# OPINION OF ADVOCATE GENERAL LÉGER
## delivered on 16 November 1995 *

1. The Pretura Circondariale (District Magistrate's Court), Rome, has referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 3, 5 and 6 of the EC Treaty and Article 6 of the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms ('the European Convention on Human Rights').

2. Those questions arose in criminal proceedings brought against Mr Perfili by the Public Prosecutor attached to the Pretura Circondariale, Rome.

3. The national court has provided the following information on the factual and legal background to the case.

4. On 30 July 1991 the legal representative for Lloyd's of London, a private law corporation, conferred on Gabriele Alliata di Villafranca a general power of attorney. Under the terms of the deed conferring that power, Mr Alliata di Villafranca may appear in the name and on behalf of Lloyd's of London before any Italian court or tribunal, either as plaintiff or as defendant.

5. On 25 May 1994 Mr Alliata di Villafranca gave a lawyer a special power of attorney to bring suit as a civil party in the criminal proceedings brought against Mr Perfili.

6. The question of the admissibility of that suit has been raised before the Italian criminal court, which considers that Mr Alliata di Villafranca has no *locus standi*. The court explains that Article 78 of the Italian Code of Criminal Procedure ('the CCP'), laying down the detailed rules for the pursuit of civil claims in criminal proceedings, provides that any person representing a party who, having been harmed as the result of a criminal offence, wishes to bring suit as a civil party in criminal proceedings must produce a special power of attorney for that purpose. However, the deed executed on 30 July 1991 did not give Mr Alliata di Villafranca a special power of attorney for the specific purpose of bringing suit as a civil party in the criminal proceedings brought by the Italian Public Prosecutor against Mr Perfili.

7. Noting the differences between the rules of English and Italian criminal procedure

* Original language: French.

governing the legal position in the criminal courts of persons harmed as a result of a criminal offence, the national court points out that, because of those differences, an English person who is the victim of a crime and unacquainted with the Italian rules is inevitably at a disadvantage by comparison with an Italian victim. It concludes that Italian law gives rise to manifest discrimination against British nationals, contrary to Articles 3, 5 and 6 of the EC Treaty and Article 6 of the European Convention on Human Rights.

8. Nevertheless, since the national court was uncertain as to the interpretation of Articles 3, 5 and 6 of the EC Treaty and Article 6 of the European Convention on Human Rights, it has referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 78 of the Italian Code of Criminal Procedure currently in force contrary to Articles 3, 5 and 6 of the Treaty of Rome in that it requires a Community national — a British national in this case — as the victim of a crime who intends to bring suit as a civil party in criminal proceedings, to draw up a specific legal document, not provided for under his own national legal system, conferring a special power of attorney for bringing suit as a civil party in criminal proceedings, which may be unnecessary under English law because it is implicit in a general power of attorney?

(2) Is Article 78 of the Code contrary to Article 6 of the Convention on Human Rights of 4 November 1950 and is that Convention relevant to this case?'

**Question 1**

9. According to established case-law, in proceedings for a preliminary ruling under Article 177 of the Treaty, the Court cannot rule on the compatibility of a national measure with Community law. [1] However, Question 1 should be seen as a request for an interpretation of the Treaty provisions to which it refers, so that the national court may itself decide whether the rules at issue are compatible with the Community rules.

10. The Commission and Mr Perfili point out that the national court has not set out in its order for reference the factual and legislative context in which the questions arose. Both the Commission and Lloyd's query the relevance of questions based on an inaccurate interpretation of national law. The Commission and Mr Perfili both contend, but for

1 — See, in particular, Case 9/70 *Grad* [1970] ECR 825, paragraph 17, and Case 78/70 *Deutsche Grammophon* [1971] ECR 487, paragraph 3.

different reasons, that this request for a preliminary ruling is inadmissible. The Commission, relying on the judgments in *Lourenço Dias* [2] and *Meilicke*, [3] argues that the question submitted is manifestly irrelevant for the purposes of giving judgment in the case, since the national court has misinterpreted its own law. Accordingly, it asks the Court to declare that Question 1 is inadmissible or that there is no need to rule upon it. Mr Perfili, relying on the judgment in *Telemarsicabruzzo and Others* [4] and the order of 19 March 1993 in *Banchero*, [5] argues that, since the related factual and legislative background has not been described in sufficient detail, the Court cannot give an interpretation of Community law which would be of use in the case. As regards Question 1, the request is therefore inadmissible.

11. It is true that the order for reference provides very little information regarding the factual and legal background to the case. In many cases, however, as the Court pointed out in its order of 26 April 1993 in *Monin Automobiles*, [6] defining the factual and legislative context giving rise to the question submitted is indispensable and this is particularly true of areas characterized by complex factual and legal situations, such as competition law. In my view, that requirement should be respected generally, irrespective of the subject-matter in question. There are two major reasons for this.

12. *First*, if the Court is unable to discern the actual nature and significance of the legal issue confronting the national court, it cannot give that court any useful assistance.

The Court has repeatedly stated, and in quite express terms in its judgment in *Lourenço Dias*, cited above, that:

'... the spirit of cooperation which must prevail in the preliminary ruling procedure [which] requires the national court to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and *not to deliver advisory opinions on general or hypothetical questions* ...;

In view of that task, the Court considers that it cannot give a preliminary ruling on a question raised in a national court where, *inter alia*, ... the interpretation of Community law or the examination of the validity of a rule of Community law sought by the national

2 — Case C-343/90 [1992] ECR I-4673, paragraphs 17 to 21.

3 — Case C-83/91 [1992] ECR I-4871, paragraph 31.

4 — Joined Cases C-320/90, C-321/90 and C-322/90 [1993] ECR I-393.

5 — Case C-157/92 [1993] ECR I-1085.

6 — Case C-386/92 [1993] ECR I-2049, paragraph 7.

court bears no relation to the actual nature of the case or to the subject-matter of the main action ...;

... in order to enable the Court to provide a useful interpretation of Community law, it is appropriate that, before making the reference to the Court, the national court should establish the facts of the case and settle the questions of purely national law ... By the same token, it is essential for the national court to explain the reasons why it considers that a reply to its questions is necessary to enable it to give judgment ...;

With this information in its possession, the Court is in a position to ascertain whether the interpretation of Community law which is sought is related to the actual nature and subject-matter of the main proceedings. If it should appear that *the question raised is manifestly irrelevant for the purposes of deciding the case*, the Court must declare that there is no need to proceed to judgment.' [7]

13. *Secondly*, the Court has also emphasized that the preliminary ruling procedure under Article 177 of the Treaty is more than a dialogue between two courts. In its judgment in *Holdijk and Others*, the Court made it clear that this procedure also provides all the Member States — whose laws can be changed through application of Community law — with an opportunity to express their views on the questions of interpretation or validity raised by a national court: [8]

'... the information furnished in the decisions making the references does not serve only to enable the Court to give helpful answers but also to enable the governments of the Member States and other interested parties to submit observations in accordance with Article 20 of the Protocol on the Statute of the Court (EEC). It is the Court's duty to ensure that the opportunity to submit observations is safeguarded, in view of the fact that, by virtue of the abovementioned provision, only the decisions making the references are notified to the interested parties.'

That position was recently reaffirmed in the orders of 23 March 1995 in *Saddik* [9] and of 7 April 1995 in *Grau Gomis and Others*. [10]

14. Let us now look to see whether the order for reference in this case meets the requirements set out in the case-law so as to decide whether the Court should declare this

7 — Paragraphs 17 to 20; emphasis added.

8 — Joined Cases 141/81, 142/81 and 143/81 [1982] ECR 1299, paragraph 6.

9 — Case C-458/93 [1995] ECR I-511, paragraph 8.

10 — Case C-167/94 [1995] ECR I-1023, paragraph 10.

preliminary question inadmissible, whether there is no need for the Court to proceed to judgment, or whether another course of action should be adopted.

15. As already noted, the reasons given in the order for reference are not very explicit and the information provided regarding the facts of the case and the relevant legislative background is scant. As regards the factual context, it does not seem to me that the nature of the case warranted much in the way of further explanation. As regards the legislative background, it must be emphasized that, although the national court did indeed provide some information on points of Italian law, it is not enough to allow me to identify which rules of Community law may preclude the national provisions in question.

16. Furthermore, the Commission and Mr Perfili maintain that the national court has both misinterpreted its own law and cited provisions of Italian law which are not relevant here. Thus, according to Mr Perfili, Article 78 of the CCP, to which the national court refers, does not regulate the bringing of suit as a civil party in criminal proceedings but lists the formal requirements for giving notice of an intention to bring such suit (for example, such notice must give counsel's full name and details of his authorization). [11] However, unlike the Commission in its observations, Mr Perfili accepts that Italian law requires a *special power of attorney* to be conferred, as described by the national court.

17. It is not for the Court to say whether the national court has misinterpreted its own law. According to settled case-law, [12] Article 177 of the Treaty is based on a clear separation of functions between national courts and tribunals on the one hand and the Court on the other. However, the very nature of the procedure under Article 177, which the Court has defined as establishing a mechanism for direct, [13] close [14] and mutual [15] cooperation between the Court of Justice and the national courts and tribunals, places specific and *also mutual* obligations on the Court and on national courts and tribunals. In order to give a reply which will be of use in deciding a dispute, the nature and scope of the legal issue before the national court must also be ascertained.

18. I do not think that this request can be declared inadmissible, since the national court has provided the minimum amount of information enabling the Court to identify the Community rule at issue. Nor do I see any compelling reason to declare that there is

11 — See Mr Perfili's observations, p. 5 (French language version).

12 — Case 5/77 *Tedeschi* [1977] ECR 1555, paragraphs 17 to 19, and, more recently, Joined Cases C-358/93 and C-416/93 *Bordessa and Others* [1995] ECR I-361, paragraph 10.

13 — Case 44/65 *Hessische Knappschaft* v *Singer* [1965] ECR 965, p. 971.

14 — Case 72/83 *Campus Oil and Others* [1984] ECR 2727, paragraph 10.

15 — Paragraph 25 of *Meilicke*, cited above.

no need to proceed to judgment, as the information placed before the Court does not suggest that *the question submitted is manifestly irrelevant for the purposes of deciding the case*. However, since the national court has not set out the legal and factual context of this case in greater detail, and in order to avoid giving an opinion which is purely advisory, we must restrict ourselves to the terms of the question.

19. In my opinion, therefore, the Court should follow the precedent set, *inter alia*, by its judgment in *Deutsche Milchkontor and Others*: [16]

'The information given in the orders for reference as to the exact terms of the relevant rules of national law does not enable the Court to formulate any further guidelines for the interpretation of Community law in this regard.'

20. In view of the grounds given in the order for reference as it stands and the actual wording of the question, the latter should be re-worded as follows: Does Article 6 of the Treaty preclude a Member State from requiring nationals of other Member States who have been harmed by a criminal offence and who wish to pursue a civil claim in criminal proceedings to produce a special power of attorney for that purpose?

16 — Joined Cases 205/82 to 215/82 [1983] ECR 2633, paragraph 36.

21. The principle that the national procedural systems are autonomous must leave the Court no alternative but to give a negative answer. Nothing in the information provided by the national court suggests that the national rules governing access to the courts give rise to discrimination prohibited by Article 6 of the Treaty.

**Question 2**

22. The Court is asked to interpret a provision of the European Convention on Human Rights. That Convention is not one of the acts on which the Court has jurisdiction to give an interpretation under Article 177 of the Treaty. Furthermore, it establishes an independent system for the protection of rights and freedoms, providing, *inter alia*, for competence accruing to its own judicature.

23. Thus, in so far as I am unable to discern in this case the fundamental right which is specifically safeguarded by a provision of the Treaty, I propose that the Court state by way of reply that there is no need for it to proceed to judgment on the second question submitted for a preliminary ruling. [17]

17 — To that effect, see particularly Advocate General Trabucchi's comments in paragraph 4 of his Opinion in Case 118/75 *Watson and Belmann* [1976] ECR 1185.

24. Consequently, in the light of the foregoing, I propose that the Court give the following reply to the first question submitted for a preliminary ruling by the Pretura Circondariale, Rome, Sezione Distaccata di Frascati:

Article 6 of the EC Treaty is to be interpreted as not precluding a Member State from requiring that, in similar cases, nationals of other Member States who have been harmed as a result of a criminal offence and who wish to pursue civil claims in criminal proceedings must produce a special power of attorney for that purpose.