JUDGMENT OF THE COURT
OF 7 FEBRUARY 1979 [1]

Ministère Public
v Vincent Auer
(preliminary ruling requested by the Cour d'Appel, Colmar)

"Veterinary surgeons"

Case 136/78

Freedom of establishment — Veterinary surgeons — Degrees obtained in a Member State — Practice in another Member State — Conditions — Period prior to the implementation of the directives for the mutual recognition of diplomas and the co-ordination of national provisions

(EEC Treaty, Arts. 52 and 57; Council Directives Nos 78/1026 and 78/1027)

Article 52 of the Treaty must be interpreted as meaning that for the period prior to the date on which the Member States are required to have taken the measures necessary to comply with Council Directives Nos 78/1026 and 78/1027 of 18 December 1978, the nationals of a Member State cannot rely on that provision with a view to practising the profession of veterinary surgeon in that Member State on any conditions other than those laid down by national legislation.

In Case 136/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel, Colmar, for a preliminary ruling in the proceedings pending before that court between

MINISTÈRE PUBLIC

and

VINCENT AUER, resident in Mulhouse,

1 — Language of the Case: French.

Parties civiles:

L'ORDRE NATIONAL DES VÉTÉRINAIRES DE FRANCE

and

LE SYNDICAT NATIONAL DES VÉTÉRINAIRES

on the interpretation of Articles 52 and 57 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The order referring the matter to the Court and the written observations submitted in pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Mr Vincent Auer, who was born in Austria, studied veterinary medicine first in Vienna (Austria), then in Lyon and finally at the University of Parma, where he was awarded the degree of "laurea in medicina veterinaria" (doctor of veterinary medicine) on 1 December 1956 and was granted a "certificato di abilitazione provvisoria" (provisional practising certificate) by the competent authority on 11 March 1957, the effect of which is that that degree is a professional qualification enabling the holder to practise as a veterinary surgeon, since the person concerned benefits from the transitional provisions of the Italian Law of 8 December 1956, which provides that, *for the future,*

arrangements are to be made for a State examination to be held for the purpose of practising that profession.

Mr Auer took up residence in Mulhouse in 1958 where he practised veterinary medicine, first under the direction of a French veterinary surgeon and then on his own account. When he became a naturalized Frenchman he requested the application to himself of Decree No 62-1481 of 27 November 1962 "relating to the medical and surgical treatment of animals by veterinary surgeons who have acquired or reacquired French nationality" (Journal Officiel de la République Française of 7 December 1962).

Article 1 of that decree provides that "An authorization to undertake the medical and surgical treatment of animals may be granted by order of the Minister for Agriculture to veterinary surgeons who have acquired or reacquired French nationality who do not hold the State doctorate referred to in Article 340 of the Code Rural. A committee convened by the Minister for Agriculture shall examine the qualifications and deliver its opinion as to the professional competence and integrity of candidates". Article 2 of the decree provides that "The following shall benefit from the above provisions:

(1) ...

(2) ...

(3) Veterinary surgeons of foreign origin who have acquired French nationality by decision of the official authority provided that they have been resident in France for a period of five years after the date of that decision or are more than thirty-five years old".

Finally, Article 3 states that "An authorization to undertake the medical and surgical treatment of animals may not be granted to a veterinary surgeon falling within the scope of Article 2 (above) if he does not hold either the external French degree of veterinary surgeon or doctor of veterinary medicine or the degree of doctor of veterinary medicine of the universities of Paris, Lyon and Toulouse, created by the above-mentioned Decree of 18 August 1956, or a degree of veterinary surgeon awarded abroad which the Examining Committee established by Article 1 (above) has recognized as being equivalent to a French degree".

When the application was made to the Committee established by the 1962 decree it delivered an adverse opinion, mainly on the ground that the degree which the person concerned was awarded by the University of Parma was not equivalent to the French university degree of doctor of veterinary medicine. On a fresh application being made the Committee delivered on 18 February 1965 an opinion confirming its previous view, which it upheld subsequently and on the same ground on each occasion when the person concerned reapplied and produced documents or put forward new facts, as is shown by its minutes of 26 July 1966, 22 October 1968 and 23 June 1970. In the latter minutes it also gives an adverse opinion on the integrity of the person concerned on the ground that he had been found guilty of unlawfully undertaking medical treatment of animals.

Although each of Mr Auer's applications was turned down he set himself up in practice as a veterinary surgeon and on 17 October 1974 was found guilty by the Tribunal de Grande Instance, Mulhouse, of unlawfully practising as a veterinary surgeon and holding himself out as a veterinary surgeon. The same court again found him guilty of the same offences on 17 December 1977.

When the accused appealed to the Cour d'Appel, Colmar, that court, as it was of the opinion that the proceedings raised questions relating to the interpretation of Community law, referred to the Court of Justice the following question for a preliminary ruling:

"Does the fact that a person who has acquired the right to practise the profession of veterinary surgeon in a Member State of the European Community and who, after acquiring that right, has adopted the nationality of another Member State is forbidden to practise the said profession in the second Member State constitute a restriction on the freedom of establishment provided for by Article 52 of the Treaty of Rome and, in relation to the taking up of activities as self-employed persons, by Article 57 of that Treaty?"

The order making the reference of 9 May 1978 was received at the Court Registry on 14 June 1978. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC the appellant in the main proceedings, the French Government, L'Ordre National des Vétérinaires (France) (The National Society of Veterinary Surgeons of France), Le Syndicat National des Vétérinaires (France) (The National Union of Veterinary Surgeons of France) and the Commission of the European Communities submitted written observations.

Having heard the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Observations submitted to the Court pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations of the appellant in the main proceedings

The appellant in the main proceedings points out, in the first place, that the national court has accepted — with good reason — that a national of a Member State may rely on the provisions of the EEC Treaty against obstacles to his establishment in his own country. This point of view has been approved by the Commission and is in accordance with the opinion of the Advocate General in Case 71/76, judgment of 28 April 1977, *Thieffry* [1977] ECR 765. The appellant then proceeds to consider the scope of Articles 52 and 57 of the Treaty in relation to the refusals to allow him to practise as a veterinary surgeon and submits, in reliance on the judgment in Case 71/76 (mentioned above) delivered by the Court of Justice on 28 April 1977, that the argument that in the absence of any Community directives on the mutual recognition of qualifications it must simply be assumed that the requirement of a national degree is to be retained must be rejected.

The combined effect of Articles 5, 52 and 57 and the grounds of the *Thieffry* judgment is that the national authorities are under an obligation, in the case of every application made to them, to examine the formal qualifications and competence of each national of a Member State who wishes to establish himself on their territory, since the benefit of freedom of establishment cannot be refused solely because the directives provided for by Article 57 have not yet been adopted.

Having regard to the *Thieffry* judgment that examination must lead to the conclusion, account being taken, on the one hand, of the academic equivalence of the Italian and French degrees and formal qualifications of doctor of veterinary medicine — which was recognized by the Committee set up under the 1962 Decree — and, on the other hand, of the professional competence proved by his long and satisfactory practice in the profession, that the rejection of his applications and the resulting prohibition of practise as a veterinary surgeon are restrictions on freedom of establishment which are incompatible with Articles 52 and 57 of the Treaty.

B — Observations of the Ordre National des Vétérinaires de France and the Syndicat National des Vétérinaires (parties seeking damages in the main proceedings)

According to the parties seeking damages in the main proceedings the dispute is concerned not with Article 52 of the Treaty or with the direct applicability of that article, which is not at issue since the appellant in the main action has French nationality, but with the scope of the provisions relating to the mutual recognition of diplomas, certificates and other evidence of formal qualifications as referred to in Article 57, and in particular qualifications relating to veterinary medicine, and their effect with regard to the right of establishment. Two sets of rules emerge in this connexion from the provisions of the EEC Treaty and the case-law of the Court.

In the first place there are exceptions to the direct applicability of Article 52, namely as far as concerns the medical and allied and pharmaceutical professions (Article 57 (3)), due to the profound differences between the systems of the various Member States.

In the second place, although the Court held in the *Thieffry* judgment (which has already been mentioned) and in the judgment of 28 June 1977 in Case 11/77 *(Patrick* [1977] ECR 1199), which deal with the question of the recognition by a competent national authority of the equivalence of a foreign diploma, that Article 52 might be relied upon by nationals who can prove that they have a qualification recognized by the competent authorities of the State where establishment is to be effected as equivalent to the qualification which that State requires of its own nationals, the Advocate General in the *Thieffry* case ([1977] ECR 765), while he avoided giving his view on the principle involved, laid stress on the fact that the solution which he advocated, and which the Court adopted, turned mainly on the facts of the case and could not create a precedent of general application.

According to the parties seeking damages in the main proceedings the application of these rules leads to the conclusion that in the case of the appellant in the main proceedings there has not been any breach of the principle of freedom of establishment. In this connexion they submit in the first place that Mr Auer has not proved that he is entitled to practise veterinary medicine in Italy. In fact the Italian Law exempting holders of a university degree obtained before 21 December 1956 — the appellant in the main proceedings is in this category — from passing the State examination in order to practise the profession of veterinary surgeon reserves the benefit of that transitional provision exclusively for graduates of Italian nationality. Since the qualification upon which the person concerned relies does not permit him to practise veterinary medicine in the Member State where that qualification was obtained there can be no question of giving that qualification a more extensive application in another Member State.

In the second place and in the alternative the parties seeking damages in the main proceedings take the view that, even if Mr Auer fulfilled this precondition he could not enjoy freedom of establishment. There is first of all no doubt whatever that his Italian qualification does not entitle him to perform the official duties undertaken by French veterinary surgeons, a prohibition originating in Article 55 of the Treaty. Next, the benefit of freedom of establishment cannot be relied on as long as the directives based on Article 57 (3) of the Treaty have not been issued.

Finally, the equivalence of Mr Auer's Italian degree with the French State degree of doctor of veterinary medicine has never been recognized, because the training offered by the University of Parma is not as advanced as the corresponding French training. The parties seeking damages in the main proceedings, relying on an opinion of the

Frenchs Conseil d'État of 16 January 1969, which stated that "a person practising as a veterinary surgeon who holds only a veterinary surgeon's diploma awarded abroad, the equivalence whereof with a French diploma has not been recognized by the Examining Committee, cannot, in any event, whatever evidence of qualifications and practical experience he can show, be authorized to practise veterinary medicine and surgery in France", assert positively that this refusal to recognize equivalence is by no means based on considerations relating to the nationality of the person concerned or the country where the diploma was awarded but solely on professional requirements.

The parties seeking damages in the main proceedings therefore contend that the Court should declare that, having regard to the facts of the case, there has not been any restriction of freedom of establishment.

C — Observations of the French Government

The French Government emphasizes in the first place that the objective of Articles 7, 52 and 57 of the Treaty, as defined by the Court, in particular in its judgment of 21 June 1974 in Case 2/74, *Reyners,* ([1974] ECR 631) is to guarantee nationals of the other Member States equal treatment with nationals of the host State. However, this problem has no relevance to this case, since Mr Auer is a French national and the fact that he acquired French nationality by naturalization is immaterial. The question to be determined is the same whether Mr Auer is a French national or a national of another Member State and it is concerned with the mutual recognition of diplomas in relation to freedom of establishment, whether such recognition is laid down by Community rules or derives from bilateral agreements between Member States.

So far as the first supposition is concerned the Treaty, according to the French Government, has rejected the principle of the automatic recognition of diplomas for a certain number of activities for which a specific professional qualification is required. Recognition of equivalent qualifications was therefore to take place at the end of a procedure initiated under Article 57, which provides for the adoption of directives permitting the assessment of comparable training levels in the various Member States. The profession of veterinary surgeon is one of those for which specific professional qualifications are required. However, since no Community directive had been issued during the period covered by the facts of the case before the national court, a national of a Member State can be granted the right of establishment only if the equivalence of his diploma is recognized by the competent authority of the State where he intends to practise his profession.

As far as concerns the second supposition, it is sufficient to state there is no bilateral agreement between France and Italy on the recognition of diplomas of veterinary medicine while, on the other hand, the Examining Committee, set up by Decree No 62-1481, refused to recognize that Mr Auer's degree was equivalent because Italian diplomas are inadequate.

The French Government is of the opinion that the question referred by the Cour d'Appel, Colmar, must be answered in the negative.

D — Observations of the Commission

The Commission, having repeated the facts giving rise to the main proceedings and called attention to the fact that the national court's file shows that the appellant in the main proceedings has

practised as a veterinary surgeon for many years in France "to the entire satisfaction of his many clients", points out that there are two legal aspects to the question referred:

— The first relates to the question whether a national of a Member State may in his own Member State rely upon Community law provisions for the purpose of turning his professional qualifications obtained in another Member State to account;

— The second relates to the scope and the effects, in the absence of any Community directives on the mutual recognition of diplomas, of the academic recognition of university degrees from the point of view of entitlement to practise a profession.

The rights of nationals of the Member State concerned

According to the Commission, since the free movement of persons is a fundamental principle of the Treaty, it is impossible to imagine a system of freedom of movement which does not benefit all nationals of all the Member States. It cannot therefore be accepted that Community nationals who fulfil the conditions for the enjoyment of freedom of movement throughout the Community may move about, establish themselves and offer their services in all the Member States except the one of which they are nationals.

The effect of the free movement of persons is to increase the number of those who settle with their families in countries of which they are not nationals and bring up their children there. If the latter are given their vocational training in the host country they might, if the benefit of freedom of movement were reserved to non-nationals, be prevented from re-establishing themselves in the country of which they are still nationals, even though they could establish themselves in any other Member State.

Although the wording of Article 52 is open to argument, because it only refers to the situation in each Member State of nationals of the other Member States, it must nevertheless be placed in the context of Articles 48 and 59 which do not contain any such limitation. It emerges from the case-law of the Court of Justice in its judgments of 7 July 1976 in Case 118/75, *Watson and Belmann* ([1976] ECR 1185) and of 8 April 1976 in Case 48/75, *Royer* ([1976] ECR 497) that Articles 48, 52 and 59 are based on the same principles and that they must consequently be given a uniform interpretation.

On the other hand, in the directives relating to the medical profession (Directives Nos 75/362 and 75/363 of 16 June 1975 — Official Journal No L 167, p. 1), to nursing (Directives Nos 77/452 and 77/453 of 27 June 1977 — Official Journal No L 176, p. 1) and to dentistry (Directive No 78/686 of 25 July 1978 — Official Journal No L 233, p. 1) the Council laid down that diplomas are to be recognized in all Member States other than that where the diploma was awarded, without making any distinction on the basis of the holder's nationality.

The Commission concludes with the observation that the fact that the nationality of the host country has been acquired after a diploma has been obtained in another Member State does not alter the conclusions which it has reached. It is therefore of the opinion that the first aspect of the question referred by the Cour d'Appel, Colmar should be answered as follows:

"The fact that a Member State does not allow its own citizens to benefit from the provisions of Community law relating to establishment, and especially those relating to the recognition of

qualifications obtained in another Member State, is a restriction of the freedom of establishment which is prohibited by Article 52 of the EEC Treaty".

The effect of the academic recognition of diplomas

According to the Commission, this aspect of the question referred to the Court is concerned with ascertaining whether the competent national authorities responsible for recognizing the equivalence of a diploma may, without infringing Article 52 of the Treaty, exercise discretion in reaching decisions in this field.

The Commission takes the view that this question must be determined in the light of the judgment of the Court of Justice of 28 April 1977 in Case 71/76 (*Thieffry*, [1977] ECR 765), from which the following principles, which could provide a solution in circumstances similar to those in this case, may be derived:

— Limitations on freedom of establishment, which is a fundamental right, must be strictly interpreted and the adoption of directives pursuant to Article 57 is not a condition precedent to the application of Article 52.

— Nevertheless, freedom of establishment must be compatible with the application of non-discriminatory professional rules which are in the public interest, especially rules relating to professional qualifications.

— In the absence of the directives provided for by Article 57 of the Treaty Member States cannot, without infringing Article 5 of the Treaty, simply shelter behind national rules which makes the taking up and pursuit of an activity conditional upon the possession of a diploma awarded by a national educational establishment.

— The fact that, under national law, a foreign diploma is recognized as being equivalent but only for academic purposes does not in itself justify the refusal to recognize such equivalence as an entitlement to practise a profession. On the contrary, it is for the competent authorities to consider all the facts in order to decide whether that limited equivalence can be treated as an entitlement to practise a profession while at the same time continuing to be compatible with observance of legitimate professional requirements.

The Commission infers from these principles that any person concerned must be allowed to prove the desired equivalence by all appropriate means even in the absence of laws and regulations or practices of the public administration or professional bodies laying down procedures for the recognition of the equivalence of foreign diplomas. The Court cannot take the place of the Examining Committee provided for in Decree No 62-1481 in order to determine whether in a given case academic equivalence may be recognized as having a value by way of an entitlement to practise a profession, but it clearly emerges from the *Thieffry* judgment, which has already been mentioned, that the competent national authority is under a duty to examine each specific situation *in concreto* and that it cannot on that occasion disregard the professional experience acquired by the person concerned and the conditions in which he practised his profession.

When that examination takes place advantage should be taken of the solutions formulated in the Community directives which have already been adopted on the mutual recognition of diplomas. They all contain provisions recognizing acquired rights, which lead

to acceptance of the equivalence of diplomas awarded prior to the implementation of the directive, even if such diplomas do not satisfy the minimum training requirements prescribed by the co-ordinating directive, provided that they have been supplemented by a finding that the activities in question have in fact been lawfully carried on during a certain number of years determined by each directive.

It is certain that the directive on the mutual recognition of diplomas of veterinary medicine, which is under discussion in the Council at the present time, contains a similar provision. The result is that an Italian university degree gives the holder the right to enter the profession of veterinary surgeon in all the Member States provided that such holder can establish that he has in fact lawfully practised that profession.

In these circumstances the French Examining Committee can no longer refuse to recognize the civil effect of an Italian degree awarded by the University of Parma or another university coupled with a period of practice in the profession.

Finally, the Commission submits that the second aspect of the question referred to Court by the Cour d'Appel, Colmar, should be answered as follows:

"The requirement of possession of a national diploma for entry into a profession such as that of veterinary surgeon in the case of a national of a Member State who establishes fully both in law and in fact that his professional qualifications, substantiated by a diploma which he obtained in a Member State other than the host State, supplemented, where appropriate, by actual and lawful practice of the profession, are equivalent to the professional qualifications required in the country of establishment, amounts to a restriction which is incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty".

The appellant in the main proceedings, represented by Mr Thieffry of the Paris Bar, the parties seeking damages in the main proceedings, represented by Mr Petit of the Paris Bar, and the Commission of the European Communities, represented by its Agent, Mr Leleux, presented oral argument.

The Advocate General delivered his opinion at the hearing on 12 December 1978.

Decision

1 By a judgment of 9 May 1978 which reached the Court on 14 June 1978 the Cour d'Appel, Colmar, asked the Court, in pursuance of Article 177 of the EEC Treaty, to give a preliminary ruling on the following question:

"Does the fact that a person who has acquired the right to practise the profession of veterinary surgeon in a Member State of the European Community and who, after acquiring that right, has adopted the nationality of another Member State is forbidden to practise the said provision in the

second Member State constitute a restriction on the freedom of establishment provided for by Article 52 of the Treaty of Rome and, in relation to the taking up of activities as self-employed persons, by Article 57 of that Treaty?"

2 This question was raised in the context of criminal proceedings on the ground, amongst others, of unlawfully practising as a veterinary surgeon in France.

3 The accused, who was originally of Austrian nationality, studied veterinary medicine first in Vienna (Austria), then in Lyon and finally at the University of Parma where he was awarded on 1 December 1956 the degree of doctor of veterinary medicine *(laurea in medicina veterinaria)* and on 11 March 1957 he was granted a provisional certificate to practise as a veterinary surgeon, which was issued by a commission set up by that university.

4 That certificate was issued to him in pursuance of the transitional provisions of the Italian Law of 8 December 1956, in accordance with which the practice of veterinary medicine was in future to be made subject, in addition to the possession of a degree of doctor in veterinary medicine, to the passing of a state examination, although holders of a degree acquired before the entry into force of that Law were exempt from passing that examination on condition that they produced a provisional practising certificate, issued by one of the commissions set up for that purpose, in particular at universities.

5 The accused took up residence in France and on 4 October 1961 acquired French nationality by naturalization; he then applied on a number of occasions for the application to himself of the provisions of French Decree No 62-1481 of 27 November 1962 "relating to the medical and surgical treatment of animals by veterinary surgeons who have acquired or reacquired French nationality" *(Journal Officiel de la République Française* of 7 December 1962, p. 12014).

6 Under the first paragraph of Article 1 of that decree, an authorization to undertake the medical and surgical treatment of animals may be granted by order of the Minister for Agriculture to veterinary surgeons who have acquired or reacquired French nationality and who do not hold the state doctorate referred to in Article 340 of the Code Rural.

7 The second paragraph of the same article provides that a committee convened by the Minister for Agriculture shall examine the qualifications and deliver its opinion as to the professional competence and integrity of candidates; in Article 3 the decree provides that no authorization may be granted to the persons concerned unless they hold either certain French degrees specifically named, or "a veterinary degree awarded abroad of which the equivalence to a French degree shall have been recognized by the Examining Committee established under Article 1 above".

8 The competent committee took the view that it could not recognize the equivalence, from the point of view of the exercise of veterinary medicine, of the degree produced by the accused to a French degree. His successive applications were therefore rejected but he nevertheless practised veterinary medicine as a result of which he has been prosecuted on several occasions.

9 The question referred to the Court inquires essentially whether, having regard to the provisions of Community law relating to freedom of establishment as they were in force at the time of the facts on which the prosecution before the national court is based, the person concerned was in a position to claim in France the right to practise the profession of veterinary surgeon which he had acquired in Italy.

10 The situation referred to by the national court is that of a natural person who is a national of the Member State in which he actually resides, and who is invoking the provisions of the Treaty relating to freedom of establishment with a view to being authorized to practise the profession of veterinary surgeon there, whereas, he does not possess the degrees required of nationals for that purpose but possesses degrees and qualifications acquired in another Member State which allow him to practise that profession in that other Member State.

11 It should also be stated that the question refers to the situation as it existed at a time when Article 57 (1) of the Treaty relating to mutual recognition of diplomas, certificates and other qualifications had not yet been applied as regards the practice of the profession of veterinary surgeon.

12 This matter has subsequently been dealt with by Council Directive No 78/1026 of 18 December 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in

veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (Official Journal No L 362, p. 1), supplemented by Council Directive No 78/1027 of the same date concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons (Official Journal No L 362, p. 7).

13 According to Article 18 of the first and Article 3 of the second of these directives Member States have a period of two years in which to bring into force the measures necessary to comply with them, dating from the notification of the directives.

14 Consideration must therefore be given to the question whether, and if so to what extent, nationals of the Member State in which they were established were entitled, at the time in question, to rely on the provisions of Articles 52 to 57 of the Treaty in situations such as those decribed above.

15 These provisions must be interpreted in the light of their place in the general structure of the Treaty and of its objectives.

16 Under Article 3 of the Treaty the activities of the Community with a view to the establishment of the Common Market include, *inter alia,* the abolition of obstacles to freedom of movement for persons and services.

17 In the words of Article 7 of the Treaty, within the scope of its application, any discrimination on grounds of nationality is prohibited.

18 Thus freedom of movement for persons is intended to contribute to the establishment of a common market, in which nationals of the Member States have opportunity to carry on their economic activities by establishing themselves or by providing services in any place within the territory of the Community.

19 As regards freedom of establishment, the realization of this objective is in the first place brought about by Article 52 of the Treaty which provides, first, that "restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by

progressive stages in the course of the transitional period" and, secondly, that such 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".

20 In so far as it is intended to ensure, within the transitional period, with direct effect, the benefit of national treatment, Article 52 concerns only — and can concern only — in each Member State the nationals of other Member States, those of the host Member State coming already, by definition, under the rules in question.

21 However, it may be seen from the provisions of Articles 54 and 57 of the Treaty that freedom of establishment is not completely ensured by the mere application of the rule of national treatment, as such application retains all obstacles other than those resulting from the non-possession of the nationality of the host State and, in particular, those resulting from the disparity of the conditions laid down by the different national laws for the acquisition of an appropriate professional qualification.

22 With a view to ensuring complete freedom of establishment, Article 54 of the Treaty provides that the Council shall draw up a general programme for the abolition of existing restrictions on such freedom and Article 57 provides that the Council shall issue directives for the mutual recognition of diplomas, certificates and other evidence of qualifications.

23 It follows from the general structure both of the General Programmes of 18 December 1961, drawn up in implementation of Articles 54 and 63 of the Treaty (Official Journal, English Special Edition, Second Series, IX, pp. 3 and 7) and of the directives issued in implementation of those programmes, that the field of application, *ratione personae*, of the measures for securing freedom of establishment and freedom to provide services is to be determined on each occasion without distinction based on the nationality of those concerned.

24 This idea, in particular to the extent to which it relates to the effects of mutual recognition of diplomas, certificates and other qualifications, is in conformity with the general rule set out in Article 7 of the Treaty according to which, within the scope of application of the Treaty, any discrimination on grounds of nationality is prohibited.

25 Moreover, in so far as the practice of the profession of veterinary surgeon is concerned, this idea was fully confirmed by a declaration concerning the definition of the persons covered by the directives, which was recorded in the minutes of the meeting of the Council during which the directives relating to the mutual recognition of diplomas and the co-ordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons were adopted.

26 That declaration states that: "The Council reaffirms that it is to be understood that freedom of establishment, particularly for the holders of certificates obtained in other Member States, must be accorded on the same terms to nationals of other Member States and to nationals of the Member State concerned, as is the case with other directives.

27 It appears, both from the wording of the question referred to the Court and from the recitals to the decision of the national court, that that court would also like to know whether the fact that the person concerned had acquired French nationality by naturalization at a date subsequent to that on which he had obtained the Italian degrees and qualifications on which he relies, was of such a nature as to influence the reply to the question which it has put.

28 There is no provision of the Treaty which, within the field of application of the Treaty, makes it possible to treat nationals of a Member State differently according to the time at which or the manner in which they acquired the nationality of that State, as long as, at the time at which they rely on the benefit of the provisions of Community law, they possess the nationality of one of the Member States and that, in addition, the other conditions for the application of the rule on which they rely are fulfilled.

29 Hence, in assessing the rights of a national of a Member State, in periods both prior and subsequent to that referred to in the directives cited above, the date on which he acquired the status of a national of a Member State is irrelevant as long as he possesses it at the time at which he relies upon the provisions of Community law, the enjoyment of which is linked to the status of a national of a Member State.

30 It follows from the considerations set out above that Article 52 of the Treaty must be interpreted as meaning that for the period prior to the date on which the Member States are required to have taken the measures necessary to comply with Council Directives Nos 78/1026 and 78/1027 of 18 December 1978, the nationals of a Member State cannot rely on that provision with a view to practising the profession of veterinary surgeon in that Member State on any conditions other than those laid down by national legislation.

31 This answer in no way prejudges the effects of the above-mentioned directives from the time at which the Member States are required to have complied with them.

Costs

32 The costs incurred by the Government of the French Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

33 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Cour d'Appel, Colmar, by an order dated 9 May 1978, hereby rules:

Article 52 of the Treaty must be interpreted as meaning that for the period prior to the date on which the Member States are required to have taken the measures necessary to comply with Council Directives

Nos 78/1026 and 78/1027 of 18 December 1978, the nationals of a Member State cannot rely on that provision with a view to practising the profession of veterinary surgeon in that Member State on any conditions other than those laid down by national legislation.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 7 February 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 12 DECEMBER 1978

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Cour d'Appel of Colmar. It raises important questions of interpretation of Article 52 *et seq.* of the EEC Treaty relating to freedom of establishment.

Dr Vincent Auer, the Appellant before the Cour d'Appel, was born in Austria in 1924. His nationality was originally Austrian. After the war he embarked on veterinary studies at the University of Vienna, but was, so it is said on his behalf, prevented by financial difficulties from completing them. Subsequently he obtained scholarships to study successively at the École Nationale Vétérinaire of Lyon and at the University of Parma. At the latter he obtained, on 1 December 1956, the degree of Doctor of Veterinary Medicine and, on 11 March 1957, a provisional practising certificate ("certificato di abilitazione provvisoria"). An Italian statute of 8 December 1956 (No 1378) which instituted a State examination for veterinary surgeons enacted, by way of transitional provision, that a Doctor of Veterinary Medicine of Italian nationality who had obtained his degree before 21 December 1956 could, on pres-