

JUDGMENT OF THE COURT (Sixth Chamber)

19 January 1988 \*

In Case 292/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour d'appel (Court of Appeal), Colmar, for a preliminary ruling in the action pending before that court between

**Claude Gullung**, residing in Mulhouse,

and

**Conseil de l'ordre des avocats du barreau de Colmar** (Colmar Bar Council),

and

**Conseil de l'ordre des avocats du barreau de Saverne** (Saverne Bar Council),

interveners:

**Syndicat des avocats de France** (Union of French Avocats),

**Confédération syndicale des avocats** (Federation of Avocats),

**Conférence des bâtonniers** (Bâtonniers' Association) and

**Fédération nationale des unions de jeunes avocats** (National Federation of Young Avocats' Unions)

on the interpretation of Article 52 of the EEC Treaty and Council Directive 77/249/EEC of 22 March 1977 (Official Journal 1977, L 78, p. 17),

THE COURT (Sixth Chamber)

composed of: O. Due, President of Chamber, G. C. Rodríguez Iglesias, T. Koopmans, K. Bahlmann and T. F. O'Higgins, Judges,

\* Language of the Case: French.

Advocate General: M. Darmon  
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

C. Gullung, the applicant in the main proceedings, by Mr Gullung himself and, during the written procedure, by J.-C. Tschirhart, bâtonnier of the Mulhouse Bar,

the conseil de l'ordre des avocats du barreau de Colmar and the conseil de l'ordre des avocats du barreau de Saverne, the defendants in the main proceedings, by F. Perrad, bâtonnier, of the Colmar Bar,

the Syndicat des avocats de France, an intervener in the main proceedings, by M. Welschinger of the Colmar Bar,

the Conférence des bâtonniers, an intervener in the main proceedings, by M. Veroone, of the Lille Bar,

the Confédération syndicale des avocats, an intervener in the main proceedings, also by M. Veroone, of the Lille Bar,

the Fédération nationale des unions de jeunes avocats, an intervener in the main proceedings, by F. Perrad, bâtonnier, of the Colmar Bar, and by R. Milchior, of the Paris Bar,

the Government of the Federal Republic of Germany by A. Dittrich, Oberregierungsrat at the Federal Ministry of the Economy, acting as Agent, and by H.-W. Neyl, Regierungsdirektor at the Federal Ministry of Justice, acting as Agent,

the Government of the Hellenic Republic, during the written procedure, by S. E. Perrakis, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, and, during the oral procedure, by S. Zissimopoulos, acting as Agent,

the Government of the Kingdom of Spain, during the written procedure, by F. Javier Conde de Saro, of the Spanish Ministry of Foreign Affairs, acting as Agent, and, during the oral procedure, by Mr Garcia-Valdecasas Fernandez, acting as Agent,

the United Kingdom, during the written procedure, by H. R. L. Purse of the Treasury Solicitor's Department, acting as Agent, and, during the oral procedure, by Mr Mummery, acting as Agent,

the Government of the French Republic, during the written procedure, by G. Guillaume and P. Pouzoulet, of the Ministry of Foreign Affairs, acting as Agents, and, during the oral procedure, by R. de Gouttes, acting as Agent,

the Government of the Kingdom of the Netherlands, during the oral procedure, by M. Fierstra, acting as Agent,

the Commission of the European Communities, by its Legal Adviser, J. Amphoux, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 23 September 1987,

after hearing the opinion of the Advocate General delivered at the sitting on 18 November 1987,

gives the following

### Judgment

- 1 By a judgment of 17 November 1986, which was received at the Court on 25 November 1986, the cour d'appel, Colmar, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Articles 52 and 59 of the EEC Treaty and the provisions of Council Directive 77/249/EEC of 22 March 1977 facilitating the effective exercise by lawyers of freedom to provide services (Official Journal 1977, L 78, p. 17).
- 2 The questions were raised in the context of proceedings brought against the Colmar Bar Council and the Saverne Bar Council by Mr Gullung, a lawyer of French and German nationality, who is registered as a Rechtsanwalt in Offenburg, Federal Republic of Germany. Mr Gullung relies on the liberties guaranteed by the provisions of the EEC Treaty in order to practise his profession in France although

admission to a bar in France was refused him on grounds connected with his character.

- 3 Mr Gullung practised as a notaire (notary) in Hirsingue, France, from September 1947 to March 1966, at which date he resigned following the adoption of disciplinary measures against him by the Chambre de discipline des notaires du Haut-Rhin (Notaries' Disciplinary Committee for the département of Haut-Rhin). Subsequently, he sought first to be permitted to practise as a conseil juridique (legal adviser) in Marseilles and then to be admitted to the Mulhouse Bar to practise as an avocat. Both applications were rejected on the ground that he did not meet the conditions of good character required of an avocat. Under French legislation those conditions must also be met by persons enrolled on the register of conseils juridiques. Various actions were brought against the decisions rejecting his two applications but none were successful because the courts or tribunals in question concluded from the infringements of the rules relating to professional ethics with which he was charged in relation to his practice as notaire that he did not offer the guarantees of dignity, good repute and integrity necessary to practise as an avocat.
- 4 Following his admission as a Rechtsanwalt in Offenburg, Mr Gullung, who at the same time had opened an office as jurisconsulte (legal adviser) in Mulhouse, was notified of a decision of the Mulhouse Bar Council prohibiting any member of that Bar 'from lending assistance under the conditions laid down by Community law and the Decree of 22 March 1979', namely the French decree which implemented Directive 77/249, 'to any avocat who does not satisfy the necessary requirements as to good character and, in particular, to Mr Claude Gullung, on pain of disciplinary sanctions'.
- 5 Similar decisions were adopted by the Bar Councils of Colmar and Saverne after Mr Gullung had appeared at a sitting of the chambre d'accusation of the cour d'appel, Colmar, acting as adviser to a civil party. He appeared as a provider of services in conjunction with an avocat having a right of audience before that court.
- 6 The main proceedings relate to the actions brought by Mr Gullung against those two decisions. In support of his application he relied on the provisions of Directive 77/249 guaranteeing freedom of lawyers established in other Member States to provide services and on the provisions of the EEC Treaty relating to the right of establishment which, he argued, had the effect of enabling a person to establish

himself as a member of the legal profession without the need of registration at a bar.

7 The cour d'appel, Colmar, before which both actions were brought stayed the proceedings in order to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) May a person who is a national of two Member States of the Community and who has been admitted to the legal profession in one of those two States rely on the directive of the Council of the European Communities of 22 March 1977 facilitating the effective exercise by lawyers of freedom to provide services in order to provide services on the territory of the other Member State in which access to the legal profession has been denied to him by a court or tribunal in that State for reasons connected with the requirements of dignity, good repute and integrity? More generally, in the light of the foregoing, is not the scope of the directive of 22 March 1977 limited by the requirements of national public policy?

(2) Does a lawyer who is a national of one Member State of the Community enjoy the right of establishment in another Member State pursuant to Article 52 of the Treaty of Rome only if he is a member of a bar in the host country, where such membership is required by the legislation of that country?

If the reply to that question is in the negative, may a lawyer who is a national of one Member State of the Community and who is established in another Member State without, however, being a member of a bar in the latter State, rely on the abovementioned directive of 22 March 1977 on freedom to provide services?'

8 Reference is made to the Report for the Hearing for a fuller account of the background to the dispute and for a summary of the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 The first question referred to the Court concerns freedom of lawyers to provide services and the second concerns lawyers' right of establishment. The first question also raises the matter of the effect of dual nationality and it is appropriate to deal with that issue first.

## Dual nationality

- 10 The question raised with regard to dual nationality is whether a person who is a national of two Member States and who is admitted to the legal profession in one of those States may rely on the provisions of Directive 77/249 in the territory of the other Member State.
- 11 It should be noted that, in its judgment of 7 February 1979 in Case 115/78 (*Knoors v Secretary of State for Economic Affairs* [1979] ECR 399), the Court took the view, in regard to a directive concerned with the right of establishment, that the directive might be relied upon by the nationals of all the Member States who were in the situations which the directive defined for its application, even in respect of the State of which they were nationals. The same principle applies in relation to a directive concerned with freedom to provide services.
- 12 Freedom of movement for persons, freedom of establishment and freedom to provide services, which are fundamental in the Community system, would not be fully realized if a Member State were entitled to refuse to grant the benefit of the provisions of Community law to those of its nationals who are established in another Member State of which they are also a national and who take advantage of the facilities offered by Community law in order to pursue their activities in the territory of the first State by way of the provision of services.
- 13 Consequently, it must be held that a national of two Member States who is admitted to practise as a member of the legal profession in one of those States may rely on the provisions of Directive 77/249 in the territory of the other State where the conditions for the application of that directive, as defined therein, are satisfied.

## Provision of services

- 14 The first question referred to the Court seeks to ascertain, in particular, whether the provisions of Directive 77/249 may be relied upon by a lawyer established in one Member State in order to pursue his activities as a provider of services in the territory of another Member State where he has been barred from access to the legal profession by the latter Member State for reasons relating to dignity, good repute and integrity. If the reply is in the affirmative, the cour d'appel seeks to ascertain whether public policy does not constitute an impediment to the application of the directive.

- 15 The purpose of Directive 77/249 is to facilitate the effective exercise by lawyers of the freedom to provide services. To that end the directive requires the Member States to recognize as a lawyer for the purpose of pursuing the activities of lawyers any person established in another Member State as a lawyer under one of the designations set out in Article 2 (1), which include 'Rechtsanwalt' in the Federal Republic of Germany.
- 16 However, Article 4 (1) provides that activities relating to the representation of a client in legal proceedings or before public authorities are to be pursued in each host Member State under the conditions laid down for lawyers established in that State, with the exception of any conditions requiring residence, or registration with a professional organization, in that State. Article 4 (2) provides that when pursuing his activities as a provider of services a lawyer must observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes.
- 17 As regards other activities pursued by way of the provision of services, Article 4 (4) provides that a lawyer is to remain subject to the conditions and rules of professional conduct of the Member State from which he comes without prejudice to respect for the rules which govern the profession in the host Member State only in so far as the latter rules are capable of being observed by a lawyer who is not established in the host Member State and in so far as their observance is objectively justified to ensure the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.
- 18 It follows from those provisions that members of the legal profession, when providing services, are required to comply with the rules relating to professional ethics in force in the host Member State.
- 19 That interpretation finds support in the terms of Article 7 (2) of the directive which provides that 'in the event of non-compliance with the obligations . . . in force in the host Member State' the competent authority of that Member State is to determine the consequences of such non-compliance 'in accordance with its own rules and procedures'. The authority is required to notify the competent authority of the Member State from which the person comes of any decision taken.

- 20 In the course of the proceedings before the Court attention was drawn to the fact that the aforementioned provisions of the directive appear to require compliance with the rules relating to profession ethics when services are provided whereas the question raised by the cour d'appel relates to non-compliance with those rules prior to the time when the services are provided.
- 21 However, that argument is not convincing. By requiring compliance with the rules relating to professional ethics of the host Member State the directive assumes that the person providing the services has the capacity to comply with those rules. If the competent authority of the host Member State has already found in the course of proceedings concerning access to the legal profession that that person lacks such capacity so that he is barred from access to the profession on that ground, he must be considered not to satisfy the very conditions laid down by the directive with regard to freedom to provide services.
- 22 It follows that Directive 77/249 must be interpreted as meaning that its provisions may not be relied upon by a lawyer established in one Member State with a view to pursuing his activities by way of the provision of services in the territory of another Member State where he had been barred from access to the legal profession in the latter Member State for reasons relating to dignity, good repute and integrity.
- 23 In view of that reply it is unnecessary to consider the question whether it is possible to have recourse to the concept of public policy in order to refuse to grant the benefit of freedom to provide services to a lawyer established in one Member State who has been denied admission to the bar of the host Member State on the ground of non-compliance with rules relating to professional ethics.

### **The right of establishment**

- 24 The second question referred to the Court by the cour d'appel relates to the interpretation of Article 52 of the EEC Treaty. The question is directed, more specifically, to the point whether the establishment of a lawyer in the territory of another Member State for the purposes of that provision presupposes his registration at a bar of the host Member State where that is required by the legislation of that Member State. If the reply to that question is in the negative, the cour d'appel also raises a question concerning the application of Directive 77/249 to a lawyer who is not registered.

25 As a preliminary point it is necessary to determine more precisely the scope of the question referred to the Court in view, in particular, of the oral argument presented before it.

26 The Commission pointed out that the factual situation which gave rise to the main proceedings may appear ambiguous inasmuch as a person established in the Federal Republic of Germany as a 'Rechtsanwalt' also opened an office as a 'jurisconsulte' in France; it might therefore be asked, according to the Commission, whether that person was not already 'established' for the purpose of pursuing his activities in France so that the provisions relating to the right of establishment could not be applied to him. However, it is not for the Court to resolve the dispute before the cour d'appel and the question which it referred to the Court relates solely to the situation where a lawyer established in one Member State intends to establish himself in another Member State where registration at a bar is required for it to be possible to practise as a lawyer.

27 In addition, at the hearing the two Bar Councils and the United Kingdom debated the question whether a lawyer established in one Member State may establish himself in the territory of another Member State, which requires lawyers to be registered at a bar, without his being so registered where he holds himself out as a lawyer within the meaning of the legislation of the Member State from which he comes, for example in France as a German 'Rechtsanwalt' or an English 'solicitor'. That problem, too, does not form part of the question referred to the Court, which refers, according to its very wording, to the situation where a lawyer within the meaning of the legislation of the Member State where he is established is minded to set up in another Member State as a lawyer within the meaning of the legislation of that Member State.

28 In order to reply to the question defined in that manner it is necessary to emphasize that under the second paragraph of Article 52 of the EEC Treaty freedom of establishment includes 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'. It follows from that provision, as the Court stated in its judgment of 12 July 1984 in Case 107/83 (*Ordre des avocats au barreau de Paris v Klopp* [1984] ECR 2971), that in the absence of specific Community rules in the matter each Member State is, in principle, free to regulate the exercise of the legal profession in its territory.

- 29 It should be added that the requirement that lawyers be registered at a bar laid down by certain Member States must be regarded as lawful in relation to Community law provided, however, that such registration is open to nationals of all Member States without discrimination. The requirement seeks to ensure the observance of moral and ethical principles and the disciplinary control of the activity of lawyers and thus pursues an objective worthy of protection.
- 30 It follows from the foregoing that the Member States whose legislation lays down the requirement that any person wishing to establish himself in their territory as a lawyer within the meaning of their national legislation must be registered at a bar may prescribe the same requirement for lawyers who come from other Member States and who rely on the right of establishment laid down in the EEC Treaty in order to benefit from the same status.
- 31 Consequently, the reply to the second question referred to the Court for a preliminary ruling must be that Article 52 of the EEC Treaty must be interpreted as meaning that a Member State whose legislation requires lawyers to be registered at a bar may prescribe the same requirement for lawyers who come from other Member States and who take advantage of the right of establishment guaranteed by the Treaty in order to establish themselves as members of a legal profession in the territory of the first Member State.
- 32 In view of that reply the subsidiary question put by the cour d'appel no longer calls for an answer.

### **Costs**

- 33 The costs incurred by the Government of the Federal Republic of Germany, by the Greek Government, by the Spanish Government, by the United Kingdom, by the French Government, by the Netherlands Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings, are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the cour d'appel, Colmar, by judgment of 17 November 1986, hereby rules:

- (1) A person who is a national of two Member States and who has been admitted to a legal profession in one of those States may rely, in the territory of the other State, upon the provisions of Directive 77/249/EEC facilitating the effective exercise by lawyers of freedom to provide services where the conditions for the application of that directive, as defined therein, are satisfied.
- (2) Directive 77/249/EEC must be interpreted as meaning that its provisions may not be relied upon by a lawyer established in one Member State with a view to pursuing his activities as a provider of services in the territory of another Member State where he had been barred from access to the profession of lawyer in the latter Member State for reasons relating to dignity, good repute and integrity.
- (3) Article 52 of the EEC Treaty must be interpreted as meaning that a Member State whose legislation requires lawyers to be registered at a bar may impose the same requirement on lawyers from other Member States who take advantage of the right of establishment guaranteed by the Treaty in order to establish themselves as members of a legal profession in the territory of the first Member State.

Due

Rodríguez Iglesias

Koopmans

Bahlmann

O'Higgins

Delivered in open court in Luxembourg on 19 January 1988.

P. Heim

O. Due

Registrar

President of the Sixth Chamber