JUDGMENT OF THE COURT (Second Chamber)
16 November 1995 *

In Case C-152/94,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Rechtbank van Eerste Aanleg, Ghent (Belgium), for a preliminary ruling in the criminal proceedings pending before that court against

Geert Van Buynder

on the interpretation of Article 52 of the EEC Treaty, subsequently the EC Treaty,

THE COURT (Second Chamber),

composed of: G. Hirsch, President of the Chamber, G. F. Mancini and F. A. Schockweiler (Rapporteur), Judges,

Advocate General: M. B. Elmer,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Openbaar Ministerie, by C. Sorgeloose, Deputy Procurator Royal,

* Language of the case: Dutch.

— Mr Van Buynder, by G. Schoeters, of the Ghent Bar,

— the United Kingdom, by S. Braviner, of the Treasury Solicitor's Department, acting as Agent, and R. Thompson, Barrister,

— the Commission of the European Communities, by B. J. Drijber and W. Wils, of the Legal Service, acting as Agents,,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Van Buynder and the Commission at the hearing on 14 September 1995,

after hearing the Opinion of the Advocate General at the sitting on 5 October 1995,

gives the following

Judgment

1 By interlocutory judgment of 2 June 1994, received at the Court on 10 June 1994, the Rechtbank van Eerste Aanleg (Court of First Instance), Ghent, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 52 of the EEC Treaty, subsequently the EC Treaty.

2 That question arose in criminal proceedings brought against Mr Van Buynder, a Belgian national, on the ground that he had, in Belgium, carried out unauthorized veterinary measures and, more specifically, performed surgical and dental opera-

tions on animals without satisfying the conditions laid down in the Belgian Law of 22 August 1991 on the practice of veterinary medicine (*Belgisch Staatsblad* (Belgian Law Gazette) of 15 October 1991, p. 22981).

3 Article 3(1) of this Law lists veterinary measures which form part of the exercise of veterinary medicine. These include 'surgical and dental operations on animals' (Article 3(1)(6)). Article 4 of the Law makes the exercise of veterinary medicine subject to a number of conditions, including the possession of a lawful qualification in veterinary medicine and entry on the register of veterinary surgeons.

4 In the course of the investigation into his activities, Mr Van Buynder stated that he had performed a number of acts involving the treatment of horses' teeth, in particular by filing them down when they acquired sharp points and edges through natural abrasion. In this way, he prevented cuts to the tongue and jaws, as well as digestive problems. It is common ground that, when performing these acts, Mr Van Buynder did not administer any anaesthetic or medication.

5 In his defence, Mr Van Buynder argued that the activity in which he was thus engaged could be freely exercised in the countries bordering on Belgium. He produced a list of persons from the Netherlands, France and Germany who were, he claimed, engaged in the same activity under similar conditions.

6 In view of the fact that Mr Van Buynder contended that 'if a trade or profession can be exercised somewhere in the European Community, it should also be possible to do so in Belgium', the Rechtbank van Eerste Aanleg, Ghent, formed the

view that, prior to deciding whether Mr Van Buynder was guilty, it ought to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Does the freedom of establishment set out in Article 52 of the EEC Treaty guarantee the right of any person, even if not a veterinary surgeon, to perform dental operations on horses without the use of medication or anaesthetic?'

7 Mr Van Buynder contends that this question submitted for a preliminary ruling is irrelevant and therefore inadmissible on the ground that the answer to the question whether he can or cannot perform the acts in respect of which he has been charged is to be found in the Belgian legislation alone. He argues in this regard that he does not perform dental operations on horses within the meaning of Article 3(1)(6) of the Belgian Law, but merely attends to the maintenance of horses' teeth, an activity which does not come within the scope of that Law.

8 That argument cannot be accepted.

9 The Court has consistently held that, in proceedings under Article 177 of the Treaty, it may not rule on the interpretation of national laws or regulations, or assess whether questions referred to it by a national court are relevant (judgment in Case C-347/89 *Eurim-Pharm* [1991] ECR I-1747, paragraph 16). As the Advocate General has stated at point 8 of his Opinion, it is a matter for the national court to decide on the propriety of an objection that a question in a reference for a preliminary ruling is irrelevant on the ground that it is based on a misinterpretation of national law.

10 With regard to the substance of the question submitted for a preliminary ruling, it also follows from settled case-law that the provisions of the Treaty on freedom of

establishment do not apply to purely internal situations in a Member State such as a situation where nationals of a Member State engage within its territory in a self-employed activity in respect of which they cannot rely on any previous training or experience acquired in another Member State (judgment in Joined Cases C-54/88, C-91/88 and C-14/89 *Nino and Others* [1990] ECR I-3537).

11 It is clear from the judgment making the reference and from the parties' observations that the main proceedings concern a Belgian national residing in Belgium who wishes to engage in a self-employed activity within Belgium and who does not claim to have obtained in another Member State the professional qualifications required for the exercise of that activity.

12 Since this situation has therefore no connection with any of the situations envisaged by Community law, the Treaty rules on freedom of establishment are not applicable.

13 The answer to the question submitted must therefore be that Article 52 of the Treaty does not apply to a purely internal situation in a Member State such as that in which a national of a Member State engages within its territory in a self-employed activity in respect of which he cannot rely on any previous training acquired in another Member State.

Costs

14 The costs incurred by United Kingdom Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a

step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Rechtbank van Eerste Aanleg, Ghent, by interlocutory judgment of 2 June 1994, hereby rules:

Article 52 of the EC Treaty does not apply to a purely internal situation in a Member State such as that in which a national of a Member State engages within its territory in a self-employed activity in respect of which he cannot rely on any previous training acquired in another Member State.

Hirsch Mancini Schockweiler

Delivered in open court in Luxembourg on 16 November 1995.

R. Grass G. Hirsch

Registrar President of the Second Chamber