

In Case 107/83

REFERENCE to the Court under [Article 267 TFEU] 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 Association]

and

ONNO KLOPP, of the Düsseldorf Bar,

on the interpretation of [Article 49 TFEU] *et seq.*,

THE COURT

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

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

gives the following

## JUDGMENT

### 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 267 TFEU] a question as to

the interpretation of [Article 49 TFEU] *et seq.* 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 he 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 [Union] law, stayed the proceedings and requested the Court of Justice under [Article 267 TFEU] to give a preliminary ruling:

"by way of interpretation of [Article 49 TFEU] *et seq.*, on whether, in the

absence of any directive of the Council of the European [Union] 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 49 TFEU]."

- 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 49 TFEU] *et seq.* 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 49 TFEU] 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 49 TFEU] 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 50 TFEU] 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 50(1) TFEU] provides that the Council is to issue directives to achieve freedom of establishment in respect of the various activities in question. Furthermore, [Article 53 TFEU] 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 50 and 53 TFEU].

- 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 49 TFEU] 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 50 and 53 TFEU] cannot serve to justify failure to meet the obligation.
- 11 It is therefore necessary to consider the scope of [Article 49 TFEU] as a directly applicable rule of [Union] 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 49 TFEU] 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 49 TFEU], 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 267 TFEU] 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 49 TFEU] 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 49 TFEU] 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 [Union] 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 [Union] 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 [Union] is confirmed by the very words of [Article 49 TFEU], 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 [Union].
- 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 49 TFEU] *et seq.* 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 [Union], 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 49 TFEU] *et seq.* 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  
Pescatore

Koopmans  
O'Keeffe  
Everling

Bahlmann  
Bosco

Galmot  
Due

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl

Principal Administrator

A. J. Mackenzie Stuart

President