OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 25 OCTOBER 1978 [1]

Mr President,
Members of the Court,

Article 2 of Council Directive No 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations sets out the requirements which must be fulfilled by natural persons or undertakings wishing to engage in that occupation. In this case, the only requirement at issue is that relating to the good repute of the candidate, which is required in Article 2 (1) (a).

Mr Delkvist obtained from the competent Danish authorities his first road *passenger* transport licence (tourist category) on 11 November 1974. That authorization was valid until 30 September 1976.

However, when he applied for its renewal, the National Motorbus Transport Board refused on the grounds that Mr Delkvist had several criminal convictions and his criminal conduct provided grounds for considering that there was imminent danger of misuse of his position as a passenger transport operator.

Under Article 78 of the Danish Penal Code a criminal conviction does not automatically lead to forfeiture of the civil rights of the convicted person or to a prohibition on engaging in certain occupations which are subject to authorization by a public authority.

The court must expressly pronounce such a forfeiture of civil rights either in the sentence itself or if the competent administrative authority refuses to issue an authorization to engage in a regulated occupation and the court takes the view that the offence or offences committed provide grounds for considering that there is imminent danger of misuse by the convicted person of the occupation in which he wishes to engage.

In this case, Delkvist's complaint against the refusal to renew his licence as a road passenger transport operator was submitted to the court of first instance in Copenhagen (Københavns Byret), and that court found that he had been convicted of numerous offences since 1945, and in particular since 2 November 1977 had been held in custody charged with a series of burglaries committed in weekend cottages, to which he had pleaded guilty.

However, before applying the provisions of Article 78 of the Penal Code to Mr Delkvist, the Danish court considered it necessary to refer a series of questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty.

In my opinion the first of these questions conspicuously exceeds the limits of the proceedings pending before the national court. That court asks whether the Council Directive of 12 November 1974 in its entirety is lawful and valid. As we shall see, the only provisions of that directive which are at issue and require interpretation are, first, Article 2 (1) (a) concerning the requirements relating to good repute and, secondly, Article 4 (1), which provides that "Natural persons and undertakings furnishing proof that before 1 January 1978 they were authorized under national regulations in a Member State to engage in the occupation of road passenger transport operator in national and/or international transport operations shall be exempt *from the requirement to furnish proof* that they satisfy the provisions laid down in Article

1 — Translated from the French.

2", which include *inter alia* the requirement relating to good repute.

Subject to the foregoing, in my view, as in the Commission's, there is no doubt that the directive at issue was lawfully and validly adopted by the Council, in accordance with the requirements of Article 75 of the Treaty. Furthermore, the parties have not challenged its validity.

The national court also asks whether the directive is directly binding on Danish courts and "is applicable to relations" between the nationals and the public authorities of that State.

In this connexion it is of course provided in the third paragraph of Article 189 of the Treaty that directives shall be binding, "as to the result to be achieved, upon each Member State to which it is addressed, *but shall leave to the national authorities the choice of form and methods*".

However, that principle has not prevented the Court of Justice from holding that certain directives — or at least certain of their provisions — have direct effect inasmuch as those provisions confer personal rights on individuals which are enforceable by them in their national courts and which the latter must protect.

So held in *inter alia Van Duyn* v *Home Office*, judgment of 4 December 1974 in Case 41/74 [1974] ECR 1337.

However, in this case let me state at the outset that the provision of Directive No 74/562 which is mainly at issue does not confer a right on individuals but on the contrary tends to impose an obligation upon them.

Without prejudging the decision which the Court would reach if such an obligation had an independent Community content, I would mention in any case that the requirement relating to *good repute* laid down in Article 2 (1) of the directive for persons wishing to engage in the occupation of road passenger transport operator is not at all precisely defined in the Community provision.

On the contrary, under Article 2 (2), "Pending co-ordination at a later date, each Member State shall determine the provisions relating to good repute which must be satisfied by the applicant and, where appropriate, the natural persons referred to in paragraph (1)".

Such a provision clearly shows that it was the Council's intention to leave it to the Member States alone to define the requirements relating to good repute, and that therefore until rules for co-ordination are subsequently adopted the criteria and the procedure for establishing whether they have been fulfilled may differ from one Member State to another.

Although there is no doubt that the directive covers the present case, as the national court asks in its second question, it follows from what I have just said that Article 2 (1) of that directive did not and moreover could not have the effect of amending the provisions of Danish law relating to forfeiture of certain rights as laid down in Article 78 (2) and (3) of the Penal Code.

In other words, it is for the competent Danish judicial authority to assess, on the basis of those provisions, whether the criminal conduct of the person concerned provides grounds for considering that there is imminent danger of misuse by him of the occupation of road passenger transport operator.

From this point of view, whatever the characteristics of the system may be, I share the view expressed by the Netherlands Government: the purpose of the Community instruments — regulations or directives — in this field is to bring into line the conditions for admission to and pursuit of certain occupations, and this applies *inter alia* to the field of transport.

On the other hand, those instruments do not concern provisions of criminal law in the Member States which empower criminal courts in giving judgment where appropriate to impose a supplementary or incidental penalty consisting in a prohibition on engaging in certain occupations.

To answer the fourth question asked by the national court, I do not think that in this connexion the system established by Article 78 of the Penal Code confers on the national judicial authority an area of discretion in excess of the limits of the discretion which the directive has left — albeit provisionally — to the Member States.

In my view the fact that Article 78 "is worded in negative terms", in other words that under the system laid down by that article a person may be deprived of the right to engage in a regulated occupation only if the offence or offences committed provide grounds for considering that there is imminent danger of misuse of his occupation, is not contrary to the requirements of the Community directive relating to good repute.

No doubt it is a liberal system, intended to give convicted persons who are considered to be capable of reform the opportunity of being reintegrated into society, but the directive in no wise excludes such a system.

This Court is next asked whether this case is covered by the transitional provisions Article 4 (1) of the directive, which provides that:

"Natural persons and undertakings furnishing proof that before 1 January 1978 they were authorized under national regulations in a Member State to engage in the occupation of road passenger transport operator ... shall be exempt *from the requirement to furnish proof* that they satisfy the provisions laid down in Article 2".

The purpose of this provision is to protect the "vested rights" of road transport operators should application of the directive in one or another of the Member States result in making the pursuit of the occupation subject to stricter conditions, but in my opinion it is not to be interpreted as releasing from the requirement relating to good repute laid down in Article 2 (1) such of those operators as had previously obtained an authorization. Such persons are merely exempted from the requirement themselves to furnish proof that they satisfy the condition relating to good repute. But the competent administrative authority, subject to review by the court, must of its own motion assess whether or not that condition is fulfilled. In that connexion, Article 4 (1) must be read with the provision in Article 5 (2) whereby "Member States shall ensure that the competent authorities withdraw the authorization to pursue the occupation of passenger transport operator *if they establish* that the provisions of Article 2 (1) ... [in particular the requirement relating to good repute laid down in Article 2 (1) (a)] are no longer satisfied".

Accordingly the competent court, to which the case was submitted following the refusal by the National Motorbus Transport Board to renew the licence which had previously been issued to Mr Delkvist, was free to apply the provisions of Article 78 of the Danish Penal Code to the person concerned.

I am of the opinion that the Court should rule that:

1. Nothing in the case-file gives any reason to doubt the validity of Council Directive No 74/562/EEC of 12 November 1974 on admission to the

occupation to road passenger transport operator in national and international transport operations.

2. The provision laid down in Article 2 (1) (a) of the said directive has no direct effect on legal relations between Member States and their nationals.

3. The provisions of Article 2 (1) (a) and (2) of the aforementioned directive cannot have the effect of amending or repealing Article 78 (2) of the Danish Penal Code, under which the forfeiture of certain rights can be ordered only if the criminal conduct in question provides grounds for considering that there is imminent danger of misuse by the person concerned of his occupation. The aforementioned provisions of the Danish Penal Code must be regarded as satisfying the requirements relating to good repute which the Member States must lay down for such of their nationals as apply for authorization to engage in the occupation of road passenger transport operator for the purposes of Article 2 (1) (a) of Council Directive No 74/562.

4. Under Article 4 (1) of the said directive, persons who before 1 January 1978 had obtained authorization to engage in the occupation of road passenger transport operator are exempt from the requirement themselves to furnish proof that they satisfy the requirement relating to good repute laid down in Article 2 (1) (a) of the directive. However, under Article 5 (2) of the directive, the competent authorities in the Member States must of their own motion verify on the basis of the applicable national legislation whether the said requirement is actually fulfilled.