OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 10 MAY 1984

My Lords,

Mr Klopp, a national of the Federal Republic of Germany, is a member of the Bar of Düsseldorf, where he has practised since 1971. He wishes to be admitted as a member of the Paris Bar and to open an office there whilst maintaining his office in Düsseldorf. He has the necessary academic qualifications, including a doctorate in law of the University of Paris; he passed the professional qualifying examination in Paris in 1980; he is of good repute. There is no objection by the Düsseldorf Bar to his practising in Paris as well as from his Düsseldorf office.

The Conseil de l'Ordre des Avocats du Barreau de Paris, however, refused his application on 17 March 1981 on the basis that he could not be admitted to practise in Paris whilst he maintained his office in Düsseldorf. That decision was set aside by the Court of Appeal in Paris composed of the first three chambers. The Conseil de l'Ordre was not satisfied with the Court of Appeal's ruling and took the matter before the Cour de Cassation which has referred to the Court of Justice the question whether a legislative rule that a lawyer who is a national of one Member State and who wishes to practise in another Member State must maintain chambers in one place only (a rule intended to ensure the proper administration of justice and compliance with the professional ethics in that other Member State) is incompatible with the freedom of establishment guaranteed by Article 52 of the EEC Treaty, given that the Council of the Communities has not issued any directive governing access to and the exercise of the legal profession.

The Conseil de l'Ordre and the French Government contend that this rule is compatible with Article 52, and that Mr Klopp's application can, consistently with Community law, be rejected. The Commission, the Governments of Denmark, the Netherlands and the United Kingdom support Mr Klopp in saying that the decision of the Conseil de l'Ordre cannot stand with Article 52 of the Treaty.

The rules in question are to be found in Article 83 of Decree 72/468 and Article 1 of the Rules of the Paris Bar. Under the Decree an *avocat* is required to establish his chambers within the territorial jurisdiction of the *tribunal de grande instance* with which he is registered. Under the Rules an *avocat* must continue in practice and must have his chambers, in Paris or in one of three named departments; he may have a second set of chambers apart from his principal chambers so long as they are in the same geographical area.

It is accepted that these rules, as a matter of French law, prohibit an *avocat* from maintaining chambers in two areas of France, e.g. in Bordeaux and in Paris. This case has nothing to do, even obliquely as I see it, with that effect of the Rule and the Decree. That is a matter of domestic law and professional practice which does not fall within the question referred, which is solely concerned with the position of the lawyer seeking to practise in more than one Member State.

There is, however, a lack of agreement as to whether, as a matter of interpretation, the Decree and the Rule prevent a foreign-based lawyer from setting up in Paris. The Court of Appeal thought that they did not do so. The Paris Conseil de l'Ordre argues that they do so, though it seems that in fact lawyers who are qualified in, and practise in other Member States, have become members of the Paris Bar.

There is also a lack of agreement about the position of French nationals who are members of the Paris Bar and who wish to apply to become members of other Bars. The Court of Appeal found that for a long time the usages of the Paris Bar have allowed French *avocats* to apply for membership of other bars of other countries. The French Government in its written answer to a question from the Court said that there was no rule to prevent a member of the Paris Bar from being admitted to the Bar of another country. At the hearing, however, counsel for the French Government said that, although the Bars of other countries could admit French *avocats*, if their rules permitted it, it would violate the rules applicable in France for a French lawyer to become a member of the Bar of another country. The Conseil de l'Ordre takes the position that a French lawyer practising in Paris cannot lawfully seek membership of another country's Bar and set up practice there. It is accepted, however, that no disciplinary proceedings have ever been taken against a Paris *avocat* for doing so, such proceedings, it is said, being difficult to bring because of the lack of facilities available to the Conseil de l'Ordre.

What is the correct interpretation of the rules applicable in Paris is obviously not for the Court to decide, even in relation to foreign lawyers. In view of the express finding of fact by the Court of Appeal and the evidence available to this Court, it seems, however, right to proceed on the basis that in fact, whether lawfully or not, some members of the Paris Bar do practise in other countries and have not been stopped or disciplined by the Conseil de l'Ordre.

The Court has already made it clear that Article 52 is of direct effect and, after the end of the transitional period, can be relied on before national courts (Case 2/74 *Reyners* v *Belgian State* [1974] ECR 631). It creates a basic right not dependent on the issue of directives under Article 57, though the latter by coordinating national provisions applied

without discrimination may facilitate the taking up and pursuit of activities as a self-employed person (Case 71/76 *Thieffry* v *Conseil de l'Ordre* [1977] ECR 765).

The Conseil de l'Ordre accepts this basic premise as to the effect of Article 52. It contends, however, that the right given goes no further than that of setting up one establishment. In any event, it is said that the way in which the right is to be exercised or protected is entirely a matter for national rules and any right to have more than one establishment can only be conferred by Community legislation or by agreement between the various Bars through the Commission Consultative des Barreaux Européens. Here there is no discrimination on the basis of nationality and the rule is thoroughly justified in France for the administration of justice and the maintenance of professional codes of behaviour.

These submissions involve a consideration first of the general rule under Article 52 and then the submission that exceptions to the general rule may be justified.

As to the former, it seems to me quite impossible to read Article 52 in the limited way first contended for. Although it does not say in terms that a person may be established in more than one Member State, that is plainly the intention. Article 52 gives a right of establishment in another Member State; it does not take away any right which may exist in the national's own Member State. Nor does it make renunciation of the latter the price of the former. The object of the general programme envisaged in Article 54 seems to me to give the key. It is for the abolition of the existing restrictions on freedom of establishment "within the Community". The fact that by Article 52 restrictions are to be removed on the setting up by a national "established" in one Member State of agencies, branches or subsidiaries in another Member State also indicates that more than one establishment may exist at the same time by the mechanism of an agency, branch or subsidiary. It cannot be less so where a professional man wishes to set up practice after qualifying in two Member States even if the two practices are independent of each other.

Nor should Article 52 be limited to restrictions which are defined expressly in terms of the nationality of the person wishing to establish a business or profession. In *Thieffry* the Court construed Article 52 in the context of the provisions of the other Articles which follow, and held that a refusal to recognize for professional purposes a university qualification of another Member State is contrary to Article 52 when that qualification is recognized as being equivalent to the relevant qualification of the host Member State for academic purposes. (See also Case 16/78 *Choquet* [1979] ECR 2293.) Moreover, in the *Thieffry* case the general programme adopted under Article 54 was said by the Court to

provide useful guidance for the implementation of the relevant provisions of the Treaty. Title III (B) thereof includes in the list of restrictions to be eliminated "any requirements ... in respect of the taking up or pursuit of an activity as a self-employed person, where, although applicable irrespective of nationality, their effect is exclusively or principally to hinder the taking up or pursuit of such activity by foreign nationals". Accordingly, it is no answer that the rule as to one establishment is not tied to the nationality of the person involved, but applies to everyone if the effect is to restrict non-nationals from undertaking a course of training and taking the oath with a view to membership of the Bar of Paris on the sole ground that they are members of the Bar of another State with an office there.

The rights specified in the second paragraph of Article 52 as "included in" the freedom of establishment, comprise, *inter alia*, 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". That may well and in my view, subject to further harmonization, does require the advocate practising in another Member State to observe the rules of the French Bar, as they are accepted to be, that he shall only have a principal office in the area of one jurisdiction in France. As a matter of Community law Article 52 on its face does not preclude him *in limine* from membership of the Paris Bar because he also practises in Germany.

Are there any exceptions to this general rule?

The Cour de Cassation gives as the purpose of the Rule that it is intended to ensure the proper administration of justice and compliance with professional ethics in France. These are obviously important factors and in Case 33/74 *van Binsbergen* [1974] ECR 1299 the Court recognised that rules "that persons whose functions are to assist the administration of justice must be permanently established for professional purposes within the jurisdiction of certain courts or tribunals cannot be considered incompatible with the provision of Articles 59 and 60 where such requirement is objectively justified by the need to ensure observance of professional rules of conduct connected, in particular, with the administration of justice and with respect to professional ethics" (paragraph 14). That case was concerned with the provision of services but a similar rule must apply, in my view, to freedom of establishment. Indeed, in *Thieffry* the Court accepted that such freedom was subject to the observance of professional rules justified by the general good.

The obligation on the advocate in France to have his chambers in the territorial jurisdiction of the *tribunal de grande instance* with which he is registered is, as I understand it, linked partly to the exclusive right now vested in the *avocat* to present written pleadings to such *tribunal*, and partly to the needs of the court in the French procedure to have ready access to the lawyer in the case

and to have an address within the jurisdiction to which communications can be sent. The importance of the latter is clear and the lawyer not trained in the French system must attach due weight to the views expressed on behalf of the Bar in regard to these matters in relation to French procedure.

Such rules as are relied on must, however, be seen to be "objectively justified" *(van Binsbergen,* para. 14 of the judgment) and must be "applied in accordance with the objective defined by the provisions of the Treaty relating to freedom of establishment" *(Thieffry,* para. 18 of the judgment).

It is clear that a member of the Paris Bar can have secondary chambers in the area where he is registered with the *tribunal de grande instance.* He can also appear to plead orally before courts in other parts of France, and can advise clients in other parts of France. He has a right under Community law to provide services in other Member States (Directive 77/249, OJ 1977 L 78/17). He may under a ruling adopted by the Paris Bar with effect from 20 January 1981, with the consent of the President of the Bar, set up branch offices in other Member States. In addition some lawyers in fact, as has been seen, are members of the Paris Bar and of another national Bar and no-one has been stopped or disciplined for being so.

At the hearing, in reply to a question from the Court, it was accepted by counsel for the Conseil de l'Ordre that where there was a secondary office a lawyer could sufficiently perform his obligation to the court and to his clients by contact with local lawyers. He could keep in touch through them. It seems to me that he could, with proper arrangements, equally do so through his main office if he was appearing in Brussels or in Bonn or even before this Court or the Court of Human Rights. Clearly, in days gone by, the lawyer practising alone with more limited means of transport and communication than are now available might well have found it impossible to fulfil his obligations to the local court seised of his case if he were outside France. In this day and age it seems to me that in relation to practice in other Member States, it is disproportionate to have an absolute rule that a lawyer can only have one establishment and in effect only practise as a member of one Bar. If, having offices in two Member States, he were to default on his obligations to the court or to his clients, he would not survive long; such a possibility does not justify the exclusion of all lawyers established in other Member States from the Paris Bar.

A further justification is advanced. It is said that membership of two Bars can cause difficulties if the rules of professional conduct and ethics are different, or if a lawyer did something outside France which was a breach of the code of the Paris Bar. It seems to me that the answer to this difficulty was provided by the French Government in its written replies to questions from the Court. If the *avocat* does breach the code of the Paris Bar, whilst practising outside France, he may remain subject to the

discipline of that Bar, as well as of the Bar of the country where he also practises. It has, of course, to be recognized that difficulties could arise but the possibility that they may do so does not seem to me to justify an absolute refusal to admit a lawyer established in one Member State to the Bar of another. Whether special reasons could be shown in particular cases or circumstances is not the question in this case.

Accordingly, in my view, the absolute refusal to admit a lawyer to practise in Paris solely on the basis that he has already an establishment in another Member State where he practises as a lawyer qualified in that Member State cannot be shown to be objectively justified.

In conclude, therefore, that the question referred should be answered on the basis that

a requirement that a national of one Member State, who is qualified and practising at an establishment in that Member State and who wishes to qualify and set up an establishment to practise as a lawyer qualified in another Member State, must have an establishment in one place only is a restriction, even though no directive has been adopted under Article 57 of the EEC Treaty, which is incompatible with the freedom of establishment conferred by Article 52 of the EEC Treaty.

The costs of the parties to the main proceedings fall to be dealt with by the national court seized of those proceedings. No order should be made as to the costs of the Commission or the Member States which have intervened before the Court.