OPINION OF MR ADVOCATE GENERAL DA CRUZ VILAÇA
delivered on 9 March 1988 *

Mr President,
Members of the Court,

1. The question referred to the Court of Justice by the cour d'appel, Rennes, on which the Spanish Government and the Commission have just expressed their views, is identical to that submitted by the tribunal de police, Falaise (in Case 20/87 *Ministère public* v *Gauchard* [1987] ECR 4879), on which I delivered my Opinion on 27 October 1987 and to which an answer was given in the judgment of the Court of 8 December 1987.

2. As in that case, the issue here is the interpretation of Community law in connection with the application of French legislation on town-planning rules applicable to commercial premises, and in particular Articles 28 to 36 of Law 73-1193 of 27 December 1973, known as the 'Loi Royer'.

3. In this case too the case relates to the requirement of prior authorization for the operation of commercial premises exceeding a certain area and here too the person accused of infringing the Loi Royer claimed before the national court that the French legislation was incompatible with Community law, having regard in particular to the principles of freedom of trade and of competition and, therefore, freedom of establishment.

4. The question referred to the Court for a preliminary ruling in both cases fails to specify the rules of Community law which are considered applicable and of which an interpretation is sought; but the grounds set out in the order for reference, which are the same in both cases, enable the aims pursued by it to be identified.

5. Since the issues in the two cases are identical, both the French Government and the Commission refer in their written observations to those which they submitted in the *Gauchard* case.

6. In the opinion which I delivered in the latter case, I analysed the problem from the point of view of the Community rules concerning the right of establishment and free movement of goods and the competition rules laid down in the Treaty.

7. In the judgment which it then delivered, the Court, taking the view that the national court sought to determine whether national

* Translated from the Portuguese.

rules such as the French law on the town-planning rules applicable to commercial premises were incompatible with the principle of freedom of establishment, reformulated the question submitted in such a way that it called for interpretation of the Community provisions concerning freedom of establishment, specifically Article 52 of the EEC Treaty and Directives 68/363 and 68/364 of the Council of 15 October 1968 implementing Article 52 in respect of activities of self-employed persons in retail trade (Official Journal, English Special Edition 1968 (II), pp. 496 and 501).

8. However, in the present case — as in the *Gauchard* case — it does not appear from the documents before the Court that the circumstances have any point of contact with Community law as far as freedom of establishment is concerned: the appellant in the main proceedings was born and resides in France, where he manages a public limited company which operates a commercial establishment in France as concessionnaire for a French make of cars, and all that is involved is an application containing false statements which were submitted with a view to enlarging that establishment.

9. The situation is therefore wholly internal to a Member State.

10. As the Court made clear in paragraph 11 of its judgment in *Gauchard* 'Article 52 is intended to ensure that all nationals of Member States who establish themselves in another Member State, even if that establishment is only secondary, for the purpose of pursuing activities there as a self-employed person receive the same treatment as nationals of that State and it prohibits, as a restriction on freedom of establishment, any discrimination on grounds of nationality'.

11. As far as Directives 68/363 and 68/364 are concerned, two aspects are deserving of attention in this case:

1. There is no information before the Court to indicate whether the appellant before the national court was ever in a situation such as to render those directives applicable (for example the pursuit of activities in another Member State as a self-employed person in retail trade); [1]

2. Even if that had been the case, the proceedings before the national court are entirely unrelated to any circumstances which might render the provisions of those directives (for example, Article 4 of Directive 68/364) applicable.

12. In a word, the present proceedings, as presented to the Court, do not involve any situation detrimental to freedom of establishment within the meaning of Article 52 of the Treaty and of the directives adopted for the implementation of that article in the field of retail trade.

13. Having regard to the specific circumstances to which I have just referred, and to the clear similarities between this case and the *Gauchard* case, I propose that you should give to the cour d'appel, Rennes *mutatis mutandis* an answer similar to that which you gave to the tribunal de police, Falaise, in *Gauchard*.

1 — See judgment of 7 February 1979 in Case 115/78 *Knoors* [1979] ECR 399.

14. The answer which I propose is as follows:

'The Community rules on the right of establishment, in particular Article 52 of the Treaty and Council Directives 68/363 and 68/364 implementing that article in respect of activities of self-employed persons in retail trade, do not apply to situations which are purely internal to a Member State and where no obstacle to the exercise of that right of establishment is at issue.'