Judgment of the Court of Justice, Thieffry, Case 71/76 (28 April 1977)

Caption: When a national of one Member State desirous of exercising a professional activity in another Member State has obtained a diploma in his country of origin which has been recognised as an equivalent qualification by the country of establishment, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes a restriction incompatible with the freedom of establishment.

Source: Reports of Cases before the Court. 1977. [s.l.].

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Judgment of the Court of 28 April 1977 [1]

Jean Thieffry v Conseil de l'ordre des avocats à la Cour de Paris

(preliminary ruling requested by the Cour d'Appel of Paris)

'Freedom of establishment for advocates'

Case 71/76

1. Freedom of establishment — Objectives of the Treaty — Implementation — Absence of Community directives — National provisions or practice — Obligations of the Member States
(EEC Treaty, Articles 5, 52 and 57)

2. Freedom of establishment — Foreign diploma — Recognition of equivalence — University effect and civil effect — Distinction — Competence of the State of establishment — Requirements of Community law — Compliance
(EEC Treaty, Article 52)

3. Freedom of establishment — National of a Member State — Exercise of a professional activity in another Member State — Profession of advocate — Diploma obtained in the country of origin — Recognition of equivalence with the national diploma of the country of establishment — Absence of Community directives — Requirement of the diploma of the country of establishment — Restriction incompatible with the Treaty
(EEC Treaty, Articles 52 and 57)

1. Freedom of establishment, subject to observance of professional rules justified by the general good, is one of the objectives of the Treaty. In so far as Community law makes no special provision, these objectives may be attained by measures enacted, pursuant to Article 5 of the Treaty, by the Member States. If freedom of establishment can be ensured in a Member State either under the provisions of the laws and regulations in force, or by virtue of the practices of the public service or of professional bodies, a person subject to Community law cannot be denied the practical benefit of that freedom solely by virtue of the fact that, for a particular profession, the directives provided for by Article 57 of the Treaty have not yet been adopted. Since the practical enjoyment of freedom of establishment can thus in certain circumstances depend upon national practice or legislation, it is incumbent upon the competent public authorities — including legally recognized professional bodies — to ensure that such practices or legislation are applied in accordance with the objective defined by the provisions of the Treaty relating to freedom of establishment.

2. With regard to the distinction between the academic effect and the civil effect of the recognition of equivalence of foreign diplomas, it is for the competent national authorities, taking account of the requirements of Community law in relation to freedom of establishment, to make such assessments of the facts as will enable them to judge whether a recognition granted by a university authority can, in addition to its academic effect, constitute valid evidence of a professional qualification. The fact that a national legislation provides for recognition of equivalence only for university purposes does not of itself justify the refusal to recognize such equivalence as evidence of a professional qualification. This is particularly so when a diploma recognized for university purposes is supplemented by a professional qualifying certificate obtained according to the legislation of the country of establishment.

3. When a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

In Case 71/76,

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

JEAN THIEFFRY, Doctor of Laws, Advocate, resident in Paris,

and

CONSEIL DE L'ORDRE DES AVOCATS A LA COUR DE PARIS (The Paris Bar Council),

on the interpretation of the provisions of the EEC Treaty on the right of establishment, in relation to certain

legal conditions for admission to the profession of Advocate,

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

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

gives the following

JUDGMENT

Facts

The facts, 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

Of Belgian nationality, Jean Thieffry obtained a doctorate in Belgian law at the University of Louvain on 23 July 1955.

From 1956 to 1969, he practised as an Advocate ('avocat') at the Brussels Bar. After a period in London, during which he assisted a Barrister, he established himself in Paris, where he is collaborating in the chambers of an Advocate of the Paris Bar and teaching law.

On 5 December 1974, Mr Thieffry obtained from the University of Paris 1 — Panthéon Sorbonne — recognition of the diploma for his doctorate in Belgian law as a qualification equivalent to a licentiate's degree in French law.

On 18 November 1975 he obtained the Certificat d'Aptitude à la Profession d'Avocat (CAPA) (qualifying certificate for the profession of Advocate) from the Institut d'Études Judiciaires of the University of Paris 2.

Mr Thieffry then applied to take the oath with a view to his registering for the period of practical training at the Ordre des Avocats à la Cour de Paris (Paris Bar).

By an order of the Conseil de l'Ordre (the Bar Council) of 9 March 1976 his application was rejected on the ground that he offered no diploma evidencing a licentiate's degree or a doctor's degree in French law, as required by Article 11 (2) of Law No 71-1130 of 31 December 1971, reforming certain legal and judicial professions (Journal Officiel de la République Française of 5.1.1972, p. 131).

On 19 March 1976, Mr Thieffry appealed against this decision before the Cour d'Appel, Paris.

By a judgment given in chambers on 13 July 1976, the Cour d'Appel, composed of the first three Chambers, decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court of justice had given a preliminary ruling on the following question:

When a national of one Member State desirous of exercising the profession of Advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the University authority of the country of establishment and which has enabled him to sit in the latter country the Advocate's professional qualifying examinations — which he has passed — does the act of demanding the national diploma prescribed by the law of the country of establishment constitute, in the absence of the directives provided for in Article 57 (1) and (2) of the EEC Treaty, an obstacle to the

attainment of the objective of the Community provisions in question?

The judgment of the Cour d'Appel, Paris, was entered at the Registry of the Court of Justice on 19 July 1976.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 22 September 1976 by the Commission of the European Communities, on 5 October by the Government of the French Republic, on 13 October by the Government of the United Kingdom and on 15 October 1976 by Mr Thieffry, the appellant in the main action.

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

The Court did however invite the Government of the French Republic, the Government of the United Kingdom and the Commission of the European Communities to answer certain questions in writing before the oral proceedings.

II — Written observations submitted to the Court

Jean Thieffry, the appellant in the main action, takes the view that the decision of the Conseil de l'Ordre des Avocats au Barreau de Paris (Paris Bar Council) goes against the fundamental principles which follow from the application of the EEC Treaty and against the purport of the judgment given by the Court of Justice on 21 June 1974 in Case 2/74 *Jean Reyners* v *the Belgian State*; reference by the Conseil d'État, Belgium, for a preliminary ruling; [1974] ECR 631).

(a) The solution of the problem submitted to the Court of Justice rests on a certain number of fundamental principles defined by the Court which govern the application of Community law, in particular those of the autonomy, the direct effect and the supremacy of Community law. In so far at the French Law goes against these principles, it is inapplicable; any Law which is contrary to Community law is applicable only within the limits set by the Community rules, which prevail over the national rules.

The Member States cannot derogate from the principle according to which, on the expiry of the transitional period, those Community rules which do not require any further legal instrument in order to be applied must be fully and entirely put into effect. In particular, Article 52 of the EEC Treaty is a directly applicable provision, and it is so notwithstanding that in a given field the directives referred to in Articles 54 (2) and 57 (1) of the Treaty may be lacking.

Moreover, Member States are forbidden to apply measures having a restrictive effect which goes beyond what is necessary for the purposes of attaining the objective of the national or Community provisions in question.

(b) Among the techniques used in the national rules relating to the right of establishment in order to favour national protectionism one of the most frequent is discrimination based on nationality. The discrimination in question in the main action pertains to this criterion: it is discrimination exercised in relation to the nationality of diplomas. Such considerations go against the fundamental objectives of the EEC Treaty. The aim of this Treaty is to bring into being a single market, within which, among other things, persons may move freely and all obstacles to their establishment must be abolished without any distinction on grounds of nationality. Such is, in particular, the object of Article 52 of the Treaty.

It emerges from the judgment of the Court in the *Reyners* case that since the end of the transitional period that provision has been directly applicable, notwithstanding the absence of the directives prescribed by the Treaty. Establishment is the rule, the harmonization measures, in particular those relating to diplomas, referred to in Article 57 (1), an exception. Accordingly, discrimination based on the criterion of nationality must be rejected, whether it is applied to the person himself or whether it takes the form of a national law demanding a national diploma, and whenever a solution can be found to the problem raised by the absence

of mutual recognition of diplomas, that solution must be adopted if it answers to the national and Community objectives in question.

(c) The refusal to permit the appellant in the main action to take the oath with a view to his registering for the period of practical training on the ground only that he does not fulfil the stipulation of the French Law requiring that the person concerned shall have a licentiate's degree in law conferred by a French university, goes directly against the EEC Treaty.

Doubtless that Law is not open to criticism on the grounds that it provides that a national of a Member State who wishes to practise as an Advocate in France must have educational qualifications corresponding to the licentiate's degree in French Law. A directive on the equivalence of diplomas would be apt to resolve this problem more simply; but the *Reyners* judgment establishes that such a directive is not indispensable.

The decisive point is that the check carried out by the French university before recognizing the doctor's degree in Belgian Law as qualification equivalent to the licentiate's degree in French Law enabled a full comparison of knowledge to be made, therefore the requirement of the French Law in this respect is satisfied.

Since all the other requirements are satisfied, the absence of a licentiate's degree in French Law cannot constitute an obstacle to acceptance for the period of practical training, since the appellant in the main action has proved that he has knowledge corresponding to that diploma. Objectively he satisfies the requirements for entry into the profession of Advocate in France, account being taken of the effect of Article 52 of the EEC Treaty on the analysis of the French provision and the application thereof.

(d) Article 52 imposes an obligation to attain a particular result, an obligation which goes beyond merely *equal* national treatment for nationals of a Member State other than that in which establishment is to take place. It imposes on the competent national authorities an obligation to seek the means whereby establishment can be achieved in accordance with the aims of the national law. A qualification equivalent to the diploma must be recognized as valid. To insist on the national diploma alone is contrary to Articles 7 and 52 of the Treaty. At all events, when the candidate satisfies all the other requirements for admission to the profession of Advocate and when he has a qualification equivalent to the required national diploma, to insist on that diploma alone is more restrictive than is necessary to attain the objectives of the national and Community provisions in question.

(e) Therefore the question referred to the Court of Justice should be answered in the following terms:

When a national of one Member State desirous of exercising the profession of Advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the university authority of the country of establishment and which has enabled him to sit in the latter country the Advocate's professional qualifying examinations — which he has passed — the act of demanding the national diploma prescribed by the law of the country of establishment constitutes, in the absence of the directives provided for in Article 57 (1) and (2) of the Treaty of Rome, an obstacle to the attainment of the objective of the Community provisions in question.

The *Government of the French Republic* submits in essence the following observations:

(a) The argument based on the recognition of a diploma conferred in another Member State as a qualification equivalent to the national diploma is irrelevant for the purposes of answering the question referred for a preliminary ruling. In fact, a distinction should be drawn between those decisions of university authorities which have civil effects and those which have academic effects. The former confer rights upon their recipients which can be enforced even outside the university, the latter confer rights only in respect of the university institution. The recognitions of diplomas in question in this case belong to the latter category. Those recognitions give the right to follow studies from one university to another, but do not involve any civil effect, in particular the right to practise a profession.

At all events, the Court of justice recognizes that it does not have jurisdiction, within the framework of the procedure under Article 177, to interpret or classify a rule of national law.

Therefore, in the absence of Community directives on the mutual recognition of diplomas, the requirement of the national diploma should purely and simply be left as it stands.

(b) The effect of the direct applicability of Article 52 of the EEC Treaty, acknowledged by the *Reyners* judgment, is to affirm the rule on equal treatment with nationals in the area of the right of establishment. In the present case, there is no doubt that the rule on equal treatment with nationals is ensured: the problem would be the same if the appellant in the main action was of French nationality.

The question is rather whether the direct effect of Article 52 makes not only the requirement of nationality but also the requirement of the national diploma unlawful. In this connexion it should be pointed out that, in the *Reyners* judgment, the Court of Justice drew a distinction between two functions which the Community directives are designed to accomplish:

— 'negative' function, consisting of the elimination of obstacles to attaining freedom of establishment; these obstacles were to be removed during the transitional period and directives of this kind became superfluous on the expiry of the said period, since Article 52 applied from that time with direct effect;

— 'positive' function, consisting of the introduction into the laws of the Member States of provisions intended to facilitate the effective enjoyment of freedom of establishment; the expiry of the transitional period is without effect on the accomplishing of this second function, and the attaining of the said freedom remains conditional upon the existence of directives of this kind.

According to the decision in the *Reyners* case the direct effect of Article 52 is not general, but limited to such obstacles as correspond to the first of these two functions. Under the first category the Court mentions only the rule on equal treatment with nationals, and it relates 'the set of provisions in Article 57' to the second category, in regard to which Article 52 does not have direct effect. Therefore questions of mutual recognition of diplomas form part of the task of legislative harmonization to be carried out by means of directives, even after the transitional period.

This interpretation is the one adopted by the Commission which, following the *Reyners* judgment, withdrew the directives removing restrictions, but, out of the coordinating directives, maintained those directed towards the mutual recognition of diplomas. On 16 June 1975 the Council, for its part, adopted a directive on the mutual recognition of physicians' diplomas.

This solution is the only one which is compatible with the specific nature of the subject of the right of establishment, in so far as national diplomas must not be considered in isolation, but in relation to the studies which they evidence and the professions to which they can give access, these studies and professions being organized in most cases in very different and heterogeneous ways from one Member State to another.

(c) As to the idea of the balance between retaining the requirement of a national diploma and pursuing the Community objectives in question, it should be pointed out that normally the requirement of a national diploma does not appear to constitute an obstacle to the exercise of freedom of establishment going beyond what is necessary to guarantee the security of individuals before the law and to ensure the proper public administration of justice. Indeed, no method is better suited than this requirement to ensuring that the foreign professional gives proof of a sufficient knowledge of the language of the country in which he wishes to practise his profession and of the legal system, in particular the law of procedure, of that country.

Starting from a case as special as that of the appellant in the main action, the Court cannot lay down a decision having general applicability to the whole of such a complex subject.

(d) At all events, the Court should not modify the case-law established in the Reyners case by a judgment of principle which can be generalized to the whole of the subject.

Even if it is true that Advocates' studies, if not the profession, are not organized very differently from one Member State to another the same does not apply to a large number of other activities. For these, a precise 'legal policy' is still indispensable for harmonizing the factual situations, of which diplomas are only the reflection. Generally speaking, for most of the professions affected by the right of establishment, the field of practical activities which correspond thereto never coincides from one Member State to another and sometimes even applies to situations which in reality are very different. The organization of the studies, which the diplomas evidence, also varies considerably from one Member State to another, both as regards the syllabus and the length of the course.

If Article 52 of the EEC Treaty were to be applicable notwithstanding the absence of directives, most of the activities affected by the right of establishment would be liable to be disorganized thereby. A particular case of a very special nature should not be used as a criterion for regulating in its entirety the subject of the recognition of diplomas, which taken as a whole is an extremely complex one.

The *Government of the United Kingdom* stresses that the question referred to the Court of Justice is such as to raise problems of a general nature on the recognition of foreign diplomas and that any decision tending to rule on those problems in a general way would be inappropriate.

(a) In the United Kingdom, access to the legal professions is governed by the professions themselves, according to particular procedures. Moreover, the legal order of the United Kingdom differs considerably from that of most of the Member States, so that, with certain exceptions, a diploma conferred by a continental university does not provide a solid basis for admission to any legal profession in the United Kingdom.

(b) Article 57 of the EEC Treaty provides for the adoption of directives relating to mutual recognition of official diplomas. One essential precondition for mutual recognition is that the diplomas in question should be equivalent regarding the subject, the experience and the level of knowledge which they sanction. Such equivalence can be attained by directives aimed at coordinating conditions of training and ensuring that these correspond to a large extent. In the absence of such directives recognition of foreign diplomas with a view to exercising a right of establishment or of freedom to provide services under the Treaty cannot be demanded — except in so far as it is already expressly authorized by national legislation. In that case, any discrimination on the basis of nationality, be it the nationality of the holder of the diploma or the nationality of the university, would obviously be incompatible with the provisions of the Treaty.

The *Commission of the European Communities* points out that the question raised in this case which was not dealt with by the Court's decision in the Reyners case consists of determining more precisely what is the nature of the 'restrictions' on the freedom of establishment which are prohibited by Article 52 of the EEC Treaty; in particular, is such a restriction constituted by a legislative obstacle to recognizing that a foreign diploma, recognized in the host country as an equivalent qualification, has civil effect, giving access to a specific profession?

(a) It follows from the spirit and the system of the Treaty, and more particularly from the provisions of the chapter on freedom of establishment, that such a rule does constitute a restriction which falls under Article 52 and that therefore it cannot be applied against a national of another Member State.

Freedom of establishment is a fundamental right conferred on all the citizens of the Member States. Any limitations on this fundamental right must be interpreted strictly and can be applied against them only if they are objectively justified.

The implementation of Article 52 is not conditional upon the adoption of directives under Article 57. The purpose of such directives is to lay down measures 'intended to assist the effective exercise of the right of

establishment. Therefore the role of such directives is only subsidiary, even if that role may be indispensable in certain circumstances.

The only purpose of mutual recognition of diplomas is to remove the obstacle deriving from the legitimate concern of a Member State to restrict access to certain professions to persons giving proof of specific professional qualifications, confirmed by diploma, by means of assuring that Member State that the professional qualifications acquired in another Member State are equivalent. If that result was obtained by other means, in particular by national measures, a directive would not be necessary to ensure the effective exercise of the right of establishment.

If a person having the right of establishment proves by means of documents issued in the host country by institutions authorized to do so that he has received legal education abroad equivalent to that sanctioned by the licentiate's degree in the host country, and that on the basis of that equivalence he has been allowed to sit and has passed an examination preparing specially for the profession of Advocate, then any directive on mutual recognition under Article 57 (1) is superfluous and cannot be a prerequisite for the exercise of his right of establishment.

In these circumstances, the formal requirement of a diploma issued by an educational institution of the host country no longer has any objective justification and must be considered as a restriction within the meaning of Article 52.

(b) The objections which can be raised against this analysis are not cogent.

This is true in the case of the statement, based on a rigid application of the principle of equal treatment with nationals, that a French national holding a foreign diploma recognized as an equivalent qualification in the same circumstances as the diploma of the appellant in the main action could not be admitted to a French Bar, that therefore there is no prohibited discrimination and that, on the contrary, the French national risks being the victim of a reverse discrimination.

In fact, the argument to the effect that a national cannot invoke the EEC Treaty against obstacles raised to his establishment in his own country is, to say the least, debatable. This restrictive view does not take into account the general objectives of the Treaty as regards the free movement of persons. For the application of Article 57 (1), the Council has confirmed the view propounding the objective nature of the recognition of diplomas. Freedom of establishment, in particular for holders of diplomas obtained in other countries of the Community, must be ensured on the same terms for nationals of other Member States and for nationals of the Member State in question.

In any case, discriminations on the basis of nationality are not only overt discriminations, but can also be disguised discriminations. It follows both from the case-law of the Court and from Title III (B) of the general programme for the abolition of restrictions on freedom of establishment of the Council of 18 December 1961 (JO, 15.1.1962, p. 36), that the conditions to which the right to take up or pursue activities as a self-employed person is made subject by any law, regulation or administrative action and which, although applicable irrespective of nationality, mainly or exclusively impede foreigners in the taking up and pursuing of such activities, constitute restrictions within the meaning of Article 52 of the Treaty. The requirement of a French diploma is in fact a condition which impedes almost exclusively, and at all events mainly, nationals of the other Member States.

Since the right of establishment is an individual right, it is incumbent upon the court making the reference to examine each particular situation. In the present case, everything indicates that the appellant in the main action has a knowledge of French law which makes him perfectly qualified to practise the profession of Advocate in France. The holding of the Certificat d'Aptitude à la Profession d'Avocat (qualifying certificate for the profession of Advocate), a French diploma issued under the conditions laid down by French legislation for French nationals, can only reinforce the conclusion that in such a case Article 52 must be fully and completely applied independently of whether the Council has previously adopted directives on mutual recognition under Article 57 (1) of the Treaty.

The distinction between the academic equivalence of diplomas and their civil effect in relation to taking up a specific profession is also irrelevant. According to the Decree of 15 February 1921 on qualifications equivalent to the level of licentiate with a view to the doctorate the recognition of a qualification as equivalent to the licentiate's degree in law is granted only with a view to the doctorate and cannot confer any right to the licentiate's diploma. However this distinction is no longer compatible with Articles 52 and 57 of the EEC Treaty. The spirit of Article 57 (1) implies that recognized diplomas have equivalent value. Under the system of the Treaty, the legitimate interest of the Member States in protecting access to certain activities or professions against foreigners is justified only by the necessity of restricting such access to persons possessing knowledge and qualifications equivalent to those which are acquired through the education given in the national institutions and which are required of their own nationals. For the purpose of protecting that interest, it is of little importance whether or not that knowledge and those qualifications are recognized in national law to have a formal civil effect. Mutual recognition is closely bound up with equivalence of knowledge acquired.

Moreover it is odd to note that, in the present case, the recognition of equivalence granted to the appellant in the main action was not for the purpose of enrolling for the studies for a doctorate in the law faculties, but for the purpose of entering upon the special education for the profession in question and leading up to the Certificat d'Aptitude à la Profession d'Avocat (CAPA) (qualifying certificate for the profession of Advocate). Although it does not confer a right to enter the profession the obtaining of the CAPA without any doubt constitutes confirmation of fitness to practise that profession in France and consequently the appropriate knowledge of the substantive law and the procedure of that country.

(c) Therefore the question referred by the Cour d'Appel, Paris, should be answered in the following terms:

When a national of one Member State desirous of exercising the profession of Advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the university authority of the country of establishment and which has enabled him to sit in the latter country the Advocate's professional qualifying examinations, the act of demanding the national diploma prescribed by the law of the country of establishment constitutes, even in the absence of the directives provided for in Article 57 (1) and (2) of the EEC Treaty, a restriction within the meaning of Article 52 of that Treaty, in that such demand goes beyond what is objectively necessary to ensure that the national rules on admission to the profession of Advocate are observed.

At all events, such a demand constitutes a disguised discrimination, in that, although it does not formally take nationality into account, it impedes mainly or exclusively nationals of the other Member States.

III — Oral procedure

Mr Thieffry, the appellant in the main action, represented by Robert Collin, Advocate of the Paris Bar, the Conseil de l'ordre des avocats à la Cour de Paris (The Paris Bar Council), represented by Simon Gueullette, Advocate of the Paris Bar, and the Commission of the European Communities, represented by its Legal Adviser, Paul Leleux, presented oral argument and answered questions asked by the Court at the hearing on 2 December 1976.

The Advocate-General presented his opinion at the hearing on 29 March 1977.

Decision

1 By order of 13 July 1976, lodged at the Court Registry on 19 July 1976, the Cour d'Appel, Paris, put to the Court, under Article 177 of the EEC Treaty, a question concerning the interpretation of Article 57 of the Treaty, which relates to the mutual recognition of evidence of professional qualifications for the purposes of access to activities as self-employed persons, with regard in particular to admission to exercise the profession of advocate.

2 The case before the Cour d'Appel concerns the admission to the Ordre des Avocats auprès de la Cour de Paris (the Paris Bar) of a Belgian advocate, who is the holder of a Belgian diploma of Doctor of Laws which has been recognized by a French university as equivalent to the French licenciate's degree in law, and who subsequently obtained the 'Certificat d'Aptitude à la Profession d'Avocat' (qualifying certificate for the profession of advocate), having sat and passed that examination, in accordance with French legislation.

3 The appellant in the main action applied for admission to the Paris Bar, but by an order of 9 March 1976 the Conseil de l'Ordre (Bar Council) rejected his application on the ground that the person concerned 'offers no French diploma evidencing a licentiate's degree or a doctor's degree'.

4 It appears from the wording of that decision that the application for admission was refused solely by reason of the fact that, although the person concerned had obtained university recognition of the equivalence of his basic diploma and furthermore had acquired the Certificat d'Aptitude à la Profession d'Avocat, that was not enough for him to be treated in the same way as a holder of the diploma of the licentiate's degree or doctor's degree within the meaning of French legislation.

5 According to the Conseil de l'Ordre, although the effect of the Treaty is to abolish any discrimination on grounds of nationality in this field, the equivalence of diplomas does not follow automatically from the application of its provisions, since such equivalence can result only from directives concerning recognition adopted pursuant to Article 57 of the Treaty, which do not yet exist for the profession of advocate.

6 The person concerned appealed to the Cour d'Appel against the order of the Conseil de l'Ordre and the Cour d'Appel put to the Court a question in the following terms:

'When a national of one Member State desirous of exercising the profession of advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the university authority of the country of establishment and which has enabled him to sit in the latter country the advocate's professional qualifying examinations — which he has passed — does the act of demanding the national diploma prescribed by the law of the country of establishment constitute, in the absence of the directives provided for in Article 57 (1) and (2) of the Treaty of Rome, an obstacle to the attainment of the objective of the Community provisions in question?'

7 Under Article 3 of the Treaty, the activities of the Community include, *inter alia*, the abolition of obstacles to freedom of movement for persons and services.

8 With a view to attaining this objective, the first paragraph of Article 52 provides 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.

9 Under the second paragraph of the same article, freedom of establishment includes the right to take up 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.

10 Article 53 emphasizes the irreversible nature of the liberalization achieved in this regard at any given time, by providing that Member States shall not introduce any new restrictions on the right of establishment in their territories of nationals of other Member States.

11 With a view to making it easier for persons to take up and pursue activities as self-employed persons, Article 57 assigns to the Council the duty of issuing directives concerning, first, the mutual recognition of diplomas, and secondly, the coordination of the provisions laid down by law or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons.

12 That article is therefore directed towards reconciling freedom of establishment with the application of national professional rules justified by the general good, in particular rules relating to organization, qualifications, professional ethics, supervision and liability, provided that such application is effected

without discrimination.

13 In the General Programme for the abolition of restrictions on freedom of establishment, adopted on 18 December 1961 pursuant to Article 54 of the Treaty, the Council proposed to eliminate not only overt discrimination, but also any form of disguised discrimination, by designating in Title III (B) as restrictions which are to be eliminated, 'Any requirements imposed, pursuant to any provision laid down by law, regulation or administrative action or in consequence of any administrative practice, in respect of the taking up or pursuit of an activity as a self-employed person where, although applicable irrespective of nationality, their effect is exclusively or principally to hinder the taking up or pursuit of such activity by foreign nationals' (OJ, English Special Edition, Second Series, IX, p. 8).

14 In the context of the abolition of restrictions on freedom of establishment, that programme provides useful guidance for the implementation of the relevant provisions of the Treaty.

15 It follows from the provisions cited taken as a whole that freedom of establishment, subject to observance of professional rules justified by the general good, is one of the objectives of the Treaty.

16 In so far as Community law makes no special provision, these objectives may be attained by measures enacted by the Member States, which under Article 5 of the Treaty are bound to take 'all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community', and to abstain 'from any measure which could jeopardize the attainment of the objectives of this Treaty'.

17 Consequently, if the freedom of establishment provided for by Article 52 can be ensured in a Member State either under the provisions of the laws and regulations in force, or by virtue of the practices of the public service or of professional bodies, a person subject to Community law cannot be denied the practical benefit of that freedom solely by virtue of the fact that, for a particular profession, the directives provided for by Article 57 of the Treaty have not yet been adopted.

18 Since the practical enjoyment of freedom of establishment can thus in certain circumstances depend upon national practice or legislation, it is incumbent upon the competent public authorities — including legally recognized professional bodies — to ensure that such practice or legislation is applied in accordance with the objective defined by the provisions of the Treaty relating to freedom of establishment.

19 In particular, there is an unjustified restriction on that freedom where, in a Member State, admission to a particular profession is refused to a person covered by the Treaty who holds a diploma which has been recognized as an equivalent qualification by the competent authority of the country of establishment and who furthermore has fulfilled the specific conditions regarding professional training in force in that country, solely by reason of the fact that the person concerned does not possess the national diploma corresponding to the diploma which he holds and which has been recognized as an equivalent qualification.

20 The national court specifically referred to the effect of a recognition of equivalence 'by the university authority of the country of establishment', and in the course of the proceedings the question has been raised whether a distinction should be drawn, as regards the equivalence of diplomas, between university recognition, granted with a view to permitting the pursuit of certain studies, and a recognition having 'civil effect', granted with a view to permitting the pursuit of a professional activity.

21 It emerges from the information supplied in this connexion by the Commission and the governments which took part in the proceedings that the distinction between the academic effect and the civil effect of the recognition of foreign diplomas is acknowledged, in various forms, in the legislation and practice of several Member States.

22 Since this distinction falls within the ambit of the national law of the different States, it is for the national authorities to assess the consequences thereof, taking account, however, of the objectives of Community law.

23 In this connexion it is important that, in each Member State, the recognition of evidence of a professional qualification for the purposes of establishment may be accepted to the full extent compatible with the observance of the professional requirements mentioned above.

24 Consequently, it is for the competent national authorities, taking account of the requirements of Community law set out above, to make such assessments of the facts as will enable them to judge whether a recognition granted by a university authority can, in addition to its academic effect, constitute valid evidence of a professional qualification.

25 The fact that a national legislation provides for recognition of equivalence only for university purposes does not of itself justify the refusal to recognize such equivalence as evidence of a professional qualification.

26 This is particularly so when a diploma recognized for university purposes is supplemented by a professional qualifying certificate obtained according to the legislation of the country of establishment.

27 In these circumstances, the answer to the question referred to the Court should be that when a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

Costs

28 The costs incurred by the Government of the French Republic, the Government of the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

29 As these 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 Cour d'Appel, Paris, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Cour d'Appel, Paris, by a judgment delivered in chambers on 13 July 1976, hereby rules:

When a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

Kutscher
Donner

Pescatore
Mertens de Wilmars
Sørensen
Mackenzie Stuart
O'Keeffe
Bosco
Touffait

Delivered in open court in Luxembourg on 28 April 1977.

A. Van Houtte
Registrar
H. Kutscher
President

1 — Language of the Case: French.