OPINION OF ADVOCATE GENERAL F.G. JACOBS

delivered on 4 June 1992 *

My Lords,

1. Once again the Court is asked to rule on the compatibility with Community law of Spanish legislation which reserves the profession of estate agent to the holders of certain qualifications awarded by the Spanish State. The same legislation was at issue in Joined Cases C-330/90 and C-331/90 *Ministerio Fiscal* v *López Brea and Hidalgo Palacios*, in which the Court gave judgment on 28 January 1992, ECR I-323. It was also the subject of Case C-104/91 *Colegio Oficial de Agentes de la Propiedad Inmobiliaria* v *Aguirre Borrell, Newman and others*, in which the Court gave judgment on 7 May 1992, ECR I-3003.

2. It will be recalled from those cases that under the relevant provisions of Spanish law (in particular, Decree No 3248/69 of 4 December 1969) the profession of estate agent is reserved to persons who have (i) completed three years of university-level education, (ii) passed an examination organized by the Ministry of Public Works and Transport and (iii) been enrolled as a member of a professional association known as the 'Colegio Oficial de Agentes de la Propiedad Inmobiliaria'. Persons who do not satisfy those requirements commit a criminal offence if they practise as estate agents. It was previously necessary to have Spanish nationality in order to qualify as an estate agent. However, nationals of other Member States are now to be treated in the same way as Spanish nationals, by virtue of Decree No 1464/88 of 2 December 1988, the purpose of which was to implement Council Directive 67/43/EEC of 12 January 1967 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with *inter alia* real estate (OJ English Special Edition 1967, p. 3). I described the contents of that directive at some length in my Opinion in *López Brea and Hidalgo Palacios*.

3. The defendant in the main proceedings, Mrs Michele Ferrer Laderer, has been prosecuted for practising as an estate agent in spite of the fact that she does not possess the qualifications required by Spanish law. As in *López Brea and Hidalgo Palacios*, the referring court is the Juzgado de lo Penal, No 4, Alicante. The following questions have been referred to the Court:

'(1) Are Article 1 of the Decree of 4 December 1969 and Royal Decree 1464/88, in so far as they provide that activities as

* Language of the case: Spanish.

an intermediary or broker for the purchase, sale and exchange of rural and urban property, for loans secured by a mortgage on such property, for the letting of rural and urban property, for the assignment and transfer and the provision of opinions on the value in the event of the sale, assignment or transfer of such property are functions specific to estate agents, valid in the light of Articles 2, 3 and 5 of Council Directive 67/43/EEC and, as from the entry into force of that Directive, may a Member State, in the said real-estate sector, give the exclusive right to carry out such activities to a particular professional group?

(2) May a Member State apply any kind of restriction or exclusion to that Directive?

(3) Where other Member States of the Community do not impose any such requirements for the exercise of those occupations, may the Spanish State, in accordance with the above-mentioned provisions, require nationals of those countries to possess qualifications or to undergo tests such as those prescribed in Spain in that connection for admission to the Colegio de Agentes de la Propiedad Inmobiliaria and thus for authorization for those purposes?'

4. It will be observed that the first two questions are identical to those referred to the Court in *López Brea and Hidalgo Palacios*, where the Court ruled that national legislation which reserves certain activities relating to transactions in real property to persons pursuing the regulated profession of estate agent is not contrary to Directive 67/43.

5. In that case the defendants were Spanish nationals and the situation was purely internal, in the sense that the case displayed no connection with any other Member State. In the present case the third question implies that the defendant has the nationality of another Member State. However, the documents before the Court indicate that Mrs Ferrer Laderer has the nationality of Switzerland, which is not of course at present a Member State. At the hearing it was confirmed that Mrs Ferrer Laderer is of Swiss origin and it was also stated that she is married to a Spanish national. But as the Agent for the Commission pointed out, it is clear from Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763 that that circumstance cannot bring the Treaty provisions on the free movement of persons into play; the situation continues to be purely internal. Moreover, it does not seem likely that Mrs Ferrer Laderer has acquired a relevant qualification in another Member State. Counsel for the Colegio Oficial de Agentes de la Propiedad Inmobiliaria, which is acting as a private prosecutor in this case, asserted at the hearing that she has acquired no relevant qualifications in any Member State or indeed in Switzerland. That assertion was not challenged by Mrs Ferrer Laderer's counsel.

6. All questions of fact are of course exclusively a matter for the national court. If, as

seems probable, Mrs Ferrer Laderer does not have the nationality of a Member State other than Spain and does not hold a relevant qualification awarded in another Member State, it is clear that neither Directive 67/43 nor the relevant articles of the EEC Treaty (in particular Article 52 et seq.) can assist her, any more than they could assist Mr López Brea and Mr Hidalgo Palacios. Those provisions require Member States to treat the nationals of other Member States in the same way as their own nationals. They do not however confer rights on the nationals of non-member States.

7. Since the third question referred by the national court expressly seeks a ruling on the position of nationals of other Member States, it may be noted that if, notwithstanding the above indications, it turns out that Mrs Ferrer Laderer has the nationality of a Member State other than Spain and has acquired relevant qualifications in that State, the Spanish authorities must, according to the judgment in *Aguirre Borrell, Newman and others*, examine to what extent those qualifications match the ones required by Spanish law. If they correspond partially to the Spanish qualifications, she may be required to demonstrate, in particular by means of an examination, that she has acquired the knowledge and ability not attested to by the qualifications obtained in the other Member State. A negative decision must state the reasons on which it is based and must be open to judicial review.

8. In his written observations counsel for Mrs Ferrer Laderer attempted to construct, with an ingenuity that would be worthy of Don Quijote himself, an elaborate argument according to which the contested Spanish legislation leads to the abuse of a dominant position on the part of members of the regulated profession of estate agent in Spain and has the effect of conferring on them a State aid. It need simply be noted that the national court has not raised any question on the interpretation of Article 86 or Articles 92 to 94 of the Treaty and that in any event it is difficult to see how the legislation in question can have the effects attributed to it.

Accordingly, I am of the opinion that the questions referred to the Court by the Juzgado de lo Penal, No 4, Alicante, should be answered as follows:

(1) Council Directive 67/43/EEC does not preclude national legislation which reserves certain activities relating to transactions in real property to persons pursuing the regulated profession of estate agent.

(2) Council Directive 67/43/EEC does not entitle a national of a non-member State to practise in a Member State as an estate agent without holding the qualifications required by the law of that Member State for admission to the profession of estate agent.

(3) Where a national of a Member State wishes to pursue the profession of estate agent in another Member State in which that profession is reserved to the holders of specific qualifications, the competent authorities of the second Member State must examine to what extent any qualifications obtained by the person concerned in the first Member State are equivalent to the qualifications required in the second Member State. When the qualifications obtained in the first Member State do not correspond fully to the qualifications required in the second Member State, the person concerned may be required to demonstrate, in particular by means of an examination, that he has acquired the knowledge and abilities not attested to by the qualifications obtained in the first Member State. Where the full equivalence of the qualifications obtained in the first Member State is not recognized, the person concerned is entitled to be informed of the reasons for the decision and must be able to challenge it in judicial proceedings, so that its conformity with Community law may be tested.