ORDER OF THE COURT
OF 18 JUNE 1980 [1]

Jules Borker
(preliminary ruling requested by the Conseil de l'Ordre des Avocats à la Cour de Paris)

"Reference for a preliminary ruling — Bar Council"

Case 138/80

Preliminary rulings — Reference to the Court — National court within the meaning of Art. 177 of the Treaty — Concept
(EEC Treaty, Art. 177)

A reference cannot be made to the Court in pursuance of Article 177 of the EEC Treaty except by a court or tribunal which is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature. That is not the case where a Conseil de l'Ordre des Avocats [Bar Council] has before it, not a case which it is under a legal duty to try, but a request for a declaration relating to a dispute between a member of the Bar and the courts or tribunals of another Member State.

In Case 138/80

(Reference for a preliminary ruling requested by the Conseil de l'Ordre des Avocats à la Cour de Paris)

JULES BORKER

1 — Language of the Case: French.

1. By a decision of 27 May 1980, which was received at the Court on 9 June 1980, the Conseil de l'Ordre des Avocats à la Cour de Paris [Bar Council of the Cour de Paris], referring to Article 177 of the EEC Treaty, submitted to the Court for a preliminary ruling a question on the interpretation of Article 59 *et seq.* of the EEC Treaty and of Council Directive No 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of the freedom to provide services (Official Journal L 78, p. 17).

2. The decision in question states that Jules Borker, a member of the Paris Bar, has asked the Conseil de l'Ordre to determine "the conditions for the pursuit of his activities as a lawyer by way of provision of services before any of the courts of a Member State" following a decision by one of the Principal Criminal Chambers of the Landesgericht Köln [Regional Court, Cologne] refusing to allow him to appear on behalf of a civil party in criminal proceedings. It appears from the file that the civil party lodged a complaint with the Oberlandesgericht Köln [Higher Regional Court, Cologne], and that that court confirmed the decision of the Landgericht by an order of 23 January 1980 and declared that Directive No 77/249 was "not to be regarded as forming part of national law". In those circumstances the Conseil de l'Ordre stated that "it appears to be advisable, before giving a decision on this request", to refer to the Court of Justice of the European Communities on the basis of Article 177 of the Treaty a question worded as follows:

"Taking into consideration the provisions of Article 59 *et seq.* of the EEC Treaty read together with Council Directive of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, are they, having regard to their nature, general scheme and wording, provisions which confer on individuals rights which they may enforce in the courts of a Member State and which national courts must protect, notwithstanding the fact the Member State to whom it has been addressed has not adopted the measures necessary to comply with the directive within the periods which it was allowed and may a lawyer of a Member State within the meaning of Article 2 of Council Directive of 22 March 1977, who has been duly called to the Bar of the Member State from which he comes validly plead before the court of the host Member State that that directive has direct effect, even though that Member State has not adopted the measures necessary to comply with the said directive within the period allowed in Article 8, for the purpose of pursuing the activities of a lawyer by way of provision of services, when he has in fact appeared together with a lawyer practising at the court of the host State who has been briefed to represent the parties?"

3. Under Article 177 of the EEC Treaty the Court of Justice has jurisdiction to give preliminary rulings concerning the interpretation of the Treaty and of acts of the institutions of the Community. The second paragraph of the article adds that: "Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon."

4. It is apparent from that provision that the Court can only be requested to give a preliminary ruling under Article 177 by a court or tribunal which is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature. That is not the position in this case since the Conseil de l'Ordre does not have before it a case which it is under a legal duty to try but a request for a declaration relating to a dispute between a member of the Bar and the courts or tribunals of another Member State.

5. It is therefore clear that the Court has no jurisdiction to give a ruling in connexion with the decision sent to it by the Conseil de l'Ordre des Avocats à la Cour de Paris.

6. In these circumstances there are grounds for the Court to apply Article 92 of the Rules of Procedure as amended on 12 September 1979 (Official Journal L 238, p. 1) and to declare of its own motion that it has no jurisdiction.

On those grounds,

Upon hearing the Advocate General,

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

hereby orders as follows:

The Court of Justice of the European Communities has no jurisdiction to answer the question referred to it by the Conseil de l'Ordre des Avocats à la Cour de Paris by its decision of 27 May 1980.

Luxembourg, 18 June 1980.

A. Van Houtte
Registrar

H. Kutscher
President