OPINION OF MR ADVOCATE GENERAL VAN GERVEN
delivered on 28 November 1990 *

Mr President,
Members of the Court,

Background

1. Irene Vlassopoulou, a Greek national, obtained a law degree in 1977 at the University of Athens. After passing an examination she was admitted as an advocate of the Athens Bar in 1982. In the same year she obtained her doctorate with the grade '*magna cum laude*' at Tübingen University with a thesis entitled 'Der eheliche Hausrat im Familien- und Erbrecht' (Matrimonial Household Effects in Family and Succession Law). The doctorate was devoted to German law and in preparation for it she followed a number of courses in German law between 1978 and 1981 at the Law Faculty of Tübingen University.

On 9 November 1984 she obtained authorization to deal with foreign legal matters, including the giving of legal advice (Rechtsberatung) on Greek law and Community law, in accordance with point 5 of the second sentence of Paragraph 1(1) of the Rechtsberatungsgesetz. [1] She has also practised in the field of German law since July 1983 in collaboration with two Mannheim lawyers with whom she shares offices. Although she has retained her registration at the Athens Bar and continues to practice there, the main focus of her professional activity is in Mannheim. Before the national court she has stated that, as regards her practice in German law, she works independently and has contact with clients, although under the responsibility and supervision of one of the two German lawyers with whom she works. Finally, I would point out that, in addition to her doctoral thesis, she has published two articles on Greek law in the German review *IPRax*.

2. On 13 May 1988 Mrs Vlassopoulou applied for admission to the bar and for authorization to practice as an advocate ('Rechtsanwalt' or, in her case, 'Rechtsanwältin') at the Amtsgericht (local court) Mannheim and the Landgerichte (regional courts) of Mannheim and Heidelberg. However, that application was refused by the Ministerium für Justiz, Bundes- und Europaangelegenheiten (Ministry of Justice and Federal and European Affairs of the Land Baden-Württemberg, hereinafter referred to as the 'defendant' on the ground that she did not satisfy the requirements laid down in Paragraph 4 of the Bundesrechtsanwaltsordnung (Federal Regulation on the Profession of Rechtsanwalt) [2] for admission as a lawyer, that is to say possession of the

* Original language: Dutch.

1 — Law of 13 December 1985, Bundesgesetzblatt (BGBl.) III, p. 303.

2 — BGBl. 1959, I, p. 565, as amended by the Law of 13 December 1989, BGBl. 1989, I, p. 2135.

qualifications for holding judicial office. Under the Richtergesetz [3] (Law on Judges) those qualifications are deemed to be acquired after the study of law at a German university, the passing of the First State Examination ('Erste Staatsexamen') and the completion of a training and preparation period ('Vorbereitungsdienst') ending with the Second State Examination.

Mrs Vlassopoulou's application for judicial review of this refusal was dismissed by the Ehrengerichtshof (Lawyers' Disciplinary Council). She then appealed to the Bundesgerichtshof (Federal Supreme Court), which has referred the following question to the Court for a preliminary ruling:

'Is freedom of establishment within the meaning of Article 52 of the EEC Treaty infringed if a Community national who is already admitted and practising as a lawyer in her country of origin and for five years has been admitted in the host country as a legal adviser (Rechtsbeistand) and also practises in a law firm established there, can be admitted as a lawyer in the host country only in accordance with the statutory rules of that country?'

3. Given the facts set out above the question before the Court is thus clear: Do the Treaty provisions on freedom of establishment permit a Member State (the 'host' Member State) to refuse access to a profession (in this case that of lawyer) on the sole ground that the conditions which that Member State requires its own nationals to fulfil have not been strictly satisfied? Or is there an obligation to take into account qualifications and experience obtained in another Member State or in the host Member State and to examine whether they correspond to the qualifications and experience required by the host Member State?

Before looking at the observations submitted to the Court I would point out for the sake of clarity that the question of law before the Court concerns freedom of establishment and not freedom to provide services. In other words, for Mrs Vlassopoulou, it is not a question of offering her services as a Greek lawyer to clients in the Federal Republic (which she is, moreover, entitled to do on the basis of Directive 77/249/EEC [4]); she seeks to establish herself in the Federal Republic of Germany as a lawyer within the meaning of the legislation of that State, that is to say by acquiring the title of, and by practising as, a lawyer (Rechtsanwalt).

Nor can the question raised be answered (not yet, at any rate) by reference to the rules contained in Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years duration, [5] because the period for the transposition of that directive does not expire until 4 January 1991. [6]

3 — The current version is that published on 19 April 1972, BGBl., I, p. 713.

4 — Council Directive of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17).

5 — Council Directive of 21 December 1988 (OJ 1989 L 19, p. 16).

6 — In implementation of the directive of 6 July 1990 the Federal Republic has adopted a Law (see BGBl. 1990, I, p. 1349), which likewise enters into force only on 1 January 1991 (see Article 6 of the Law).

The observations submitted to the Court

4. Referring to the wording of the second paragraph of Article 52 of the Treaty and the Court's case-law on freedom of establishment, the German and Italian Governments as well as the defendant in the main proceedings propose that the reply to be given to the question raised should be in the negative.

Let us first look at the wording of the second paragraph of Article 52. It states:

'Freedom of establishment shall include the right to take up and pursue 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'.

The German and Italian Governments and the defendant point out that the provisions on freedom of establishment, unlike those relating to the freedom to provide services, are based on the principle that the migrant worker is in principle subject in the host Member State to all obligations imposed by that Member State on its own nationals. They go on to state that when there are no specific Community provisions on the point (as is the case in this instance) each Member State is free to lay down rules governing access to, and the exercise of, a profession in its territory, provided that the rules do not discriminate against nationals of other Member States. This point of view, they consider, is affirmed in the *Klopp*[7] and *Gullung*[8] judgments. Their conclusion is that in order to be admitted as a lawyer (Rechtsanwältin) in the Federal Republic of Germany, Mrs Vlassopoulou must comply with the rules applicable to German nationals, that is to say she must satisfy the examination and training requirements laid down in the Richtergesetz. There is, according to the defendant, no procedure available whereby qualifications and experience acquired in another manner may be recognized or examined for compliance with the requirements laid down in the *Richtergesetz*.

5. The nub of Mrs Vlassopoulou's arguments may be summarized as follows. As a lawyer already admitted to the Athens Bar where she retains her registration, she also seeks to establish herself as a lawyer in the Federal Republic. Although the examination and training requirements laid down in the *Richtergesetz* apply without distinction to German nationals and nationals of other Member States, Mrs Vlassopoulou argues that those requirements may not be applied to lawyers from other Member States without at the same time taking into account professional and academic qualifications already acquired by the lawyer, in particular qualifications in relation to the law of the host Member State. In other words, Mrs Vlassopoulou is not challenging the right of a Member State to require certain academic and professional qualifications as a condition of access to the profession of lawyer, but the fact that there is only one way in which nationals of other Member States can satisfy those requirements. That, in her view, entails an unjustified restriction on the freedom of establishment which can only be remedied if the academic and professional qualifications of foreign lawyers are examined for equivalence, and if foreign lawyers in appropriate

7 — Judgment of 12 July 1984 in Case 107/83 *Ordre des Avocats au Barreau de Paris* v *Klopp* [1984] ECR 2971.

8 — Judgment of 19 January 1988 in Case 292/86 *Gullung* v *Conseil de l'Ordre des Avocats du Barreau de Colmar* [1988] ECR 111.

cases are afforded the opportunity, by means of an aptitude test taken once only, to provide evidence that they satisfy the aptitude requirements laid down. Mrs Vlassopoulou has, moreover, declared that she is prepared to take such a test.

The case-law on freedom of establishment

6. To begin with, I would recall that the prohibition of discrimination contained in Article 52 is a concrete example of the principle of equality laid down in Article 7 of the Treaty, which forms the cornerstone of each of the foundations of the Community, namely the free movement of persons, services, goods and capital. It has long been established in the case-law of the Court of Justice on freedom of movement for workers, freedom of establishment, freedom to provide services and the free movement of goods, that the rules on equal treatment not only prohibit overt discrimination on the ground of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result.[9] That interpretation is deemed by the Court to be necessary in order to ensure the effectiveness of one of the fundamental principles of the Community.[10] Specifically in order to ensure the effectiveness of the foundations of the Community the Court has also held that national legislation, even if it contains no direct, apparent discrimination according to nationality, is nevertheless incompatible with Community law if it impedes transfrontier establishment within the Community without objective justification. As regards the right of establishment, that principle is reflected principally in the *Klopp* and *Wolf and Dorchain* judgments, and to a lesser extent in the *Gullung* judgment.

7. In *Klopp* a German lawyer applied for admission to the Paris Bar. His application was refused on the sole ground that as a lawyer he already maintained an office in another Member State (Germany). In that connection the French legislation and the statutes of the Paris Bar provided that a lawyer could have only one office, and had to be established within the district of the court at which he was admitted. The French Bar Association and the French Government had argued before the Court that as regards access to and the exercise of the right to freedom of establishment Article 52 refers to the conditions laid down by the Member State of establishment. Since the restriction in question was applicable without distinction to French nationals and to nationals of other Member States, there could not be said to be discrimination. The Court affirmed (at paragraph 17 of the judgment) that in view of the wording and the context of Article 52 of the EEC Treaty each Member State, in the absence of specific Community rules on the matter, is free to regulate the exercise of the profession of lawyer in its territory. But the Court added:

9 — First established in the judgment of 12 February 1974 in Case 152/73 *Sotgiu* v *Deutsche Bundespost* [1974] ECR 153, at paragraph 11, (national legislation may not subject workers to different treatment on the ground that they do not reside within national territory), recently affirmed in the judgment of 30 May 1989 in Case 33/88 *Allué* v *Università degli Studi di Venezia* [1989] ECR 1591, at paragraph 11, (the restriction contained in an Italian Law on the duration of the employment of foreign language teachers at the University — a restriction which does not apply to the other staff of the universities — constitutes indirect discrimination on the ground of nationality because only 25% of the teachers concerned are of Italian nationality).

10 — See the judgment in *Sotgiu*, cited in the previous footnote, at paragraph 11.

'Nevertheless that rule does not mean that the legislation of a Member State may require a lawyer to have only one establishment throughout the Community territory. Such a restrictive interpretation would mean that a lawyer once established in a particular Member State would be able to enjoy the freedom of the Treaty to establish himself in another Member State only at the price of abandoning the establishment he already had' (paragraph 18).

That affirmation was reinforced by reference to the wording of Article 52 from which the Court inferred a general principle according to which the right of establishment includes freedom to set up and maintain, subject to observance of the professional rules of conduct, more than one place of work within the Community (see paragraph 19). More specifically, in relation to the exercise of the profession of lawyer, the Court confirmed that, whilst the host Member State did have the power to require that lawyers enrolled at a bar in its territory should practise in such a way as to maintain sufficient contact with their clients and the judicial authorities and abide by the rules of the profession, nevertheless:

'such requirements must not prevent the nationals from other Member States from exercising properly the right of establishment guaranteed them by the Treaty.

In that respect it must be pointed out that modern methods of transport and telecommunications facilitate proper contact with clients and the judicial authorities. Similarly, the existence of a second set of chambers in another Member State does not prevent the application of the rules of ethics in the host Member State' (see paragraphs 20 and 21).

The *Klopp* judgment thus confirms that a rule which is applicable without distinction may conflict with Article 52 of the EEC Treaty, particularly if such a rule impedes the transfrontier establishment of nationals from other Member States in such a way as to prevent the actual exercise of freedom of establishment guaranteed to them by the Treaty, where that cannot be justified on objective grounds.

8. The ruling in *Klopp* was reaffirmed in the *Gullung* case which concerned the question whether a lawyer established in Germany could establish himself in France without contravening the rule applicable in France requiring a person to be enrolled at a bar in order to practise as a lawyer.[11] The Court reiterated that Article 52 of the Treaty permits the Member States, in the absence of specific Community rules governing the matter, to make access to and the exercise of a profession (including the profession of lawyer) subject to conditions which also apply to their own nationals.[12] The Court established that the contested rule was applicable without distinction, but examined whether that rule could be deemed to be objectively justified:

'... the requirement that lawyers be registered at a bar laid down by certain Member States must be regarded as lawful in relation to Community law provided, however, that such registration is open to nationals of all Member States without discrimination. The requirement seeks to ensure the observance of moral and ethical principles and the disciplinary control of the

11 — The lawyer in question had earlier been struck off the register of the French Bar Association for disciplinary reasons.

12 — See paragraph 28 of the judgment.

activity of lawyers and thus pursues an objective worthy of protection' (paragraph 29).

9. In the judgment in *RSVZ* v *Wolf and Others* of 1988 [13] the Court was required to rule on Belgian legislation which granted persons whose principal gainful employment was in Belgium exemption from contributions to the social security scheme for *self-employed persons* but refused to grant such an exemption to persons whose principal gainful employment was held abroad. The Court expressly stated that the contested provision contained no direct or indirect discrimination on the ground of nationality, and that Article 7 of the Treaty had thus not been infringed. [14] Yet it held the provision to be contrary to Article 52 (and Article 48) of the Treaty. It recalled the *Klopp* judgment, in which it was affirmed that freedom of establishment entailed the right to set up and maintain more than one place of work within the territory of the Community. [15] It added:

'The provisions of the Treaty relating to the free movement of persons are thus intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and preclude national legislation which might place Community citizens at a disadvantage when they wish to pursue their activities beyond the territory of a single Member State.

[The contested Belgian rules have] the effect of placing at a disadvantage the pursuit of occupational activities outside the territory of that Member State. Articles 48 and 52 of the EEC Treaty therefore preclude such legislation' (paragraphs 13 and 14 of the judgment).

Finally, it was indicated that since the contested Belgian provision granted no additional social protection (that is to say a right to supplementary benefits under the scheme for self-employed persons) to the persons concerned, the resultant impediment to the pursuit of occupational activities in more than one Member State could not be justified on that basis. [16]

10. It is evident from those judgments that the Court sees in Article 52 of the Treaty not only a provision prohibiting discrimination on the ground of nationality but also one precluding national provisions which, irrespective of the occupation in question, make it less easy without objective justification for Community nationals to pursue their occupation outside the territory of their own Member State. More particularly, Article 52 precludes national provisions which place Community nationals 'at a disadvantage when they (like Mrs Vlassopoulou) wish to pursue their activities beyond the territory of a single Member State'.

The obligation to take account of qualifications already obtained

11. According to Mrs Vlassopoulou, from Article 52 of the Treaty must be inferred an obligation to take account of the qualifications which a national of another Member

13 — Judgment of 7 July 1988 in Joined Cases 154/87 and 155/87 *RSVZ* v *Wolf and Others* [1988] ECR 3897. See also the analogous judgment of the same date in Case 143/87 *Stanton* v *Inasti* [1988] ECR 3877.

14 — See paragraphs 8 and 9 of the judgment.

15 — See paragraphs 11 and 12 of the judgment.

16 — See paragraph 15 of the judgment.

State already possesses when the question whether such a person satisfies the requirements laid down for admission to a specific profession comes to be examined. That means that such qualifications must be assessed for compliance with the requirements laid down by national law and that proper account must be taken of the degree of compliance by considering all or part of the qualifications required by national law to have been fulfilled.

I am essentially in agreement with that point of view. The obligation to take account of qualifications acquired by a person seems to me to flow from the prohibition recognized by the Court according to which Member States should not make it more difficult than is necessary for Community nationals to carry on their occupation within the entire territory of the Community, in particular when they wish to establish themselves on the territory of more than one Member State. This obligation also precludes Community subjects who wish to establish themselves in another Member State from being less favourably treated or from being subjected to unnecessary duplication, or complication, of admission requirements.

I would emphasize that in taking this view I am not in the least casting doubt on the position of the German and Italian Governments in so far as they submit that the migrant worker is in principle subject to the rules imposed by the host Member State as regards access to and the pursuit of an occupation so long as those rules do not have discriminatory effect but pointing out a *further proviso* to be added in the light of the Court's case-law, which is that a migrant worker is so subject so long as those rules do not unnecessarily complicate the pursuit of an occupation in the territory of more than one Member State. That further proviso is important because it is precisely upon that basis that the host Member State must take account of qualifications already obtained, an obligation which the abovementioned governments do not acknowledge.

12. In passing I would point out that an analogous obligation has been accepted by the Court with regard to freedom to provide services and the free movement of goods, in situations which display parallels with the present case. As regards freedom to provide services, the question in the *Webb* case [17] was whether the Member States could make the provision of manpower in their territory subject to a prior licensing system. The Court answered that question in the affirmative by reference to the special nature of the employment relationships inherent in the activity of employment agencies and the protection of the legitimate interests of the workforce concerned. [18] At the same time it pointed out that the requirement of a licence would be excessive in relation to the aim pursued if the requirements to which the issue of a licence was subject unnecessarily duplicated the proofs and guarantees already required in the State of establishment. Therefore, in considering applications for licences and in granting them, account had to be taken of the evidence and guarantees already furnished by the provider of the services in the Member State of his establishment. [19]

17 — Judgment of 17 December 1981 in Case 279/80, criminal proceedings against *Alfred John Webb* [1981] ECR 3305.

18 — See paragraph 18 of the judgment.

19 — See paragraph 20 of the judgment. In the earlier judgment in Joined Cases 110/78 and 111/78 *Van Wesemael* [1979] ECR 35, the Court had already held that the requirement of a licence for the provision of manpower services is not justified if the provider of the manpower services in the Member State of establishment is already the holder of a licence issued subject to conditions which are comparable with those laid down by the Member State in which the service is provided, and when all forms of manpower services provision are properly supervised in the Member State of establishment (see paragraphs 24 to 30 of the judgment).

As far as the free movement of goods is concerned, the question arising in *Frans-Nederlandse Maatschappij voor Biologische Producten*[20] (which was delivered on the same day as the *Webb* judgment) concerned the importation into a Member State of a product lawfully marketed in another Member State. The Member State of importation made the use of the product in question subject to a prior authorization granted on the basis of a laboratory examination. The Court recognized that system as falling within the exception provided for by Article 36 of the EEC Treaty, but at the same time pointed out that the Member States had an obligation to contribute to relaxing controls in intra-Community trade, and thus could not unnecessarily require technical or chemical analyses or tests already carried out in another Member State to be repeated.[21]

However, the similarity with the case-law of the Court on the freedom to provide services and the free movement of goods ends at that point. In fact, that case-law clearly goes further than an obligation to take account of already acquired qualifications. Whereas as regards the right of establishment (in the absence of specific provisions at Community level) the assumption is that national rules are in principle permissible, that is not true of the free movement of goods, and is still less true of the freedom to provide services. In the matter of the free movement of *goods* it has been acknowledged since the 'Cassis de Dijon' case that goods which have been lawfully manufactured or marketed in one Member State may also be imported into another Member State. In other words, the mutual recognition of legislation is the general rule: restrictions on the free movement of goods as a result of disparities in national legislation are accepted *only* in so far as such rules are necessary in order to satisfy mandatory requirements and those requirements have not already been met as a result of the controls carried out in the country of origin.[22]

Thus, in the matter of the free provision of *services*, it is also accepted that such provision can only be subject to rules which apply to all persons or undertakings operating within the territory of the Member State concerned *and* which are justified by the general good in so far as that interest is not safeguarded by the provisions to which the provider of a service is subject in the Member State of his establishment.[23] In accordance with that case-law, Directive 77/249/EEC, adopted to facilitate the effective exercise by lawyers of freedom to provide services,[24] enables persons who carry on the profession of lawyer in the various Member States to be recognized as lawyers in the Member State in which the service is provided.

Whilst the case-law of the Court on the free movement of goods and freedom to provide services goes significantly further than that

20 — Judgment of 17 December 1981 in Case 272/80 [1982] ECR 3277, affirmed in the judgment of 11 May 1989 in Case 25/88 *Wurmser* [1989] ECR 1105.

21 — See paragraphs 13 to 15 of the judgment.

22 — See the judgment of 20 February 1979 in Case 120/78 *Rewe-Zentral AG* v *Bundesmonopolverwaltung für Branntwein* ('Cassis de Dijon') [1979] ECR 649, at paragraph 8, consistently affirmed since then, in *inter alia*, the judgment of 14 July 1988 in Case 407/85 *3 Glocken and Others* v *USL Centro-Sud and Others* [1988] ECR 4233, at paragraphs 9 to 11.

23 — See the judgment of 4 December 1986 in Case 205/84 *Commission* v *Federal Republic of Germany* [1986] ECR 3755, at paragraph 25. See also the *Van Wesemael* judgment, already cited in footnote 19, the *Webb* judgment already cited in footnote 17 and the recent judgment of 27 March 1990 in Case C-113/89 *Rush Portuguesa* [1990] ECR I-1417.

24 — Already mentioned above in footnote 4.

relating to freedom of establishment, it should not be forgotten that freedom of establishment, as a minimum requirement, also requires Member States to take account of qualifications already acquired when national rules relating to the access to a given profession are applied.

13. On the basis of the foregoing considerations, I therefore disagree with the viewpoint expressed by the German Government and the defendant which argued at the hearing that in the case of freedom of establishment, unlike in the case of the freedom to provide services and the free movement of goods, no duty of recognition existed. They take the view that a lawyer who wishes to establish himself in another Member State must acquaint himself with a wholly different legal system: the qualifications and experience acquired by him in his Member State of origin or in the host Member State are not relevant in that connection. I am not persuaded by that argument because it assumes that no significant aspects of similarity can exist between the national legal systems in the Community and the manner of legal practice in the various Member States, a supposition which I find difficult to accept in the light of the historical relationship between a number of national legal systems of the Member States[25] and the way in which justice is administered. Furthermore, and above all, it takes no account of the efforts made by a lawyer from another Member State to acquaint himself with the legal system and the legal practice of the Member State in which he also wishes to practice.

That does not mean that the existing differences between the Member States would not justify an admission procedure for lawyers from other Member States; however, in my view, freedom of establishment and the exercise of a profession throughout the Community would be hindered in an unjustified manner if, upon application for admission by a lawyer from another Member State, *no account at all* were taken of qualifications already obtained and their correspondence with the qualifications required by the law of the host Member State.

This idea underlay the judgment in *Thieffry*.[26] However, the facts of that case were more straightforward than in the present case, because the equivalence of a Belgian diploma in law with a French diploma had been recognized (by a French university) and also the 'certificat d'aptitude à la profession de l'avocat' required by French legislation had been obtained after the passing of an examination.[27] The refusal of the competent authorities to grant access to the profession on the sole ground that the person concerned was not in possession of the *national* diploma was, in the circumstances, clearly in conflict with Article 52 of the Treaty.[28] In that judgment too,

25 — In that connection it should be pointed out that Mrs Vlassopoulou was not contradicted by the German Government and the defendant in the main proceedings when she argued that large areas of Greek civil law and the law of civil procedure are to a considerable extent similar to German law.

26 — Judgment of 28 April 1977 in Case 71/76 *Jean Thieffry* v *Conseil de l'Ordre des Avocats à la Cour de Paris* [1977] ECR 765.

27 — See paragraph 2 of the judgment.

28 — See paragraph 19 of the judgment.

however, the Court stated that it is generally for the Member States to adjust their legal provisions or practices in line with the objective laid down in the Treaty provisions on freedom of establishment — an obligation which the French authorities had in fact met generally by providing for the possibility of examining academic and professional qualifications to ascertain their correspondence with the qualifications required by their own legislation.[29] Furthermore, the Court emphasized that it was important that, in each Member State, the recognition of evidence of a professional qualification for the purposes of establishment could be accepted to the full extent compatible with the observance of the national professional requirements.[30]

Connection with Directive 89/48/EEC

14. The duty to take account of qualifications already obtained flows, as has already been stated, from Article 52 of the Treaty which since the end of the transitional period has had direct effect,[31] and exists even in the absence of any rules at Community level. Indeed, the Court has already held several times that the absence of directives adopted on the basis of Article 57 does not authorize a Member State to deny a citizen the actual benefit of freedom of establishment.[32] Such directives are intended to make easier the realization of freedom of establishment but do not set the framework for it. The adoption of such directives has therefore not become superfluous as a result of the direct effect which Article 52 and the obligations contained therein have acquired since the end of the transitional period.[33]

This immediately establishes the link with Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration.[34] As the title of the directive indicates, the directive is concerned with a *general* system of recognition. In other words, where Article 52 requires the host Member State merely to take account of the degree of correspondence between qualifications already obtained (in the Member State of origin and the host Member State) and the qualifications required by the host Member State[35] (only when it is revealed on this examination that the qualifications already obtained in a given case are either wholly or partly equivalent to the qualifications required by national law may the applicant place reliance upon them) the directive goes further than this. It means that the Member States must in general recognize the equivalence of professional rules in the various Member States, so that a person carrying on a regulated professional activity in a given Member State *acquires the right to establish himself in all other Member States*, possibly subject to evidence of professional experience and the completion of an adap-

29 — See paragraphs 15 to 18 of the judgment.

30 — See paragraph 23 of the judgment.

31 — First affirmed in the judgment of 21 June 1974 in Case 2/74 *Reyners* v *Belgium* [1974] ECR 631, at paragraphs 3 to 32.

32 — See, in addition to the *Reyners* judgment mentioned in the preceding footnote, the *Thieffry* judgment already mentioned in footnote 26, at paragraph 18, and the judgment of 28 June 1977 in Case 11/77 *Patrick* [1977] ECR 1199), at paragraphs 10 to 13, affirmed in the judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, at paragraphs 11 to 12.

33 — See the judgment in *Unectef* v *Reyners*, mentioned above at paragraphs 30 to 31.

34 — Already mentioned above in footnote 5.

35 — The existence of that obligation is also recognized in the fifth recital in the preamble to the directive.

tation period or the passing of an aptitude test.[36]

How the duty to take account of qualifications obtained is to be carried out

15. As has already been stated, the duty described above flows from Article 52 of the EEC Treaty, a Treaty provision having direct effect. Even though a directly effective obligation under Community law is involved, its fulfilment will still often require a careful examination of the degree of correspondence between qualifications acquired in the country concerned and abroad.[37] Such an examination must be carried out by the national authorities pursuant to an actual application for admission to a regulated professional activity, on the basis of the obligation under Article 5 of the Treaty to ensure the legal protection afforded to Community nationals by directly effective provisions of Community law. Furthermore, in the absence of Community rules, such an examination must be carried out with regard to the applicable national rules; however, the effectiveness of the directly applicable provisions of Community law must not be impaired by the relevant national rules[38] and the application of those rules must be brought as far as possible into line with the objective defined in the Treaty provisions on freedom of establishment.[39] It seems to me that in carrying out such an examination guidance can be drawn from rules of national law which permit the concordance of equivalent academic and professional qualifications acquired abroad to be assessed, provided that additional account is taken of qualifications acquired by the person concerned in the host country.

It is the task of the national court to identify such rules. Yet I would like to examine a number of provisions which were also discussed at the hearing and which will be mentioned later in a different context.[40]

16. In the first place, I would refer to the Treaty of Unification (Einigungsvertrag)

36 — See Article 4 of the directive. Normally the applicant is entitled to choose between an adaptation period and an aptitude test. For 'professions whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity', the host Member State may in derogation from that principle stipulate either an adaptation period or an aptitude test (see Article 4(1)(b) *in fine*).

37 — This difficulty also arises in the same manner, according to the judgments in *Webb* and *Frans-Nederlandse Maatschappij voor Biologische Producten*, in areas concerning the freedom to provide services and the free movement of goods.

38 — See the judgment of 5 March 1980 in Case 265/78 *H. Ferwerda B. V.* v *Produktschap voor Vee en Vlees* [1980] ECR 617, at paragraph 10; of 16 December 1976 in Case 33/76 *Rewe-Zentralfinanz eG and Another* v *Landwirtschaftskammer für das Saarland* [1976] ECR 1989, at paragraph 5; of 16 December 1976 in Case 45/76 *Comet B. V.* v *Produktschap voor Siergewassen* [1976] ECR 2043, at paragraphs 15 to 16; and of 9 July 1985 in Case 179/84 *Bozzetti* v *Invernizzi SpA and Another* [1985] ECR 2301, at paragraph 17. See also the judgment of 19 June 1990 in Case C-213/89 *The Queen* v *Secretary of State for Transport, ex parte Factortame* [1990] ECR I-2433.

39 — See in that respect the *Thieffry* judgment, already mentioned in footnote 26, and the *Heylens* judgment mentioned in footnote 32.

40 — I can imagine that there are also other factors which will have to be taken into account. For example, it seems to me likely that, upon Mrs Vlassopoulou's admission to the doctor's degree course at the University of Tübingen, an assessment had already been made of her earlier academic education and its comparability with the legal education in the Federal Republic. It appears from the *Thieffry* judgment mentioned above that the national authorities must take account of any such assessment (see paragraphs 20 to 26 of that judgment).

between the Federal Republic and the (former) German Democratic Republic, which entered into force on 3 October 1990. That Treaty stipulates that all examinations passed or diplomas and certificates of aptitude acquired in the German Democratic Republic are to be equated with examinations, diplomas and certificates of aptitude passed or acquired in the rest of the Federal Republic, and that they confer the same rights *if* they are deemed to be equivalent.[41] Equivalence is established, upon application, by the relevant competent institution.[42] In an annex to the Treaty it is provided that a 'Rechtsanwalt' admitted in the former German Democratic Republic stands on an equal footing with a Rechtsanwalt admitted under the relevant regulations in the Federal Republic; in other words, he does not have to satisfy the conditions laid down in the Richtergesetz in order to be admitted as a Rechtsanwalt in the Federal Republic.[43]

Secondly, there is Paragraph 92 of the Bundesvetriebenengesetz (Federal Law on Expelled Persons),[44] the second subparagraph of which remains applicable by virtue of Paragraph 112 of the Richtergesetz. In accordance with that provision examinations passed and certificates of aptitude acquired by 'Vertriebene und Sowjetzonenflüchtlinge' (expelled persons and refugees from the Soviet zones) prior to 8 May 1945 are to be recognized *if* they are equivalent to the corresponding examinations or certificates in the Federal Republic. Subparagraph 3 of Paragraph 92 of the Bundesvertriebenengesetz provides that the same principle is to apply to diplomas obtained after 8 May 1945.[45] At the hearing the representative of the defendant in the main proceedings made clear that this possibility of recognition is inspired by the (substantive) concordance which exists between the training for which recognition is requested and the training undergone in the Federal Republic.

A similar provision is to be found in the Gesetz über die Rechtsstellung heimatloser Ausländer im Bundesgebiet (Law on the legal position of homeless foreigners in the Federal territory) of 25 April 1951.[46] Paragraph 15 of that Law provides that examinations passed abroad by 'homeless foreigners' must be recognized in the

41 — See Article 37 of the Einigungsvertrag.

42 — *Ibid.*

43 — See Annex I, Chapter III, A, Section II, No 2 of the Einigungsvertrag. Admission to the profession of Rechtsanwalt in the German Democratic Republic forms the subject-matter of the Rechtsanwaltsgesetz enacted on 13 September 1990. See the Gesetzblatt der Deutschen Demokratischen Republik 1990, I, No 61, p. 1504. This Law lays down as a general requirement legal studies at an East German university, if appropriate complemented by practical training (see Paragraph 4 of the Law).
The Einigungsvertrag also offers to inhabitants of the former German Democratic Republic the possibility of taking an aptitude test (see Annex II, Chapter III, A, Section III, No 1(e), and lays down similar arrangements in a number of 'transitional'provisions in favour of trainee lawyers and students from the former German Democratic Republic; some of those provisions are to continue in force until the end of 1992 (see Annex I, Chapter III, A, Section III, 8(y].

44 — The current version seems to be that published on 3 September 1971, BGBl. I, p. 1565.

45 — In German academic writing the view is propounded that, owing to the fact that Paragraph 112 of the Richtergesetz refers only to the second subparagraph of Paragraph 92 of the Vertriebenengesetz, recognition *under the Richtergesetz* of such diplomas in law obtained after 8 May 1945 is not possible. See G. and J. Schmidt-Räntsch, *Kommentar zum deutschen Richtergesetz*, Fourth Edition, 1988, paragraph 1 on § 112. That does not, however, preclude the criteria developed on the basis of this paragraph from being used as a guide for the assessment of the equivalence of examinations or certificates in general in the examination to be conducted as described in paragraphs 11 to 15.

46 — BGBl., I, p. 269.

Federal Republic if they can be considered equivalent to examinations in the Federal Republic.

17. It may be seen that each of the foregoing procedures is intended to lead to recognition of the equivalence of diplomas and certificates obtained elsewhere. The obligation described above (paragraphs 11 to 13) stemming from Article 52 of the EEC Treaty is not so far reaching since it does not extend to the recognition of the equivalence of diplomas or certificates but to an assessment of the degree of correspondence between qualifications already obtained (in the person's own Member State or another Member State) and the qualifications required under national law. Such an examination will not normally result in the recognition of diplomas or certificates but might lead to part of the qualifications required by national law being regarded as fulfilled. Yet the experience acquired in the procedures described above with regard to the comparability of diplomas and certificates obtained elsewhere can be useful in fulfilling the obligation described above.

Infringement of the principle of equality?

18. It was contended for Mrs Vlassopoulou at the hearing that a number of the abovementioned provisions are not relevant even as a source of guidance for compliance with the abovementioned obligation under Article 52. In her view, provisions such as those contained in the Treaty of Unification and the Law on Expelled Persons are to be regarded as a form of discrimination prohibited under Articles 7 and 52 of the Treaty against nationals of other Member States of the Community who are subject to less favourable treatment.

At the hearing the representative of the German Government recognized that the Unification Treaty contains preferential treatment of a number of German nationals but pointed out at the same time that the Unification Treaty is a unique event based on exceptional circumstances. In reply to that point it can only be stated that Community law precludes *any* national legislative action incompatible with it, whatever the grounds for its adoption,[47] and that a Member State may not impair the effectiveness of a directly effective provision of Community law by concluding a treaty with another State.[48]

Nor may a difference in treatment be justified by the fact that *not all* persons of German nationality can lay claim to the preferential treatment in question. On that point a parallel may be drawn with the interpretation of Article 30 of the EEC Treaty: in a recent judgment the Court emphasized that a measure favouring only some national products as against foreign products could not on that account escape the prohibition of Article 30, since all the products benefiting from the preferential system were national products.[49]

47 — See, for example, the judgment of 17 December 1970 in Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, at paragraph 3, and the judgment of 9 March 1978 in Case 106/77 *Simmenthal* [1978] ECR 629, at paragraphs 17 and 18.

48 — See, for example, the judgment of 14 July 1976 in Joined Cases 3/76, 4/76 and 6/76 *Kramer* [1976] ECR 1279, at paragraphs 42 to 44, and the judgment of 27 September 1988 in Case 235/87 *Mattcucci* v *Franse Gemeenschap van België* [1988] ECR 5589, at paragraphs 18 and 19, and the operative part.

49 — See the judgment of 20 March 1990 in Case C-21/88 *Du Pont de Nemours Italiana* v *Unità Sanitaria Locale No 2 di Carrara* [1990] ECR I-889, at paragraphs 12 and 13.

19. The whole question is, however, whether discrimination prohibited by Article 7 of the Treaty may be considered to exist. In the Court's case-law it is accepted that a difference in the treatment of situations which are not comparable does not in itself constitute discrimination.[50] In the case of the Law on Expelled Persons one could speak of preferential treatment in favour of a group disadvantaged by historical circumstances.

In the case of the Unification Treaty, preferential treatment applies to those who have completed certain studies in the former German Democratic Republic or acquired certain professional experience. Mrs Vlassopoulou considers that that criterion is discriminatory and disputes that it pursues an objective justified under Community law. I myself am inclined to consider that the provisions contained in the Unification Treaty are justified because they constitute preferential treatment of a group likewise disadvantaged as a result of historical circumstances. In other words, it is a question of making up ground lost, from the viewpoint of the EEC Treaty, by a group of Community nationals in relation to all other nationals.

Conclusion

20. On the basis of the foregoing considerations I propose that the following reply should be given to the question raised:

The obligation contained in Article 52 of the EEC Treaty not to treat less favourably Community subjects who wish to carry on their activities in the territory of more than one Member State must be interpreted as requiring the competent authorities of a Member State, in assessing an application for admission to the profession of lawyer (Rechtsanwalt) by a national of another Member State who is admitted to practice and practices as a lawyer in his own Member State and is already admitted and works as a legal adviser (Rechtsbeistand) in the Member State in which admission is applied for, to examine to what extent the academic and professional qualifications acquired by the applicant in the Member State of origin and in the host Member State correspond with those required by national law for access to the profession and to take account of such correspondence.

50 — See, for example, the judgment of 17 July 1963 in Case 13/63 *Italy* v *Commission* [1963] ECR 165, and the judgment of 23 February 1983 in Case 8/82 *Wagner* v *Balm* [1983] ECR 371, at paragraph 18.