OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 19 MAY 1983 [1]

Mr President,
Members of the Court,

1. These proceedings, which were initiated by a reference for a preliminary ruling made by the Cour d'Appel [Court of Appeal], Colmar, represent the sequel to Case No 136/78 ([1979] ECR 437), to which I shall hereinafter refer as "Auer I". It raises questions of interpretation of Articles 52 and 57 of the EEC Treaty concerning the freedom of establishment, in respect of two Council directives: No 78/1026/EEC of 18 December 1978, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine (Official Journal 1978, L 362, p. 1) and No 78/1027/EEC, which deals with the same matters and concerns the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons (Official Journal 1978, L 362, p. 7).

2. The facts which gave rise to the action are not in dispute. For the greater part they are set out in the judgment in Auer I and I shall summarize them as follows. Vincent Auer, who was originally of Austrian nationality, studied veterinary medicine in Vienna, Lyon and finally in Parma, where, in 1956, he obtained a diploma of "laurea" [doctor]. In 1958 he took up residence in France and practised his profession there, first as assistant to a French veterinary surgeon and subsequently on his own account. He became a naturalized French citizen in 1961, and on several occasions applied for an authorization to engage in the medical and surgical treatment of animals within the meaning of Ministerial Decree No 62-1481 of 27 November 1962. According to that decree, authorization may be granted to veterinary surgeons of foreign origin who have acquired French nationality and who are in possession of a diploma in veterinary medicine issued abroad and recognized as equivalent to the French diploma by the competent examining committee. However, in Dr Auer's case, the committee refused to recognize the equivalence of his diploma although it is accepted by certain academic institutions in France. His applications were therefore rejected and, on more than one occasion, he was prosecuted for unlawfully practising the profession.

It was in the context of one of those prosecutions that the Cour d'Appel, Colmar, submitted for a preliminary ruling the question on which the Court ruled in Auer I. The Court declared then (7 February 1979) that prior to the date on which the Member States were required to have taken the measures necessary to implement Directives Nos 78/1026 and 78/1027, the nationals of a Member State could not rely on Article 52 of the EEC Treaty with a view to practising as a veterinary surgeon within the territory of that Member State on any conditions other than those which the national legislation laid down (paragraph 30 of the decision).

1 — Translated from the Italian.

In May 1980, the University of Parma issued to Dr Auer a practising certificate in veterinary medicine. In the meantime, he had continued to practise veterinary surgery at Mulhouse. Indeed he was charged with having done so, and with having dispensed medicine and held himself out to be a veterinary surgeon on 26 January and 15 June 1981, on the basis of a complaint made by the National Society of Veterinary Surgeons and the National Union of Practising Veterinary Surgeons of France. Auer did not dispute the facts to which the charges referred. Moreover, he pleaded in his defence the rights conferred on him by the Community provisions governing the freedom of establishment. In particular, he pointed out that the period accorded to Member States for the adoption of measures implementing Directives Nos 78/1026 and 78/1027 expired in December 1980. From that date, therefore, it was not possible to refuse to recognize that he was free to practise his profession according to the rules laid down by those directives. He added that it was conclusive that Article 2 of Directive No 78/1026 imposes on Member States the obligation to recognize the diplomas listed in Article 3. The diploma of doctor which he obtained in Italy appears among those diplomas under indent (f).

The court of first instance rejected that argument and, whilst it acquitted Dr Auer on certain of the charges, found him guilty of unlawfully practising veterinary medicine. It sentenced him to a fine and ordered him to pay damages to the civil parties and the costs incurred by them. All the parties in the proceedings lodged appeals before the Cour d'Appel, Colmar. That court considered that it was "inconceivable" that a person who was of foreign origin and who held a foreign qualification could be allowed to practise veterinary medicine without having to seek registration with the appropriate body and thus enjoy rights which were denied to a person who had always held French nationality. However it stayed the proceedings and requested this Court to rule on the question whether the requirement that a person who finds himself in the position of Dr Auer must be registered with a national body as a condition for practising veterinary medicine, when the period granted to Member States for complying with Directives Nos 78/1026 and 78/1027 has expired, amounts to "a restriction on the freedom of establishment provided for in Articles 52 and 57 of the Treaty of Rome".

3. I shall come to my views on that question shortly. However, I feel that I must comment on the observations made by the national court in relation to Dr Auer's origins. I shall do so in the words which this Court employed in Auer I; there is no provision of the Treaty, the Court stated, "which 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" (paragraph 28 of the decision). Therefore, a person who has become a national of a Member State must be accorded the same treatment as one who has always been a national. Dr Auer is entitled to the treatment to which he would be entitled if he had been a French national from birth.

It is relevant to point out, although it has not been disputed before this Court, that the Community provisions concerning

the freedom of establishment do not operate exclusively in respect of relations between a national of one Member State and the authorities of another. If his professional qualification was awarded in another State, a citizen may rely on it as against the authorities of his own country (see judgments in Case 115/78 *Knoors* v *Secretary of State for Economic Affairs* [1979] ECR 399, and in Case 246/80 *Broekmeulen* v *Huisarts Registratie Commissie* [1981] ECR 2311).

4. Let us now return to the point at issue. Stripped of its inessentials, the problem which the Court has to resolve is the following: Can a citizen of a Member State, who has obtained in another Member State one of the qualifications listed in Directive No 78/1026, automatically practise veterinary medicine in his own State?

Article 2 of that directive provides that "each Member State shall recognize the diplomas, certificates and other evidence of formal qualifications awarded . . . by the other Member States in accordance with Article 1 of Directive No 78/1027/EEC and which are listed in Article 3, by giving such qualifications, as far as the right to take up and pursue the activities of a veterinary surgeon is concerned, the same effect in its territory as those which the Member State itself awards." The qualification obtained by Mr Auer at Parma — "diploma di laurea di dottore accompagnato dal diploma di abilitazione all'esercizio della medicina veterinaria" [Diploma of Doctor accompanied by a practising certificate in veterinary medicine] appears in Article 3 (f). Consequently, if it was awarded "in accordance with Article 1 of Directive No 78/1027", France must recognize that it has the effect attributed to the diploma of "Docteur — Vétérinaire d'État" [State diploma of doctor-veterinary surgeon] referred to under (d) of the same provision.

However, was the diploma in question "awarded in accordance" with the said article within the meaning of the provision? The minimum standards of professional training which Article 1 requires of holders of the diplomas listed in Directive No 78/1026 are described in extremely general terms (as, moreover, are those for the medical profession which appear in Directive No 75/363/EEC of 16 June 1975). It does not therefore seem possible to determine, in practice, whether a qualification has been awarded "in accordance with Article 1 of Directive No 78/1027", even with the help of expert opinion. However it does not follow that the Court is impotent. The qualifications awarded after the adoption of that directive are presumed to be in conformity inasmuch as the States are under an obligation to require that the qualification covers the knowledge and the experience set out in Article 1. The second paragraph of Article 2 of Directive No 78/1026 clarifies the position in respect of qualifications awarded prior to the implementation of the directive: it provides that the diploma "shall be accompanied by a certificate from the competent authorities of the issuing country stating that it complies with Article 1 of Directive No 78/1027/EEC."

In the course of the oral procedure, there was produced on behalf of Dr Auer a certificate issued on 3 December 1982 by the Director of the Faculty of Veterinary Medicine at the University of Parma. That certificate states that the diploma of doctor and the practising certificate obtained by Auer in 1956 and in 1980 comply with Article 1 of

Directive No 78/1027. The civil parties, who were allowed a certain amount of time for the consideration of that document, do not dispute the competence of the authority which issued it. However, they maintain that the Court should disregard it inasmuch as it was issued after the dates (January and June 1981) of the acts with which Dr Auer was charged.

I do not find that view convincing. It presupposes that the issuing of the certificate referred to in the second paragraph of Article 2 gives rise to the right to practise veterinary medicine *ex nunc*. Yet there is no doubt — and in any event it may be inferred from the first paragraph of the same article — that the existence of that right is dependent exclusively on the awarding of the diploma. The certificate merely provides *documentary evidence* that the diploma, awarded at an earlier date, is (and has always been) in conformity with Directive No 78/1027. It follows that the holder of the diploma could lawfully engage in the practice of veterinary medicine from the date on which the Member States were required to have adopted provisions implementing the two directives. The period for complying with that obligation expired on 20 December 1980 and therefore before the events giving rise to the criminal proceedings against Dr Auer occurred.

That is not the only objection which the civil parties base on Article 1 of Directive No 78/1027. It is contended on their behalf that a person who finds himself in the position of Dr Auer must prove before the national court that he meets all the requirements stipulated by that provision. In their view that argument is supported by Article 15 of Directive No 78/1026, according to which "when it has grounds for doubt, the host Member State may require of the competent authorities of another Member State confirmation of the authenticity of the diplomas ... awarded (in that other Member State) ... and also confirmation of the fact that the person concerned has fulfilled all the training requirements laid down in Directive No 78/1027/EEC".

Once again I do not agree. I consider that two points clearly result from the wording of that provision. In the first place, it applies only where a Member State has grounds for doubt. It did not however emerge before the Court that the French Government had any doubts as to the authenticity or the value of the degree awarded to Dr Auer (for the interpretation of a provision containing a similar formula, see judgment of 22 March 1983, Case 42/82 *Commission* v *France* [1983] ECR 1013, paragraph 32 of the decision). Secondly, even if there are doubts, it is the State which entertains them which has the duty to take all appropriate steps. Article 15 authorizes it to demand certain confirmations; it does not require individuals to furnish proof before the national courts.

5. For those reasons, I am convinced that Directive No 78/1026 applies to the case of Dr Auer. It is therefore necessary to establish whether it has direct effect, in other words, whether a person who finds himself in the position of Auer may rely on it before the national court.

The Court has repeatedly defined the characteristics which a directive must possess in order to be recognized as having direct effect. Mr Advocate General Reischl summarized them extremely well in his opinion in Case 148/78 (*Pubblico Ministero* v *Ratti* [1979] ECR 1629, in particular p. 1651). He said that it must be clear from the nature, the general scheme and the

wording of the provision that it imposes on Member States clear, complete and precise obligations, does not make those obligations subject to conditions which are not precisely defined and does not leave the Member States any margin of discretion in the performance of the obligations. I consider that the first paragraph of Article 2 of Directive No 78/1026 has those characteristics. The obligation which it imposes is precise because the qualifications which it requires to be recognized are specified with the greatest possible precision. Moreover its precision is not diminished by the vagueness with which Article 1 of Directive No 1027 describes the minimum training *standards* required of the holders of degrees. As I stated under 4 above, the second paragraph provides a practical and simple means of disposing of that obstacle. In my opinion, therefore, there can be no doubting that the obligation is also clear and complete.

The directive therefore has direct effect. That means that, as France did not implement the directive in good time, that State cannot rely on its own failure to comply with the obligations arising from the provisions of that directive against a person who is in the position of Dr Auer (see judgment in Case 8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53, in particular p. 71). On the other hand, that person may rely on the effect of the directive as against the examining committee established by Decree No 62/1481 or as against the society or the union of veterinary surgeons, inasmuch as they exercise public powers conferred on them by the national laws which govern the recognition of diplomas. In saying this, I do not mean to suggest that the effect of the directive is also "horizontal" and therefore capable of affecting relationships between private individuals. It may however be pleaded against institutions which, although they are not organs of the State in the true sense of the term, in one way or another implement the policy of the State. Moreover, the Court took that view in respect of a banking institution governed by public law which operated in the interests of a Land (see judgment in Case 65/81 *Reina* v *Landeskreditbank Baden-Württemberg* [1982] ECR 33).

6. The society and the union of French veterinary surgeons do not accept that conclusion. According to them, the requirement of enrolment on the register does not in itself amount to an infringement of Articles 52 and 57 of the EEC Treaty. Intended as it is to regulate entry into the profession and ensure respect for the ethics thereof, it is justified in the general interest and satisfies requirements of public policy.

As is stated in the judgment in Case 118/75 (*Watson and Belmann* [1976] ECR 1185, in particular pp. 1198-1199), national provisions which require residents of a Member State who provide accommodation for nationals of other Member States to inform the authorities of that Member State of the identity of such foreign nationals, are only incompatible with Community law in so far as they impose indirect restrictions on the freedom of movement. I consider that a similar principle is applicable to Articles 52 and 57. In my view, provisions which are adopted for reasons of public policy and under which holders of degrees obtained in other Member States are required to be entered on a

professional register should be considered lawful only in so far as they do not entail an indirect restriction on the freedom of movement.

It appears from the documents in the case that Dr Auer has on several occasions requested to be entered on the register of French veterinary surgeons and that his applications have been repeatedly rejected. If after 20 December 1980 he did not submit any applications, it may be thought that he refrained from so doing because he had learned from experience that submitting them would be futile. Finally, for a person whose "status" is similar to his and is therefore in conformity with the Community rules relating to the practice of veterinary medicine, arbitrary exclusion from the Society unlawfully restricts the right of establishment.

7. Once that conclusion is reached, the debate between the parties as to the effects of Article 4 of Directive No 78/1026 becomes irrelevant. It is well known that that provision recognizes the rights acquired by the nationals of a Member State who possess qualifications which do not satisfy the minimum training standards to which I have already referred many times (Article 1 of Directive No 78/1027). It is clear that that provision has no part to play in this case. Indeed, its applicability would be excluded for reasons which are all too obvious should the Court accept the solution which I have suggested. However it would also be excluded if the Court were not to accept that solution, because the benefit under that provision is made subject to condition of at least three years' "lawful" practice of veterinary medicine, and thus to a requirement which a person in Dr Auer's position could not claim to have satisfied.

It is objected that the French courts have never been particularly severe with Dr Auer. For example they have not ordered the closure of his surgery. That is perfectly true but it would be going too far to infer from such leniency that his actions were adjudged to be in conformity with French law. I therefore disagree with the Commission, whose view is that the French authority which considers Dr Auer's conduct illegal has to some extent adopted a position which is *contra factum proprium.* Nor in this connection may it be said that inasmuch as the case concerns a conflict between national provisions and provisions of Community law the latter must take precedence, with the result that the former are invalid and the conduct which on the basis of them was held to be unlawful must be considered lawful. The period allowed for giving effect to the obligation to implement the directives expired on 20 December 1980, that is to say too late for it to be possible to maintain that when Auer engaged in the conduct in question, the three years of lawful practice of the profession had elapsed.

8. I have dealt with these arguments for the sake of completeness. However, as is clear, they represent developments of a view which I do not share. I take the opposite view. I therefore propose that the Court reply to the question submitted to it for a preliminary ruling by the Cour d'Appel, Colmar by judgment of 16 December 1982, in the course of the criminal proceedings brought against Dr Auer, as follows:

"A citizen of a Member State, who is qualified to practise the profession of veterinary surgeon in another Member State, which has awarded him the diplomas referred to in Article 3 of Directive No 78/1026/EEC before that directive was or was required to be implemented, is entitled to practise that profession in his own State from the date on which the directive is implemented or, at the latest, as from 20 December 1980. That is so provided that, on the basis of the second paragraph of Article 2 of that directive, the competent authorities of the Member State in which he obtained the degree have issued to him a certificate stating that the degree in question complies with Article 1 of Directive No 78/1027. The fact that he is not a member of the society of veterinary surgeons of his own State cannot prevent him from practising that profession in so far as the requirement of membership constitutes an arbitrary restriction of the freedom of establishment."