JUDGMENT OF THE COURT OF 24 NOVEMBER 1977 [1]

Jean Razanatsimba (preliminary ruling requested by the Cour d'Appel, Douai)

'Right of establishment of nationals of ACP States'

Case 65/77

Freedom of establishment — ACP-EEC Lomé Convention — Right of establishment — National of an ACP State — Profession of Advocate — Rule as to non-discrimination — Requirement of the nationality of the State concerned — Permissibility — More favourable treatment reserved to the nationals of another ACP State by virtue of an international agreement — Absence of discrimination (ACP-EEC Convention, Article 62)

Article 62 of the ACP-EEC Convention signed at Lomé on 28 February 1975 between the African, Caribbean and Pacific States of the one part and the European Economic Community of the other part does not purport to provide equality of treatment between nationals of an ACP State and those of a Member State of the EEC; more particularly, it does not oblige either the ACP States or the Member States of the EEC to give to the nationals of a State belonging to the other group treatment identical to that reserved to their own nationals.

It is not contrary to the rule as to non-discrimination laid down in Article 62 for a Member State to reserve more favourable treatment to the nationals of one ACP State, provided that such treatment results from the provisions of an international agreement comprising reciprocal rights and advantages.

Article 62 of the Lomé Convention does not give a national of an ACP State the right to establish himself in the territory of a Member State of the EEC without any condition as to nationality, in so far as the right to practise professions reserved by the legislation of that State to its own nationals is concerned.

In Case 65/77

Reference to the Court under Article 177 of the EEC Treaty by the Cour d'Appel, Douai, for a preliminary ruling in the proceedings commenced before that court consequent upon the application by

1 — Language of the Case: French.

JEAN RAZANATSIMBA, graduate in law, Advocate's assistant, residing at Lille,

to be admitted to pupillage at the Lille Bar, on the interpretation of Article 62 of the ACP-EEC Convention signed at Lomé on 28 February 1975 between the African, Caribbean and Pacific States of the one part and the European Economic Community of the other part.

THE COURT

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

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts of the case, the course of the proceedings 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

In June 1974, Jean Razanatsimba, a Madagascan national, graduated in law at the Faculté de Droit (Law Faculty) Lille; in November 1975, at the Faculté de Droit, Amiens, he took and passed the examination for the Certificat d'Aptitude à la Profession d'Avocat (CAPA) (qualifying certificate for the profession of Advocate).

On 9 February 1976, Mr Razanatsimba applied to the Conseil de l'Ordre des Avocats au Barreau de Lille (Lille Bar Council) to be admitted to pupillage at that Bar.

By a decision of 14 December 1976, the Conseil de l'Ordre des Avocats au Barreau de Lille found that Mr Razanatsimba fulfilled the legal conditions enabling him to seek admission to pupillage, except for the condition of nationality.

Article 11 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) provides:

No-one may enter the profession of Advocate unless he fulfils the following conditions:

1. he must be French, and for this purpose account must be taken of international agreements;

...

Against this provision, Mr Razanatsimba invoked *inter alia* Article 62 of the ACP-EEC Convention signed at Lomé on 28 February 1975 between the African, Caribbean and Pacific States of the one part and the European Economic Community of the other part (Council Regulation No 199/76 of 30 January 1976 on the conclusion of the ACP-EEC Convention of Lomé; OJ L 25, p. 1), which is in the following terms:

As regards the arrangements that may be applied in matters of establishment and provision of services, the ACP States on the one hand and the Member States on the other shall treat nationals and companies or firms of Member States and nationals and companies or firms of the ACP States respectively on a non-discriminatory basis. However, if, for a given activity, an ACP State or a Member State is unable to provide such treatment, the Member States or the ACP States, as the case may be, shall not be bound to accord such treatment for this activity to the nationals and companies or firms of the State concerned.

Therefore, by its decision of 14 December 1976, the Conseil de l'Ordre du Barreau de Lille decided to request the Court of Justice to give a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of Article 62 of the Lomé Convention.

The reference by the Conseil de l'Ordre for a preliminary ruling was registered at the Registry of the Court of Justice on 6 January 1977 under No 3/77.

On 25 March 1977, the Procureur Général at the Cour d'Appel, Douai, appealed against the decision of the Conseil de l'Ordre before the Cour d'Appel, Douai.

By a judgment of 18 May 1977, the Cour d'Appel, sitting in the form of Chambre de Conseil, in plenary session composed of the first two Chambers, annulled the decision of the Conseil de l'Ordre, on the grounds that the Conseil de l'Ordre is not an ordinary court of law, that when it gives a ruling on admission to pupillage it is acting in an administrative capacity and not as a court, and that therefore it is not empowered to make a direct reference for a preliminary ruling to the Court of Justice.

By the same judgment, the Cour d'Appel, Douai, 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 questions:

1. Does Article 62 of the Lomé Convention of 28 February 1975 give a national of an ACP State, and in particular a person of Madagascan nationality, the right to establish himself in the territory of a Member State, and in particular in French territory, without any condition as to nationality?
2. Does the reservation contained in the abovementioned Article 62 allow a Member State to require the nationality of such State or that of another Member State for the pursuit of a specific activity, in the present case the profession of Advocate?

The judgment of the Cour d'Appel, Douai, was registered at the Registry of the Court on 27 May 1977.

By an order of 15 June 1977, the Court found that Case 3/77, concerning the reference by the Conseil de l'Ordre du Barreau de Lille for a preliminary ruling, had become devoid of purpose and ordered it to be removed from the register.

In accordance with Article 20 of the Protocol on the Statute of the Court of

Justice of the EEC, written observations were submitted on 11 July 1977 by Mr Razanatsimba, on 27 July by the Government of the French Republic and on 1 August by the Commission of the European Communities.

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 inquiry.

II — Written observations submitted to the Court

Jean Razanatsimba analyses Article 62 of the Lomé Convention as follows:

(a) That provision cannot be interpreted as laying down merely the principle of non-discriminatory treatment, and not treatment as nationals in matters of establishment: the EEC Treaty lays down the same principle as the Convention; and in its judgment of 21 June 1974 (Case 2/74, *Reyners* v *Belgian State* [1974] ECR 631) the Court of Justice has held that the rule on equal treatment with nationals is one of the fundamental legal provisions of the Community and is capable of being directly invoked by nationals of all the other Member States.

Moreover, the fact that the bilateral Franco-Madagascan agreements make no provision for matters of establishment can be interpreted as expressing the intention of dispensing with a separate agreement and implicitly referring to the Lomé Convention in such matters.

Article 62 of the Lomé Convention constitutes a clear and complete provision, capable of producing direct effects, in so far as it is a settled principle that treaties take precedence over internal laws.

(b) Since the reservation contained in the second sentence of Article 62 is an exception to freedom of establishment, it must be interpreted strictly.

Therefore, France must be *absolutely* unable to provice equal treatment with nationals; and, in view of the nature of the Convention, such inability must be of an economic kind.

It is legitimate to take the view that the intention of the contracting parties, in particular the ACP States, in adopting that reservation was to give priority to ensuring social advancement for their own nationals, in particular as regards access to the Liberal professions.

(g) Therefore the Court should rule that Article 62 of the Lomé Convention is an exception within the meaning of Article 11 (1) of the Law of 31 December 1971 reforming certain legal and judicial professions, and that it gives a national of an ACP State, and in particular a person of Madagascan nationality, the right to establish himself in the territory of a Member State of the EEC, and in particular in French territory, without any condition as to nationality.

The *Government of the French Republic*, for its part, puts forward in essence the following arguments:

(a) As regards the first question

In matters of establishment, Article 62 of the Lomé Convention provides merely that non-discriminatory treatment shall be applied; it does not impose an obligation on the States to treat nationals of the other party as their own nationals.

The non-discrimination in question is concerned with the treatment applied to nationals of different States making up one group of contracting parties by the States making up the other group: the first sentence of Article 62 does not allow different treatment to be applied to nationals of two different ACP States, and conversely does not allow an ACP State to subject nationals of different Community Member States to different rules.

That interpretation is confirmed by numerous international instruments which deal with such matters.

It is obvious that this is the meaning which the authors of the Lomé Convention intended to give to provision at issue: if it were otherwise, the word 'respectively' in the first sentence of Article 62 would be meaningless.

The answer to the first question referred to the Court should be in the negative.

(b) As regards the second question

The second sentence of Article 62 of the Lomé Convention expressly deals with the case where a State may be unable to provide such non-discriminatory treatment for a given activity; is also stipulates that, in such case, the other party concerned shall, for its part, not be bound to apply such treatment to the nationals of the State in question.

That provision makes it possible, where necessary, for a State not to apply equal treatment, for certain occupations, to all of the nationals of the other party and therefore to make the right to take up certain activities subject to different particular conditions. The provision also allows different treatment to be applied in such matters to nationals of different ACP States, and it concerns the condition of nationality only in so far as such different treatment is applied.

Moreover, the following considerations should be taken into account:

Developing countries, and in particular the ACP countries, are in general opposed to mass emigration of their skilled personnel and the establishment of that personnel in developed countries. International organizations, for their part, are concerned to prevent mass emigration of skilled personnel from developing countries. Several African countries (for example Senegal and Gabon), which are parties to the Lomé Convention and which had concluded establishment agreements with France providing for reciprocal treatment of the nationals of the other party as their own nationals, have renegotiated those agreements or have asked to renegotiate them, so as to substitute the principle of non-discriminatory treatment for that of treatment as nationals; other countries (Congo, Mali) have made a point of negotiating fresh establishment agreements which, on the one hand, continue to provide that equal treatment with nationals should be applied but, on the other hand, specify that such treatment may be derogated from whenever economic considerations justify it. In June 1973, Madagascar for its part denounced the previous agreements providing that, in relations between the two countries, equal treatment with nationals should be applied; up to the present, relations between Madagascar and France concerning establishment are not governed by any specific instrument.

In working out, drafting and adopting Article 62 of the Lomé Convention, the various interested parties were guided by concerns of this kind; and the article must be construed accordingly.

The interpretation of Article 62 which Mr Razanatsimba proposes is such as to give rise to serious difficulties for the ACP States: it would probably lead those States to bring up the question thus raised at the Council of Ministers, either on the basis of Article 64 of the Convention, as one of the problems raised by the application of Article 62, or in accordance with the procedures laid down in Article 81 of the Convention, as a dispute concerning the interpretation of the Convention.

The *Commission of the European Communities* submits in essence the following observations:

(a) As regards the jurisdiction of the Court of Justice

On several occasions, the Court of Justice has asserted that it has

jurisdiction to interpret international agreements which 'are binding on' the Community, whether they are agreements which the Community has concluded itself within the area of and by virtue of its own powers, or agreements, such as the General Agreement on Tariffs and Trade (GATT), which have been signed by the Member States alone but in areas in which powers were transferred from those States to the Community by virtue of the Treaty.

The legal basis of that jurisdiction to give interpretations resides in the fact that an agreement concluded by the Council on behalf of the Community in accordance with Article 228 of the Treaty, is, as regards the Community, an act of one of the institutions of the Community within the meaning of Article 177.

The Court's jurisdiction to give interpretations cannot exceed the limits of the Community legal order; consequently, that jurisdiction is confined to assessing the legal effects which provisions of international law binding on the Community may produce within that legal order. In this case, the questions referred to the Court bear directly on the interpretation of a provision of international law binding on the Community: the ACP-EEC Convention of Lomé was concluded by the Council in accordance with Articles 228 and 238 of the Treaty, as appears from Council Regulation No 199/76; it was published, at the same time as that regulation, in the Official Journal (L 25 of 30. 1. 1976); in accordance with Article 87 (1), the Convention entered into force on 1 April 1976; it has not been denounced pursuant to Article 92.

The purpose of the questions referred to the Court is in substance to obtain a ruling whether the provision of international law in question, namely Article 62 of the Lomé Convention, has imposed an obligation on the Community and the Member States which is of such a kind as to confer on individuals a right which they can enforce in the courts. Therefore the Court has jurisdiction under Article 177 to give the interpretation which is requested of it.

(b) As regards the interpretation of Article 62 of the Lomé Convention

The Lomé Convention was concluded in order to favour the development and social progress of the ACP States, within the framework of a 'new model for relations between developed and developing States, compatible with the aspirations of the international community towards a more just and more balanced economic order'. In that spirit, the Convention comprises unequal obligations on the two parties, the Community and Member States on the one hand, and the ACP States on the other: the advantages conferred upon the ACP States by the Community by far outweigh the obligations undertaken by the ACP States towards the Community, and in certain particular areas the concessions made by the Community have been granted without any *quid pro quo*. This material imbalance between the obligations of the parties does not affect the question of the direct effect of the provisions of the Convention.

The fact that the Lomé Convention was concluded by the Community by way of a regulation is also not decisive: the direct effect which a provision of international law binding on the Community may produce within the Community legal order depends only on the actual nature of the obligation imposed upon the Community by that provision.

The Convention comprises a whole set of provisions of different kinds; any direct effect which they may have must be assessed by way of an individual study of each of those provisions, and the spirit and structure of the Convention as a whole can come into such an examination only as a secondary consideration.

Article 62 is one of the few provisions of the Convention which provide for entirely reciprocal implementation measures by both parties.

It imposes an obligation on the Member States, in matters of establishment, to treat nationals and companies or firms of all the ACP States on a non-discriminatory basis, and imposes an analogous obligation upon the ACP States with regard to nationals and companies or firms of all the Member States. However, that obligation is subject to an express reservation, which leaves it to each Member State and each ACP State to determine whether or not, for a given activity, it is able to provide the non-discriminatory treatment provided for by the article. Any Member State or ACP State which considers that, for the activity concerned, it is unable to apply such non-discriminatory treatment is not guilty of any infringement of the Convention; it merely exposes itself to the risk of a retaliatory measure by the other party. It is a system of 'negative reciprocity'. Therefore Article 62 does not impose upon the Community and the Member States an unconditional obligation, enforceable in the courts; thus no question of its direct effect can arise.

At all events, even if the principle of non-discrimination laid down in Article 62 were not subject to an express reservation, the obligation which it imposed on the Member States could not give nationals of the ACP States a right which they could effectively enforce in the courts to establish themselves in a Member State for the purpose of pursuing activities as self-employed persons there, in cases where the pursuit of such activities is conditional upon being of the nationality of that Member State or another Member State. In fact, Article 62 merely provides that Member States must as a general rule treat nationals and companies or firms of the different ACP States in the same way; it does not forbid them to apply, in matters of establishment, different treatments on the one hand to nationals and companies or firms of the ACP States, and on the other to their own nationals and companies or firms or those of the Member States. Article 62 does not impose any obligation on the Member States to accord either the national (or Community) treatment, or most-favoured third-nation treatment, to nationals and companies or firms of the ACP States. Each Member State remains entirely free to apply or not to apply one or other of these kinds of treatment to nationals and companies or firms of the ACP States, or to apply other less liberal arrangements to them, either under its own legislation or under bilateral agreements concluded with the ACP States.

This interpretation not only follows from the actual terms of Article 62 of the Convention; it also accords with the spirit of the Convention: it is inconceivable that the ACP States could have envisaged according either the national treatment or the same treatment which they provide for nationals and companies or firms of other developing countries, whether members of the ACP group or not, to the nationals and companies or firms of the Member States.

Moreover, Article 62 of the Lomé Convention remains consistent with the provisions of the Yaoundé Conventions of 1963 and 1969 on the right of establishment; those Conventions also confined themselves to laying down the principle, subject to a reservation of 'negative reciprocity', that the Associated States should accord non-discriminatory treatment to the nationals and companies or firms of the Member States, without pre-determining in what such treatment consisted.

(c) Therefore the questions referred by the Cour d'Appel, Douai, may be answered as follows:

Article 62 of the Lomé Convention does not of itself give nationals of ACP States

any right which they can enforce in the courts to establish themselves in the territory of a Member State for the purpose of pursuing a given activity as self-employed persons there and in particular the profession of Advocate, if they are not of the nationality of that State or of that of another Member State, and the legislation of the Member State concerned may lay down such condition without contravening the provisions of the said Article 62.

III — Oral procedure

The Government of the French Republic, represented by Noël Museux, Legal Adviser at the Direction des Affaires Juridiques (Legal Department) of the Ministère des Affaires Etrangères (Ministry of Foreign Affairs), and the Commission, represented by its Legal Adviser, Jean Groux, presented oral argument and answered questions asked by the Court at the hearing on 18 October 1977.

With regard to the conventions concluded between France and several African States which are parties to the Lomé Convention, the *Government of the French Republic* stated that at the present time there were establishment conventions with the Congo (Establishment Convention of 11 August 1960), the Central African Republic (Establishment Convention of 15 August 1960), Gabon (Establishment Convention of 17 August 1960) and Togo (Establishment Convention of 10 July 1963); for the purposes of entering and practising the liberal professions, those establishment conventions provide in principle for equal treatment with nationals. Judicial conventions have been concluded by France with Togo (Judicial Convention of 10 July 1963) and with Mauritania (Judicial Convention of 19 June 1961); the lastmentioned covered only the provision of services. As far as Madagascar in particular is concerned, the Franco-Madagascan Establishment Convention of 27 June 1960 has been abrogated and replaced by a Judicial Convention, dated 4 June 1973, covering only the provision of services.

The Advocate-General delivered his opinion at the hearing on 9 November 1977.

Decision

1 By a judgment of 18 Mai 1977, which was received at the Court on 27 May 1977, the Cour d'Appel, Douai, referred two questions to the Court under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of Article 62 of the Convention signed at Lomé on 28 February 1975 between the African, Caribbean and Pacific States of the one part and the European Economic Community of the other part, published as an annex to Council Regulation No 199/76 of 30 January 1976 (OJ L 25, p. 1), hereinafter referred to as 'the Lomé Convention', in relation to the right of establishment of Advocates in the French Republic.

2 It appears from the file that the applicant in the main proceedings, who is a Madagascan national and has a degree in law and a Certificat d'Aptitude à la

Profession d'Avocat (qualifying certificate for the profession of Advocate) obtained in accordance with French law, applied to be admitted to pupillage at the Lille Bar.

3 After finding, without prejudice to the usual inquiry and verifications, that the applicant had the professional qualifications enabling him to seek admission, the Conseil de l'Ordre (Bar Council) reserved its position on the application of the condition as to nationality which is laid down in the following terms by Article 11 of Law No 71.1130 of 31 December 1971 reforming certain legal and judicial professions (Journal Officiel de la République Française, 1972, p. 131): 'He must be French, and for this purpose account must be taken of international agreements'.

4 In that connexion the applicant sought to rely on Article 62 of the Lomé Convention, and by a decision of 14 December 1976 the Conseil de l'Ordre, invoking Article 177 of the EEC Treaty, requested the Court of Justice to give a preliminary ruling on two questions identical in content to the questions referred by the Cour d'Appel, Douai (Case 3/77, OJ C 40 1977, p. 8).

5 Pursuant to an appeal by the Procureur Général, the Cour d'Appel by the judgment aforesaid annulled the decision of the Conseil de l'Ordre on the grounds that when the Conseil de l'Ordre gives a ruling on admission to pupillage, it is acting in an administrative capacity but not as a court, and that therefore it is not empowered to make a reference for a preliminary ruling to the Court of Justice under Article 177 of the Treaty.

6 Consequently, by an order of 15 June 1977, the Court of Justice ordered Case 3/77 to be removed from the register (OJ C 185, p. 1).

7 It also results from the aforementioned judgment that, by virtue of the annulment of the decision of the Conseil de l'Ordre, the question of the applicant's admission to pupillage has devolved in its entirety upon the Cour d'Appel.

8 The national court found that the settlement of the case before it required an interpretation of Article 62 of the Lomé Convention, and referred for a preliminary ruling two questions in the following terms:

'1. Does Article 62 of the Lomé Convention of 28 February 1975 give a national of an ACP State, and in particular a person of Madagascan nationality, the right to establish himself in the territory of a Member State, and in particular in French territory, without any condition as to nationality?

2. Does the reservation contained in the abovementioned Article 62 allow a Member State to require the nationality of such State or that of another Member State for the pursuit of a specific activity, in the present case the profession of Advocate?'

The first question

9 Under Article 62 of the Lomé Convention, 'as regards the arrangements that may be applied in matters of establishment and provision of services, the ACP States on the one hand and the Member States on the other shall treat nationals and companies or firms of Member States and nationals and companies or firms of the ACP States respectively on a non-discriminatory basis. However, if, for a given activity, an ACP State or a Member State is unable to provide such treatment, the Member States or the ACP States, as the case may be, shall not be bound to accord such treatment for this activity to the nationals and companies or firms of the State concerned'.

10 In his written observations, the applicant in the main proceedings argues that the effect of Article 62 of the Lomé Convention is the same as that of the provisions of the EEC Treaty in matters of establishment, and seeks to rely upon the principles which form the basis of the judgment of the Court of 21 July 1974, Case 2/74, *Reyners* v *Belgian State* [1974] ECR 631.

11 However, the wording of Article 62 will not admit of such an interpretation.

12 In fact, that wording refers to the two groups of States bound by the Lomé Convention, the ACP States and the Member States of the EEC, and provides that any State belonging to one of the two groups shall treat nationals of any State belonging to the other group on a non-discriminatory basis.

13 On the other hand, the wording of the article does not purport to provide equality of treatment between nationals of an ACP State and those of a Member State of the EEC.

14 More particularly, that articles does not oblige either the ACP States or the Member States of the EEC to give to the nationals of a State belonging to the other group treatment identical to that reserved to their own nationals.

15 However, the foregoing conclusion leaves open the question whether nationals of an ACP State may be entitled, under the rules as to non-discrimination laid down in Article 62 of the Lomé Convention, to invoke the particular advantages accorded in matters of establishment by a Member State to other ACP States.

16 Indeed, it emerges from the information supplied by the French Government, at the request of the Court, that the French Republic has concluded with a small number of ACP States establishment conventions or judicial conventions based on reciprocal application of national treatment.

17 It was further stated that a judicial convention based on the principle of national treatment in matters of establishment of Advocates hitherto existed between the French Republic and the Malagasy Republic, but that on the initiative of the latter State, those provisions were subsequently replaced by a convention limited, as far as Advocates are concerned, to freedom to provide services in specific cases.

18 The existence of these particular arrangements, in relations between the French Republic and certain of the ACP States, raises the question whether the rule as to non-dicrimination laid down in Article 62 of the Lomé Convention should be read as providing for the same treatment to be given to a Madagascan national in France as that given to nationals of those ACP States which are so favoured.

19 In order to answer this question, it suffices to find that it is not contrary to the rule as to non-discrimination laid down in Article 62 for a Member State to reserve more favourable treatment to the nationals of one ACP-State, provided that such treatment results from the provisions of an international agreement comprising reciprocal rights and advantages.

20 Therefore the answer to the first question should be that Article 62 of the Lomé Convention does not give a national of an ACP State the right to

establish himself in the territory of a Member State without any condition as to nationality, in so far as the right to practise professions reserved by the legislation of that State to its own nationals is concerned.

The second question

21 A reply to the second question, which aims to specify the scope of the reservation contained in the second sentence of Article 62 of the Lomé Convention, would be necessary only if the effect of the interpretation of the first sentence of the said article had been to give national treatment to the nationals of ACP States, in regard to profession at issue.

22 In the event, such is not the case, and accordingly there is no need to answer the second question.

Costs

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

24 As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings commenced before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Cour d'Appel, Douai, by judgment of 18 Mai 1977, hereby rules:

Article 62 of the ACP-EEC Convention signed at Lomé on 28 February 1975 between the African, Caribbean and Pacific States of the one part and the European Economic Community of the other part does not give a national of an ACP State the right to establish himself in the territory of a Member State of the EEC

without any condition as to nationality, in so far as the right to practise professions reserved by the legislation of that State to its own nationals is concerned.

Kutscher Sørensen Bosco

Donner Mertens de Wilmars Pescatore O'Keeffe

Delivered in open court in Luxembourg on 24 November 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 9 NOVEMBER 1977 [1]

Mr President,
Members of the Court,

The exercise of the profession of advocate is governed in France by a Law of 31 December 1971 and the implementing provisions issued thereunder. The conditions laid down therein are *inter alia* the possession of French nationality, in so far as international agreements do not provide otherwise, the obtention of a Licence en Droit (degree in law) or a Doctorat en Droit (doctorate in law) and a Certificat d'Aptitude à la Profession d'Avocat (qualifying certificate for the profession of advocate) and finally admission to a Bar (barreau) which is always preceded by pupillage (stage). In principle there is a Bar, composed of all admitted advocates and pupils, at each Tribunal de Grande Instance (regional court competent to try major civil cases and less serious criminal cases). It is administered by a Conseil de l'Ordre elected by all admitted advocates. Its task is *inter alia* to decide applications for admission to pupillage and applications for admission to the Bar. An appeal may be brought before the Combined Chambers of the Cour d'Appel (Court of Appeal) against its decision.

Mr Razanatsimba, a Madagascan national residing in France, who possesses both a Licence en Droit and the Certificat d'Aptitude à la Profession d'Avocat, applied on 9 February 1976 to the Conseil de l'Ordre des Avocats de Lille (Lille Bar Council) to be admitted to pupillage. In this connexion he relied, because he is not of French nationality, upon the Convention Judiciaire Franco-Malgache (Franco-Madagascan Judicial Convention) of 4 June 1973, Article 6 whereof provides that advocates

1 — Translated from the German.