philosophy as part of the commercial activities of that community constitute economic activities in so far as the services which the community provides to its members may be regarded as the indirect quid pro quo for genuine and effective work.

2. Articles 59 and 60 of the Treaty do not cover the situation where a national of a Member State goes to reside in the territory of another Member State and establishes his principal residence there in order to provide or receive services there for an indefinite period.

REPORT FOR THE HEARING
delivered in Case 196/87 *

I — Facts and procedure

1. *Relevant legislation*

(a) *National legislation*

In the Netherlands, under Article 91 (1) (a) of the Vreemdelingenbesluit (Aliens Order) of 19 September 1966 (*Staatsblad* 387) a foreign national who is a national of a Member State of the European Economic Community and who resides in or goes to the Netherlands in order either to pursue activities there, whether or not as an employed person, or as a recipient of services is regarded as a favoured EEC national. That provision constitutes a derogation from the general implementing rules with regard to the policy on the admission of foreigners applied under Article 11 (5) of the Vreemdelingenwet (Law on Aliens) of 13 January 1965 (*Staatsblad* 40), which is that a residence permit may be refused for reasons of public interest.

Paragraph 3.3.1. of Chapter B 4 of the *Vreemdelingencirculaire* (Circular on Aliens) 1982, which was applicable at the time of the contested decision reads as follows:

'As part of the free movement of services, nationals of Member States of the European Economic Community are entitled to go to another Member State and remain there in order to provide or receive a service but — in contrast to the freedom of movement for workers and the right to establishment for self-employed persons — they retain their principal residence

* Language of the Case: Dutch.

in another Member State of the Community.

Examples:

(i) a technician who comes to install a machine;

(ii) a lawyer who, being instructed, comes to give advice;

(iii) the opposite case of a person coming to consult a lawyer or an expert in the Netherlands.'

(b) *Relevant Community legislation*

The second recital in the preamble to Directive 73/148 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (Official Journal 1973, L 172, p. 14) states that:

'freedom of establishment can be fully attained only if a right of permanent residence is granted to the persons who are to enjoy freedom of establishment; ... freedom to provide services entails that persons providing and receiving services should have the right of residence for the time during which the services are being provided'.

Article 1 (1) (a) and (b) provides as follows:

'1. The Member States shall, acting as provided in this directive, abolish restrictions on the movement and residence of:

(a) nationals of a Member State who are established or who wish to establish themselves in another Member State in order to pursue activities as self-employed persons, or who wish to provide services in that State;

(b) nationals of Member States wishing to go to another Member State as recipients of services'.

2. *The background to the main proceedings*

Mr Steymann, a German national and a plumber by trade, came to the Netherlands at the beginning of 1983 and, for a brief period, did plumbing work in Amsterdam through a temporary employment office, after which he became a member of an association known as the 'De Stad Rajneesh Neo-Sannyas Commune' (hereinafter referred to as 'the Bhagwan Community'). According to Article 2 (1) of its Statutes, the object of that community is:

'to be a religious community of (Neo)-Sannyasins (and on that basis, to be an example) whose life is guided in all respects by the doctrine and religious vision of Bhagwan Shree Rajneesh and thereby to promote actively the said doctrine'.

Article 2 (2) of the Statutes provides that:

'The members of the commune shall live as a community with common financial means and, in order to provide for their common maintenance, shall engage in all such activities permitted by law as will enable the commune to function as a self-supporting community.'

According to Article 17 of the Statutes:

'Members are required to participate totally and positively in the life of the commune.'

Article 24 of the Statutes provides that:

'The commune shall provide clothing, food, shelter, medical care and other goods and services in accordance with the reasonable needs of the members, including and in addition to the sum of money which each individual member needs in order to pay his taxes and fulfil the obligation arising from his participation in the rules set out in Article 8. The determination of the nature, amount, quality and quantity of those "basic services" is a matter for the Board of Management, which shall seek when reaching its determination to strike a balance between the obligation to provide those basic services and the obligation to take care to promote the interests of the commune, namely the common funds.

Those basic services are provided solely on the basis of membership and are not related to the work performed by a member or to any other way in which he or she contributes to the community.'

After obtaining a provisional residence permit (three months) on several occasions in order to seek employment, Mr Steymann applied to the Netherlands authorities on 28 August 1984 for a residence permit on the basis that he was pursuing an activity as an employed person. That application was construed by the Staatssecretaris van Justitie as an application for a residence permit as a member of the Bhagwan Community and was therefore refused on the ground that Mr Steymann did not pursue an activity as an employed person and did not have sufficient means for his support within the meaning of the Vreemdelingenwet. His application for review of that decision was dismissed on 20 December 1985. Mr Steymann appealed against that refusal to the Raad van State (Council of State).

It appears from the documents before the Court that during the review proceedings Mr Steymann abandoned his claims to the effect that his activities in the Bhagwan Community could be equated to work either as an employed or self-employed person. He relied solely on freedom to provide services. It appears that Mr Steymann argued on the basis of his being both the recipient of certain services from the Bhagwan Community and a provider of services to argue that he should be regarded as a favoured EEC national within the meaning of Article 91 (1) of the Vreemdelingenbesluit and therefore was entitled to obtain a residence permit in the Netherlands.

According to Mr Steymann, the services provided by the Bhagwan Community consisted *inter alia* in the provision of certain basic requirements such as food, lodging and clothing and in permitting him to be a member of the community and to share on an equal footing in results of the association's business activities. The services rendered in exchange by Mr Steymann to

the Bhagwan Community consisted of plumbing work in the community's building, general housework and participation in the outside economic activity of the community (for example, working in the 'Zorba the Buddha Rajneesh Disco and Lounge', the 'Rajneesh Cleaning Service' or the 'Rajneesh Buddhafield Transport', all belonging to the Bhagwan Community).

3. *The questions referred to the Court*

Although it did not exclude the possibility that the question of freedom of establishment might be involved, the Raad van State considered that certain questions arose in regard to the Community-law concept of freedom to provide services. By order of 3 June 1987, it therefore decided to stay the proceedings and refer the following questions to the Court of Justice:

'(1) Can activities which consist in, and are entirely centred around, participating in a community based on religion or on another form of philosophy and in following the rules of life of that community, whose members provide each other with benefits, be regarded as an economic activity or as a service for the purposes of the Treaty establishing the European Economic Community?

(2) Must Articles 59 and 60 of the EEC Treaty be interpreted as meaning that there is no provision of services for the purposes of the Treaty if a national of a Member State goes to reside in another Member State for an indefinite period, thereby establishing his principal residence in that other Member State, when his residence there is not limited in time by the nature of the services to be provided?

(3) Must Articles 59 and 60 of the Treaty be interpreted as meaning that services are not received for the purposes of the Treaty if a national of a Member State goes to reside in another Member State for an indefinite period, thereby establishing his principal residence in that other Member State, when his residence there is not limited in time by the nature of the services to be received?'

4. *Observations of the national court*

Referring to the judgment of 3 July 1986 in Case 66/85 (*Lawrie-Blum* v *Land Baden-Württemberg* [1986] ECR 2121), the Raad van State observes that Mr Steymann does not fulfil the essential criterion in order for an employment relationship to exist, namely performance for a certain period of time of services for and under the direction of another person in return for remuneration. The national court regards the performance of certain services, which are not determined in advance but agreed on with the other members of the community as the circumstances require, as a consequence of his living in the community, from which he may withdraw at any time.

5. *Procedure*

The order requesting a preliminary ruling was received at the Court Registry on 24 June 1987.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Netherlands Government, represented by E. F. Jacobs, Secretary-General at the Ministry of Foreign Affairs, and by the Commission of the European Communities, represented by E. Lasnet, Legal Adviser, and P. J. Kuyper, a member of its Legal Department, acting as Agents.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to assign the case to the Sixth Chamber and to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

1. *First question*

(a) According to the Netherlands Government, the economic nature of activities such as those indicated by the national court in its first question must be apparent from the overall nature of the relationship within which those activities are carried out; in other words, the obligations under that relationship should constitute the provision of services in return for reward. By way of example, it points out that in the context of cooperatives or mutual insurance companies established in the form of associations, it is possible for the members to carry on economic activities because the entire organization is based on economic motives and membership thereof is designed to achieve those objectives. However, that is clearly different from membership of the Bhagwan Community. Membership of the Bhagwan Community does not constitute an economic relationship, even if membership does give rise to moral or legal obligations to work and to provide 'bed and board'. On the contrary, the relationship is based on a view of life which entails the obligation — to use the term used by the community — 'to worship'. Participation in such a community cannot therefore be regarded as an economic activity within the meaning of the Treaty.

(b) The Commission, for its part, considers that it is possible for members of a community such as the Bhagwan Community to carry out economic activities within the meaning of the Treaty, provided that the rules of the community involved contain precise instructions on the work of the members and the activities are genuine and effective. Those requirements are fulfilled in this case. Mr Steymann's position is no different, for example, from that of a brother-technician in a Trappist monastery who looks after the maintenance of the vats used in the brewing of beer.

Moreover, the Commission considers that such activities may be regarded as employed activities within the meaning of Article 48 of the Treaty. A member of the Bhagwan Community fulfils the criteria characterizing an employment relationship which were set out by the Court in its judgment in the case of *Lawrie-Blum* (cited above). The employment relationship in this case is comparable, in particular, to a contract of employment for an indefinite period, namely the length of the stay in the community. In the second place, the Commission argues that the reference to the

rules of the community implies that the members of the community are subordinated to a certain extent to the community as a whole. Finally, what is involved in this case is services provided for remuneration. It is irrelevant in that regard that the remuneration is small or below what is considered as the minimum required for subsistence in the Member State in question (see the judgments of 23 March 1982 in Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035, and of 3 June 1986 in Case 139/85 *Kempf* v *Staatssecretaris van Justitie* [1986] ECR 1741).

In the alternative, the Commission considers that, particularly in regard to Mr Steymann's activities as a plumber, he may possibly be regarded as a person pursuing a self-employed activity within the meaning of Article 52 of the Treaty if he satisfies the requirements laid down in the Netherlands in order to establish himself and work as a plumber.

2. *Second question*

The Netherlands Government and the Commission both argue that the reply to the second question should be in the affirmative.

(a) According to the Netherlands Government, membership of religious communities or communities advocating a particular philosophy may not be regarded as services normally provided in return for remuneration owing to the nature of such communities. Furthermore, it considers that the activities at issue do not extend beyond the frontiers of a single Member State and that, therefore, there is no basis for speaking of the provision of services within the meaning of Articles 59 and 60 of the Treaty (see the judgment of 10 March 1980 in Case 52/79 *Procureur du Roi* v *Debauve* [1980] ECR 833).

(b) The Commission considers that Articles 59 and 60 of the Treaty do not apply, having regard to the circumstances set out in the second question: the indefinite length of the stay envisaged and the absence of services being provided beyond the frontiers of a single Member State.

3. *Third question*

The Netherlands Government and the Commission both propose that the reply to the third question should be that a situation such as that referred to by the national court cannot come within the scope of the freedom to provide services within the meaning of Articles 59 and 60 of the EEC Treaty.

(a) According to the Netherlands Government there is not yet a provision of services where the recipient establishes his principal place of residence for an indefinite period in another Member State in which the service is provided. The nationality of the recipient of the services cannot be regarded as being a relevant factor in that connection.

(b) The Commission points out that a recipient of services who does not move within the Community in order to receive them cannot obtain independent rights under the Treaty *qua* recipient of services, at least where the services in question do not involve a trans-frontier element (see the judgment of 10 March 1980 in Case 52/79 *Debauve*, cited above).

T. F. O'Higgins
Judge-Rapporteur