Council] rejected his application on the ground that although Mr Klopp satisfied all the other requirements laid down for admission to the profession, he did not fulfil the provisions of Article 83 of Decree No 72-468 (Journal Officiel de la République Française of 11. 6. 1972) and Article 1 of the Internal Rules of the Paris Bar which provide that an *avocat* may establish chambers in one place only, which must be within the territorial jurisdiction of the *tribunal de grande instance* [regional court] with which he is registered.

Article 83 of the aforesaid decree provides that:

"An *avocat* shall establish his chambers within the territorial jurisdiction of the *tribunal de grande instance* with which he is registered."

Article 1 of the Internal Rules of the Paris Bar is as follows:

"1. An *avocat* of the Paris Bar must genuinely practise his profession.

2. In order to practise the profession, he must be a registered legal practitioner or trainee and must have his chambers in Paris or in the *départements* of Hauts-de-Seine, Seine-Saint-Denis or Val-de-Marne.

3. Apart from his principal chambers he may establish a second set of chambers within the same geographical area."

By judgment of 24 March 1982 the Cour d'Appel [Court of Appeal], Paris, set aside the decision of the Paris Bar Council on the ground that although the contested provisions permitted a lawyer to maintain chambers in one place only in France, it did not follow that a lawyer could not belong simultaneously to a French Bar and to one or more foreign

Bars. Moreover, that was consistent with the principle of equality laid down by the Treaty since in France Mr Klopp was subject to all the requirements imposed on French lawyers, and it was the practice of the Paris Bar to permit French lawyers to apply for membership of foreign Bars.

The Paris Bar Council appealed against that judgment.

Taking the view that the dispute raised a question concerning the interpretation of Community law, the Court of Cassation stayed the proceedings by Order of 3 May and requested the Court under Article 177 of the EEC Treaty to give a preliminary ruling:

"by way of interpretation of Article 52 *et seq.* of the Treaty of Rome, on whether, in the absence of any directive of the Council of the European Communities coordinating provisions governing access to and exercise of the legal profession, the requirement that a lawyer who is a national of a Member State and who wishes to practise simultaneously in another Member State must maintain chambers in one place only, a requirement imposed by the legislation of the country where he wishes to establish himself and intended to ensure the proper administration of justice and compliance with professional ethics in that country, constitutes a restriction which is incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty of Rome."

2. The order making the reference was lodged at the Court Registry on 6 June 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Onno Klopp, represented by Bruno Odent, *avocat* at the Conseil d'État [Council of State] and the Cour de Cassation; by the Paris Bar Council, represented by its President *pro tempore* and by the Société Civile Professionnelle J. G. Nicolas et H. Masse-Dessen, *avocats* at the Conseil d'État and the Cour de Cassation; by the French Government, represented by Jean-Paul Costes, acting on behalf of the Secretary General of the Interministerial Committee on Questions of European Economic Cooperation; by the United Kingdom, represented by Mrs G. Dagtoglou of the Treasury Solicitor's Department; by the Danish Government, represented by its Legal Adviser, Laurids Mikaelsen; by the Netherlands Government, represented by I. Verkade, Secretary General at the Ministry for Foreign Affairs; and by the Commission of the European Communities, represented by Jacques Delmoly and Georges Kremlis, members of its Legal Department, acting as Agents.

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 enquiry. It did, however, put certain questions to the parties and to those who submitted written observations.

II — Written observations

Mr Klopp, the United Kingdom, the Danish and Netherlands Governments and the Commission suggest that the question should be answered in the affirmative. In their opinion, the requirement that a lawyer may have chambers in one place only, if it is taken to prohibit main-

taining chambers in another Member State at the same time, constitutes even in the absence of a directive a restriction which is incompatible with the principle of freedom of establishment. However, the Bar Council and the French Government consider that the question calls for an answer in the negative.

1. *Mr Klopp* observes that the strict rule that chambers may be maintained in one place only is incompatible with Article 52 of the EEC Treaty, to which the Court has always attributed dirct effect in its decisions. That provision is also intended to promote dual establishment by the progressive abolition of restrictions *inter alia* on the setting up of agencies, branches or subsidiaries.

In its judgment of 3 December 1974 in Case 33/74 *(van Binsbergen* [1974] ECR 1299) the Court held that it was permissible for a Member State to impose a legislative requirement of habitual residence for persons providing services.

That decision, however, was based expressly on the particular nature of the services to be provided and cannot therefore apply to freedom of establishment.

Furthermore, it was held in the abovementioned judgment that the requirement of habitual residence must be based on the application of professional rules of conduct justified by the general good and binding upon any person established in the State in which the service is provided. The fact that a lawyer has chambers in two places cannot hinder the administration of justice, provided that one set of chambers is within the territorial jurisdiction of the Bar to which he belongs and that the judicial authorities are able to establish contact with him. Nor are professional integrity and ethics affected since the Paris Bar Council can supervise the activities in France of foreign lawyers just as well as those of other lawyers.

Mr Klopp submits in the alternative that the rule that chambers may be maintained in one place only, as interpreted by the Paris Bar Council, does not in fact derive from the relevant French legislation, which on the contrary expressly allows associations of lawyers to maintain subsidiary chambers in one or more places in addition to their principal chambers. Even if such a rule exists, it can only have national effect.

In any event, the principle which prohibits discrimination precludes reliance on the requirement that chambers may be maintained in one place only as against lawyers who are nationals of other Member States since that requirement is not applied in practice to French lawyers. Many lawyers practising in Paris have established one or more sets of chambers abroad. The Paris Bar Association itself has concluded agreements with foreign Bars and similar bodies, such as the Law Society of England and Wales and the Senate of the Inns of Court and the Bar. Those agreements expressly lay down that lawyers practising in Paris may, whilst remaining members of the Paris Bar, establish themselves abroad and practise there.

Finally, the arguments based on the alleged lack of reciprocity and the alleged reverse discrimination must be rejected since, first, German law does not contain any prohibition on maintaining chambers in several places and

secondly, Mr Klopp is in the same position as French lawyers, who in addition to their chambers in France may have one or more sets of chambers abroad.

Mr Klopp therefore suggests that the answer to the question submitted for a preliminary ruling should be as follows:

"The requirement that a lawyer who is a national of a Member State and who wishes to practise simultaneously in another Member State may maintain chambers in one place only constitutes a restriction on freedom of establishment which is incompatible with the Treaty of Rome."

2. The *Paris Bar Council* observes, first, that the legal profession is still governed only by Council Directive 77/249/EEC of 22 March 1977 facilitating the effective exercise by lawyers of freedom to provide services (Official Journal L 78, p. 17).

It is clear from the case-law of the Court that Article 52 of the EEC Treaty has direct effect up to a point in so far as the rule of equal treatment is concerned, but it does not necessarily apply in the case of restrictions unrelated to the principle which prohibits discrimination. Accordingly, freedom of establishment does not depend on the adoption of directives as far as equal treatment is concerned. However, the practical rules for the exercise of that freedom, including the rule that chambers may be maintained in one place only, are governed in the absence of a directive by national law, provided that the requirement in question does not constitute an obstacle which is manifestly excessive or is objectively not for the general good.

In its judgment of 28 April 1977 in Case 71/76 *(Thieffry* [1977] ECR 765) the Court defined what is meant by excessive rules incompatible with the EEC Treaty. The Court held that it was necessary to reconcile freedom of establishment with national professional rules justified by the general good, in particular relating to organization, qualifications, professional ethics, supervision and liability, provided that they were applied without discrimination.

The judgment of 3 December 1974 in the *van Binsbergen* case, cited above, which concerns the compatibility of such rules justified by the general good with freedom to provide services, is set in the same context as this case. It is clear from that judgment that the requirement that persons whose function is to assist the administration of justice must be permanently established for professional purposes within the jurisdiction of certain courts or tribunals is justified by the need for courts and tribunals to have available, within their territorial jurisdiction, persons living nearby whose function is to assist the administration of justice, who are known to the judges and who are in a position to deal promptly with the proceedings in close liaison with them.

If those considerations are applied with regard to the scope of freedom of establishment, it follows that the rule that a lawyer may have chambers in one place only — if interpreted as prohibiting maintaining chambers in another Member State at the same time — must be regarded as compatible with Article 52 of the EEC Treaty since it ensures without discrimination permanent establishment freely chosen within the territorial jurisdiction of a court and it is necessary in order to ensure observance of professional rules of conduct.

The Paris Bar Council goes on to analyse the reasons for that rule. Lawyers must of necessity be affiliated to a particular system of law, and that is accomplished by means of membership of the Bar. Affiliation to two or more systems of law may be contemplated only if the rights and obligations arising in each case have been harmonized. In the long term, only a single code of conduct common to the whole Community will suffice to overcome the rule that a lawyer must be affiliated to a single system of law. The need for such a code has already been acknowledged by the representatives of the legal profession at a meeting of the Consultative Committee of the Bars and Law Societies of the European Community in connection with preparatory work on a proposal for a directive on freedom of establishment for lawyers.

"In those circumstances", therefore, it is necessary to regard "the rule that chambers may be maintained in one place only as a restriction on the scope of freedom of establishment which is objectively necessary for the general good and which in no way contravenes the principle of such freedom and its direct effect".

3. According to the *French Government* the fundamental question which arises in this case is whether the French national rule which requires lawyers to maintain chambers in one place only constitutes an obstacle to the right of establishment inasmuch as, according to that rule, the establishment of chambers in another Member State is a sufficient ground for disallowing the establishment of a second set of chambers in France. That question calls for an answer in the negative since the provisions in question are consistent with the principle which prohibits discrimination, whilst satisfying the profession's requirements as regards internal organization.

In that regard, the French Government points out that the second paragraph of Article 52 and Article 54 of the EEC Treaty refer as regards access to, and the exercise of, freedom of establishment to the conditions laid down by the law of the country of establishment. Under the general programme for the abolition of restrictions on freedom of establishment adopted by the Council on 18 December 1961 only restrictions whereby nationals of other Member States are treated differently to 'own' nationals are to be removed by the Member States. The Court has held similarly, particularly in the *Thieffry* judgment cited above, that national professional rules of conduct justified by the general good are protected by the principle of the right of establishment provided that they are applied without discrimination.

The French Government goes on to state that Article 83 of Decree No 72-468, a rule that does not give rise to discrimination, is based on the principle that lawyers must genuinely pracise before a court and, more specifically, must be accessible to their clients and the courts.

The rule dates back to the time when the activity known as *postulation,* namely the right to submit written pleadings, was exercised by *avoués.* However, even after the merger between the profession of *avoué* and that of *avocat* under the Law of 31 December 1971, the rule in question still fulfils certain basic needs.

The French Code of Civil Procedure requires the parties, save where otherwise provided, to instruct a lawyer to plead their case before the *tribunal de*

grande instance and that amounts to choice of an address for service. In particular, the procedure for preparing cases laid down by the New Code of Civil Procedure of 13 October 1965 depends on personal contact between the judge responsible for conducting the preliminary inquiry and the lawyer, which requires the latter's constant presence in the vicinity of the court. Accordingly, the requirement that lawyers may maintain chambers in one place only is not merely a procedural rule but a rule pertaining to both judicial administration and professional ethics.

The French Government adds that a strict interpretation of the principle of freedom of establishment is also necessary to maintain the distinction between freedom to provide services and the right of establishment, for otherwise the right of establishment would cease to have any meaning.

4. The *United Kingdom*, which requests the Court to decide the case in plenary session, considers that the question at issue in the present case is whether one Member State may impose a requirement preventing the establishment within its territory of a lawyer from another Member State, whether an *avocat* or a member of any other branch of the legal profession in a Member State, unless he relinquishes his establishment in his own Member State. That question calls for an answer in the negative in view of the spirit and the letter of the EEC Treaty.

In the first place, Article 52 of the Treaty includes amongst the restrictions to be abolished those applying to the setting up of agencies, branches or subsidiaries. The resulting freedom of establishment presupposes the existence of companies and firms having establishments in two or more Member States.

Secondly, Article 54 (1) refers to the abolition of restrictions on freedom of establishment "within the Community".

It is clear that for the purposes of the right of establishment the Community must be treated as a single territory, and consequently in the absence of any law to the contrary which has effect throughout the Community there is no limit on the number of Member States in which an individual may be established.

It must be added that although the second paragraph of Article 52 leaves the Member States free to impose national rules governing the conditions under which lawyers may practise once established, it does not permit a Member State to impose a national law which excludes the right of establishment altogether by allowing an individual to establish himself in one part of the Community only if he is prepared to relinquish his establishment in another part.

Furthmore, the conditions applied under the law of a Member State to the nationals of another Member State must not be stricter than those laid down for its own nationals. If, therefore, French law permits French lawyers to have a second place of establishment abroad — as the documents before the Court would appear to show — it cannot prevent foreign lawyers from having a second place of establishment in France. To that extent there is no reverse

discrimination since French law permits French and foreign lawyers alike to maintain chambers in two places.

Finally, the argument to the effect that the requirement that chambers may be maintained in one place only is justified in order to ensure the proper administration of justice and compliance with professional ethics must be rejected. Admittedly, the need for lawyers to be permanently established for professional purposes within the jurisdiction of certain courts or tribunals, which was recognized by the Court in the *van Binsbergen* judgment cited above, justifies national laws requiring persons whose function is to assist the administration of justice to maintain a permanent establishment within the jurisdiction of the relevant court, but it does not justify a requirement to the effect that only one permanent establishment may be maintained in the Community.

The United Kingdom points out in no part of its territory is there any restriction on the number of chambers from which a barrister or advocate may practise, or on the number of offices which a solicitor may maintain, although the permission of the appropriate professional body may sometimes be needed for more than two sets of chambers. Likewise, a lawyer established in the United Kingdom may have chambers or offices in another Member State. In conclusion, the United Kingdom suggests that the answer to the question submitted should be as follows:

"A requirement that a lawyer who is a national of a first Member State and who wishes to practise the profession of lawyer simultaneously in a second Member State should maintain chambers in one place only within the Community does, even though that requirement may be intended to ensure the proper administration of justice and compliance with professional ethics, constitute a restriction which is incompatible with Article 52 of the EEC Treaty."

5. The *Danish Government* observes *in limine* that in its view the training period as an *avocat* envisaged by Mr Klopp is not covered by the rules of Community law relating to employed persons or to persons providing services.

As regards the question referred for a preliminary ruling the Danish Government considers that in the light of the considerations set out in the Court's judgment of 21 June 1974 in Case 2/74 (*Reyners* [1974] ECR 631) the obligation imposed on lawyers by a Member State to maintain chambers in one place only is compatible with the EEC Treaty, provided that the provision in question does not distinguish between lawyers by reference to their nationality and that its sole effect is to prohibit lawyers from maintaining several sets of chambers in the Member State concerned.

However, a Member State cannot prevent a lawyer who already has chambers in another Member State from also establishing himself within its own territory. It is of paramount importance for the purposes of freedom of establishment that nationals of a Member State should, even in the absence of a directive, be able to establish themselves not only in another Member State but also in several Member States simultaneously, provided that they satisfy the general conditions for establishment laid down by those States.

Next, the Danish Government reviews the relevant Danish legislation. Article 124 (1) of the Code of Civil Procedure provides that lawyers may not maintain simultaneously two sets of chambers in several judicial districts. However, that rule is interpreted by the professional

associations as extending only to chambers situated in Denmark and not to Danish lawyers established in Denmark who wish to establish chambers abroad as consultants, or to lawyers from other Member States who wish to establish themselves in a judical district in Denmark whilst retaining chambers in their country of origin.

In conclusion the Danish Government suggests that the answer to the question should be as follows:

"National provisions permitting lawyers to maintain chambers in one place only are not contrary to Article 52 of the EEC Treaty if they are interpreted as a prohibition on maintaining several sets of chambers in the country of establishment. However, national provisions of that kind cannot prevent lawyers from maintaining chambers in several countries of establishment, if those countries are Member States of the European Community."

6. The *Netherlands Government* observes that in the light of the *Reyners* and *van Binsbergen* judgments cited above no requirement as to nationality or residence may be imposed as regards establishment and the provision of services, notwithstanding the fact that the directives provided for by Articles 54 and 57 of the EEC Treaty have not been adopted. The present case concerns a requirement relating to residence leading to *de facto* discrimination, which is prohibited by Article 52 of the EEC Treaty.

The Paris Bar Council's interpretation of Article 83 of Decree No 72-468 is tantamount to saying that a lawyer cannot simultaneously be a member of a Bar in his own country and of a Bar in another Member State. A restriction of that kind, the effect of which is, moreover, to deny access to and the right to pursue the profession of lawyer to non-nationals alone, is incompatible with freedom of establishment since it deprives Article 52 of the Treaty of any effect.

Next, the Netherlands Government considers the legislation applicable in the Netherlands. According to the Advocatenwet [Law on the legal profession], a lawyer may not be registered with more than one court and is required to maintain his chambers within the territorial jurisdiction of that court. However, the provisions in question are concerned only with registration and the establishment of chambers in the Netherlands; they are not interpreted as meaning that a foreign lawyer who fulfils the other requirements for membership cannot become a member on the ground that he already belongs to a foreign Bar.

7. The *Commission* points out in the first place that the right of establishment guaranteed by Article 52 of the Treaty is based on the principle of "national treatment", according to which a national of a Member State is entitled to establish himself in another Member State on the same conditions as nationals of that State with a view to working as a self-employed person. Establishment for Community purposes refers to the creation of a professional base which is intended by the person who creates or acquires it to be for at least a considerable period of time.

The following principles may be elicited from the case-law of the Court concerning freedom of establishment:

(a) Freedom of establishment is a fundamental right which exists

regardless of whether the directives provided for by Article 57 of the EEC Treaty have been adopted. The sole purpose of the directives in question is to facilitate the effective exercise of freedom of establishment in a given sector of activity.

(b) Any restriction on the exercise of freedom of establishment resulting from a provision of national law must be interpreted and applied in accordance with the objectives of Community law. Thus, Article 52 of the Treaty may have the effect of rendering a national provision unenforceable as against Community nationals.

(c) An indirect restriction on freedom of establishment may, as is the case with a direct restriction, be incompatible with Article 52 of the Treaty.

Next, the Commission considers the arguments put forward by the Paris Bar Council.

In the first place, Article 83 of Decree No 72-468 cannot be interpreted as relating to access to the profession of *avocat.* In any event, the concept of chambers, when used in a provision of national law, can properly be applied only within the territorial limits applicable as regards the scope of the provision in question; it cannot have extra-territorial effect. This means that a lawyer may be prohibited from establishing a second set of chambers in France only once he has established himself in the jurisdiction of a court on French territory.

Secondly, the argument that there is a lack of reciprocity between the Paris and Düsseldorf Bars must be rejected. Article 52 of the Treaty does not lay down any condition of that kind in order for it to have full effect.

Thirdly, there is no conflict between rules of professional conduct since there is no reason to suppose that as a result of his membership of a German Bar Mr Klopp may find himself confronted in France with situations in which it would be impossible to comply with the French rules of professional conduct. In any event, it is common knowledge that a number of members of the Paris Bar are also members of foreign Bars.

Fourthly, the Commission challenges the argument to the effect that Community law does not confer a subjective right of establishment in a Member State on lawyers who are members of a Bar in another Member State. On the contrary, it is clear from the scope of Article 52 of the Treaty and from the general programme for the abolition of restrictions on freedom of establishment that all restrictions must be removed on the right to take up or pursue activities as self-employed persons where, although ostensibly applicable without discrimination based on nationality, they impair exclusively or primarily the right of non-nationals to take up or pursue those activities. The rule relating to chambers, as interpreted and applied by the Paris Bar Council, constitutes a restriction of that kind since in practice it affects exclusively foreign lawyers by denying them the right to take up the profession of *avocat,* whilst it is applied to French lawyers only after they are established within French territory.

It follows that the practical effect of the contested rule is to allow only young lawyers who are nationals of another Member State and who have attended in France the courses required in order to

take up the profession to establish themselves in France. Such a practice restricts freedom of movement to a very few cases and deprives Article 52 of the Treaty of a great deal of its substance and impairs its effectiveness.

Finally, it is interesting to refer to the work of the Consultative Committee of the Bars and Law Societies of the European Community on the right of establishment, in particular its draft directive (Athinai 5/82) which provides for "dual chambers". The draft directive provides that a lawyer established in another Member State shall be "exempt from compliance with any rule of that State which prohibits him from retaining chambers in the Member State in which he was called to the Bar or in another Member State in which he is also a practising lawyer". The results of that work show quite clearly that maintaining several sets of chambers within the Community is not regarded by the European Bars as incompatible with the proper administration of justice.

In conclusion, the Commission suggests that the answer to the question submitted should be as follows:

"The requirement that a national of a Member State who is already a member of a Bar and established as a lawyer in a Member State and who wishes to become a member of a Bar and to establish himself as a lawyer in another Member State may maintain chambers in one place only, although he fulfils all the requirements laid down for nationals wishing to take up that profession, constitutes, even where no directive has been adopted under Article 57 of the EEC Treaty, a restriction which is incompatible with the freedom of establishment guaranteed by Article 52 of the EEC Treaty."

III — Answers to questions put by the Court

1. The *Paris Bar Association* was asked to answer the following questions:

"On what interpretation of the national provisions does the Paris Bar Association base the practice according to which French lawyers have long been allowed to apply for enrolment at foreign Bars whereas a foreign lawyer such as Mr Klopp is refused enrolment at the Paris Bar on account of his enrolment at a foreign Bar?

How many lawyers of the Paris Bar were at the time of the contested decision simultaneously enrolled at a foreign Bar?"

The answer of the Paris Bar Council is that the Internal Rules of the Paris Bar do not authorize dual enrolment but simply facilitate collaboration between lawyers enrolled at the Paris Bar and lawyers enrolled at a foreign Bar. Under those rules a lawyer enrolled at the Paris Bar may, with the prior agreement of the president of the Bar, open other chambers abroad or enter into an agency agreement. Such possibilities, however, have nothing to do with enrolment. They

are simply the basis for cooperation, and by no means require simultaneous enrolment at two different Bars.

The Council adds that if there are individual cases of dual enrolment they are contrary to the laws and regulations in force.

2. *All the parties* who submitted written observations were asked to answer the following questions:

"If a lawyer is simultaneously enrolled at the Bars of two Member States or of a Member State and a non-member country, what are the provisions of law or professional ethics applicable to work simultaneously performed in two States, especially if such work has international repercussions in particular in relation to professional liability, fees, partnership with another lawyer or the right to be self-employed or employed?

If disciplinary measures, including exclusion from professional practice, are taken in one Member State, what are their consequences on the exercise of the profession in another State where the lawyer is also enrolled at the Bar?"

a) In answer to the questions the *Paris Bar Council* observes that French law does not at present allow dual establishment so that the question does not arise. The Council can therefore only surmise the position.

It would appear that the solution lies either in the application of the classical principles of conflict of laws, or in the adoption of the unilateral method which is to refer to municipal law wherever laws of a mandatory and public nature are to be applied. The rules relating to lawyers and their status are basically matters of public policy from which there can be no derogation.

The answer to the second part of the question on the basis of that assumption is that in law the principle of independence governs matters of discipline. The Council would act of its own motion if it had knowledge of a debarring abroad. If everywhere the same offences entailed the same penalties there would be no difficulty. If, on the other hand, there was a different definition of what constituted an offence, the question would remain open.

b) The *French Government* takes the view that there is no provision laid down by law or regulation prohibiting a lawyer enrolled at a French Bar from being a member of a foreign Bar at the same time provided that the conditions for practising in the foreign country in question are compatible with the professional rules of conduct laid down in France. Consequently a lawyer who is a member of a French Bar cannot by practising abroad infringe the professional rules of conduct to which his practice in France is subject.

On the other hand a failure by a lawyer who is a member of a French Bar to act with honesty, integrity or discretion, even in relation to conduct unconnected with his profession, which has been the

subject of disciplinary measures imposed by a foreign court may give rise to a disciplinary sanction in France.

c) The answer from the *Government of the United Kingdom* reveals that the position in England and Wales, Scotland and Northern Ireland differs from that and, moreover, is not the same for barristers (or advocates) and solicitors. The common principles may be summarized as follows:

The law of the United Kingdom does not prevent a lawyer established in the United Kingdom from also establishing an office in another State and for those purposes acting in association with foreign lawyers. He must nevertheless observe the rules of professional etiquette applicable in the United Kingdom even if practising his profession abroad. Consequently he is subject to the rules of etiquette both of his own professional body and of that of the other country. As for fees, the provisions applicable are those which govern the work in question.

Disciplinary measures taken in another State on grounds of professional misconduct do not have automatic effect in the United Kingdom. They may nevertheless give rise to independent disciplinary measures in accordance with the law of the United Kingdom.

d) According to the *Danish Government* lawyers established both abroad and in Denmark must satisfy the same requirements of honesty and integrity as those imposed on other Danish lawyers. Possibly, however, in proceedings against such a lawyer for a minor breach of the rules the Danish Bar Association might make allowance for the fact that the person concerned was accustomed to different rules in another country where he is established. The Association might also take into account the fees customarily required in the other country of establishment.

Furthermore, disciplinary measures imposed in another Member State might bring into question the right of a lawyer who is a member of the Danish Bar to continue to practice in Denmark.

e) The *Commission* considers that where a lawyer is a member of the Bar in more than one Member State or in a Member State and a non-member country it must be assumed that he is always subject to the provisions laid down by law and regulation and to the rules of professional conduct in force in the State where he is practising. The Commission adds that so far it has not had knowledge of any case relating to a conflict between the rules of two States of establishment.

3. The *Commission* was further asked to state what progress had been made in preparing the Community directive on the right of establishment of lawyers.

It stated that it had not prepared any draft directive on the right of establishment of lawyers. Preparatory work had, however, been undertaken by the Consultative Committee of the Bars and Law Societies of the European Communities with the object of considering ways in which the right of establishment of lawyers might be facilitated in the absence of harmonization

of legal training and mutual recognition of qualifications. The work of the Consultative Committee had resulted in a preliminary draft directive (Athinai 5/82) which had been discussed by the Commission and the Consultative Committee.

IV — Procedure

At the sitting on 27 March 1984 Onno Klopp, represented by B. Odent, the Paris Bar Council, represented by J. G. Nicolas, the French Government, represented by G. Guillaume, and the Commission of the European Communities, represented by J. Delmoly, presented oral argument and answered questions put by the Court.

The Advocate General delivered his opinion at the sitting of 10 May 1984.

Decision

1 By a judgment of 3 May 1983 which was received at the Court on 6 June 1983, the French Cour de Cassation [Court of Cassation] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question as to the interpretation of Article 52 *et seq.* of the EEC Treaty in relation to access to the legal profession.

2 The question was raised in proceedings between the Ordre des Avocats au Barreau de Paris [the Paris Bar Association] and Mr Klopp, a German national and a member of the Düsseldorf Bar. Mr Klopp had applied to take the oath as an *avocat* and to be registered for the period of practical training at the Paris Bar whilst remaining a member of the Düsseldorf Bar and retaining his residence and chambers there.

3 By an order of 17 March 1981 the Council of the Paris Bar Association [hereinafter referred to as "the Paris Bar Council"] rejected his application on the ground that although Mr Klopp satisfied all the other requirements for admission as an *avocat*, especially as regards his personal and formal qualifications, he did not satisfy the provisions of Article 83 of Decree No 72-468 (Journal Officiel de la République Française of 11. 6. 1972) and Article 1 of the Internal Rules of the Paris Bar which provide that an *avocat* may establish chambers in one place only, which must be within the territorial jurisdiction of the *tribunal de grande instance* [regional court] with which he is registered.

4 Article 83 of the aforesaid decree provides that: "An *avocat* shall establish his chambers within the territorial jurisdiction of the *tribunal de grande instance* with which he is registered". Article 1 of the Internal Rules of the Paris Bar provides: "An *avocat* of the Paris Bar must genuinely practise his profession," that "in order to practise the profession, he must be a registered legal practitioner or trainee and must have his chambers in Paris or in the *départements* of Hauts-de-Seine, Seine-Saint-Denis or Val-de-Marne" and that "apart from his principal chambers be may establish a second set of chambers within the same geographical area."

5 When the Cour d'Appel [Court of Appeal], Paris, set aside the decision of the Paris Bar Council by judgment of 24 March 1982 the Council appealed to the Court of Cassation, which, taking the view that the case raised a question concerning the interpretation of Community law, stayed the proceedings and requested the Court of Justice under Article 177 of the EEC Treaty to give a preliminary ruling:

"by way of interpretation of Article 52 *et seq.* of the Treaty of Rome, on whether, in the absence of any directive of the Council of the European Communities coordinating provisions governing access to and exercise of the legal profession, the requirement that a lawyer who is a national of a Member State and who wishes to practise simultaneously in another Member State must maintain chambers in one place only, a requirement imposed by the legislation of the country where he wishes to establish himself and intended to ensure the proper administration of justice and compliance with professional ethics in that country, constitutes a restriction which is incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty of Rome."

6 In substance the question is whether in the absence of a directive on the coordination of national provisions concerning access to and exercise of the legal profession Article 52 *et seq.* of the Treaty prevent the competent authorities of a Member State from denying pursuant to their national law and the rules of professional conduct in force there a national of another Member State the right to enter and to exercise the legal profession solely because he maintains at the same time professional chambers in another Member State.

7 The Paris Bar Council maintains first that Article 52 of the Treaty has only partial direct effect inasmuch as it embodies the rule of equal treatment but does not necessarily apply to other cases. Accordingly in the absence of directives the practical terms of free establishment depend on national law, unless the latter is discriminatory or constitutes a patently unreasonable obstacle or is objectively incompatible with the general interest.

8 The first paragraph of Article 52 of the Treaty provides for the abolition of restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State.

9 In order to promote the progressive achievement of that objective the Council adopted on 18 December 1961 pursuant to Article 54 of the Treaty a general programme for the abolition of restrictions on freedom of establishment (Official Journal, English Special Edition, Second Series Vol IX, p. 7). In order to implement the programme Article 54 (2) of the Treaty provides that the Council is to issue directives to achieve freedom of establishment in respect of the various activities in question. Furthermore, Article 57 of the Treaty makes the Council responsible for issuing directives providing for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. Although the legal profession is already governed in relation to freedom to provide services by Council Directive 77/249 of 22 March 1977 facilitating the effective exercise by lawyers of freedom to provide services (Official Journal L 78, p. 17), no directive on freedom of establishment for lawyers has been adopted under Articles 54 and 57 of the Treaty.

10 Nevertheless, as the Court has already held in its judgment of 21 June 1974 (Case 2/74 *Reyners* v *Belgium* [1974] ECR 631), in laying down that freedom of establishment shall be attained at the end of the transitional period, Article 52 imposes an obligation to attain a precise result the fulfilment of which must be made easier by, but not made dependent on, the implementation of a programme of progressive measures. Consequently the

fact that the Council has failed to issue the directives provided for by Articles 54 and 57 cannot serve to justify failure to meet the obligation.

11 It is therefore necessary to consider the scope of Article 52 of the Treaty as a directly applicable rule of Community law with regard to the establishment in a Member State of a lawyer already established in another Member State and retaining his original establishment there.

12 The Paris Bar Council and the French Government maintain that Article 52 of the Treaty makes access and exercise of freedom of establishment depend on the conditions laid down by the Member State of establishment. Both Article 83 of Decree No 72-468 and Article 1 of the Internal Rules of the Paris Bar (cited above) are applicable without distinction to French nationals and those of other Member States. Those provisions provide that an *avocat* may establish chambers in one place only.

13 In that respect the applicant objects in the first place that the national French legislation as applied is discriminatory and thus contrary to Article 52 of the Treaty, for whilst the Paris Bar Association has allowed or tolerated the practice of certain of its members in having a second set of chambers in other countries it will not permit the applicant to establish himself in Paris whilst retaining his chambers in Düsseldorf.

14 However, according to the division of jurisdiction between the Court and the national court laid down in Article 177 of the EEC Treaty it is for the national court to determine whether in practice the rules in question are discriminatory. The question put by the national court must therefore be answered without giving any opinion on the objection based on a discriminatory application of the national law in question.

15 In the second place the applicant, the United Kingdom, the Danish Government and the Commission consider that the legislation of the Member State of establishment, although applicable to access to the

profession and practice of law in that country, may not prohibit a lawyer who is a national of another Member State from retaining his chambers there.

16 The Paris Bar Council and the French Government object in that respect that Article 52 of the Treaty requires the full application of the law of the Member State of establishment. The rule that an *avocat* may have his chambers in one place only is based on the need for *avocats* to genuinely practice before a court in order to ensure their availability to both the court and their clients. It should be respected as being a rule pertaining to the administration of justice and to professional ethics, objectively necessary and consistent with the public interest.

17 It should be emphasized that under the second paragraph of Article 52 freedom of establishment includes access to and the pursuit of the activities of self-employed persons "under the conditions laid down for its own nationals by the law of the country where such establishment is effected." It follows from that provision and its context that in the absence of specific Community rules in the matter each Member State is free to regulate the exercise of the legal profession in its territory.

18 Nevertheless that rule does not mean that the legislation of a Member State may require a lawyer to have only one establishment throughout the Community territory. Such a restrictive interpretation would mean that a lawyer once established in a particular Member State would be able to enjoy the freedom of the Treaty to establish himself in another Member State only at the price of abandoning the establishment he already had.

19 That freedom of establishment is not confined to the right to create a single establishment within the Community is confirmed by the very words of Article 52 of the Treaty, according to which the progressive abolition of the restrictions on freedom of establishment applies to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of another Member State. That rule must be

regarded as a specific statement of a general principle, applicable equally to the liberal professions, according to which the right of establishment includes freedom to set up and maintain, subject to observance of the professional rules of conduct, more than one place of work within the Community.

20 In view of the special nature of the legal profession, however, the second Member State must have the right, in the interests of the due administration of justice, to require that lawyers enrolled at a Bar in its territory should practise in such a way as to maintain sufficient contact with their clients and the judicial authorities and abide by the rules of the profession. Nevertheless such requirements must not prevent the nationals of other Member States from exercising properly the right of establishment guaranteed them by the Treaty.

21 In that respect it must be pointed out that modern methods of transport and telecommunications facilitate proper contact with clients and the judicial authorities. Similarly, the existence of a second set of chambers in another Member State does not prevent the application of the rules of ethics in the host Member State.

22 The question must therefore be answered to the effect that even in the absence of any directive coordinating national provisions governing access to and the exercise of the legal profession, Article 52 et *seq.* of the EEC Treaty prevent the competent authorities of a Member State from denying, on the basis of the national legislation and the rules of professional conduct which are in force in that State, to a national of another Member State the right to enter and to exercise the legal profession solely on the ground that he maintains chambers simultaneously in another Member State.

Costs

23 The costs incurred by the United Kingdom, the French and Netherlands Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since the

proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the French Cour de Cassation by judgment of 3 May 1983, hereby rules:

Even in the absence of any directive coordinating national provisions governing access to and the exercise of the legal profession, Article 52 *et seq.* of the EEC Treaty prevent the competent authorities of a Member State from denying, on the basis of the national legislation and the rules of professional conduct which are in force in that State, to a national of another Member State the right to enter and to exercise the legal profession solely on the ground that he maintains chambers simultaneously in another Member State.

Mackenzie Stuart Koopmans Bahlmann Galmot

Pescatore O'Keeffe Bosco Due Everling

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl

Principal Administrator

A. J. Mackenzie Stuart

President