On those grounds,

THE COURT

in answer to the question referred to it by the Cour d'Appel, Paris, by a judgment delivered in chambers on 13 July 1976, hereby rules:

When a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 28 April 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 29 MARCH 1977 [1]

Mr President,
Members of the Court,

As I stated nearly three years ago in the *Reyners* case, social and economic integration, the primary aim of the Treaty establishing the European Economic Community, involves the development of legal relations between Member States, and consequently the

1 – Translated from the French.

attainment of freedom of establishment in each of those States for persons assisting the administration of justice such as advocates, irrespective of their nationality. In other words, any obstacle to the entry to and practice of that independent, liberal profession, based on a criterion of nationality must be effectively abolished.

On that occasion I registered my surprise at finding that the equality of treatment which is implied by the right of establishment had not really been attained more than four years after the end of the transitional period, in my opinion contrary to the clear, complete, unconditional and consequently directly applicable, provisions of Article 52 of the Treaty of Rome.

It is true that the Council adopted a directive concerning the activity of advocates on 22 March 1977, but that directive concerns only freedom to provide services and not the right of establishment.

The failure of the Community institutions, and in particular the Council, to adopt the directives provided for by Articles 54 and 57 of the Treaty did not seem to me such as to paralyse the effective implementation of Article 52.

The Court followed me on this essential point. It based itself on Article 7 of the Treaty, which forms part of the 'principles' of the Community and provides that within the ambit of the Treaty and without prejudice to any special provisions contained therein, 'any discrimination on grounds of nationality shall be prohibited'. The Court inferred from this principle that Article 52 provides for its implementation in the particular sphere of the right of establishment.

This finding led the Court to decide:

(1) that in laying down that freedom of establishment shall be attained by the end of the transitional period, Article 52 imposes, upon all the Member States, an obligation to attain a precise result;

(2) that the fulfilment of that obligation is not dependent upon the implementation of a programme of progressive measures in the form of the directives provided for both by Article 54 and by Article 57 of the Treaty, since the only purpose of those legal instruments is to facilitate the entry into and the practice of the professions referred to in each of the Member States;

That consequently, since the end of the transitional period, Article 52 is a directly applicable provision which creates individual rights, despite the absence in the sphere in question of the directives to which I have just alluded.

For my part, I specified in my opinion that the directives referred to in Article 57 relating to the mutual recognition of diplomas as well as the coordination of provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons constitute a useful complement to the practical attainment of equality of treatment, but are not the necessary condition precedent therefor, except in the particular case, referred to in Article 57 (3), of the medical and allied and pharmaceutical professions.

However, I was able to reach such a definite opinion due to the particular facts of the *Reyners* case, because the question referred to this Court by the Conseil d'État of Belgium for a preliminary ruling raised, in its pure form, the problem of equality of treatment applied to the profession of advocate, in the clearly circumscribed field of a condition pertaining to the nationality of the person concerned.

As is known, Mr Reyners, a Netherlands citizen who had been brought up in Belgium, held the Belgian diploma of Doctor of Laws, and in the circumstances

of that case the problem of the recognition of a foreign diploma as being equivalent to the national qualification required for admission to the Brussels Bar did not arise.

This case, the *Thieffry* case, on the contrary, basically centres upon the effects of the recognition by the French university authority that the diploma of Doctor of Laws of the University of Louvain is equivalent to the French national diploma of licentiate in law.

I shall put my cards on the table straightaway, and reveal my conclusion at the beginning of this opinion, by telling the Court that I have already reached the firm conclusion that, in the circumstances of the case before the Court today, the demand of the Paris Bar Council that the person concerned should possess the *French* diploma of licentiate in law constitutes, with regard to the principle of freedom of establishment, a disguised restriction on, or at least a legal obstacle to, the exercise by Community nationals of their right of establishment in the profession of advocate in France. I hope that I can convince your Lordships to take a similar view.

However, before beginning an examination of the precise case before the Court, I consider it necessary clearly to state the facts behind the question submitted to the Court by the Cour d'Appel, Paris, for a preliminary ruling, even if it entails a repetition of details which have already been set out by the parties in the written procedure and at the hearing of the oral arguments.

Jean Thieffry, 46 years old, is of Belgian nationality; in 1955 he obtained the diploma of Doctor of Laws of the University of Louvain, and subsequently practised as an advocate at the Brussels Bar for more than ten years; during that time he worked in collaboration with Mr Van Reephingen, the President of the Bar Council, on the reform of the Belgian Judicial Code.

He also became acquainted with English law by assisting a London barrister.

Finally, he settled in Paris, where for some years he has assisted in the chambers of William Garcin.

Furthermore, he also teaches comparative law, international law and French contract and commercial law.

He has also written several articles, published in particular by the Jurisclasseurs Périodiques (a French legal review), concerning price control in France, international contracts and contractual liability comparatively in French, English and German law.

In other words, for more than 20 years, the appellant in the main action has in fact been practising the profession of advocate and he has demonstrated such remarkable qualities therein that William Garcin has recently offered him a partnership, subject to his becoming a member of the Paris Bar.

With the aim of being admitted to that Bar, in 1974 Mr Thieffry requested recognition from the University of Paris 1 that his Belgian diploma is equivalent to the French licentiate's degree in law. He obtained that recognition of equivalence, and I shall examine the procedure and effects thereof later on. Then he prepared the Certificat d'Aptitude à la Profession d'Avocat (CAPA) (qualifying certificate for the profession of advocate), the exams for which he sat and passed in 1975.

Thereafter, he thought, nothing more stood in the way of the acceptance by the Conseil de l'Ordre de Paris (Paris Bar Council) of his application for membership of the Bar as an 'avocat stagiaire' (pupil).

Unfortunately, the Conseil rejected that application by a decision of 9 March 1976, on grounds which call for careful scrutiny.

On the report of Simon Gueulette — who represented the Conseil de l'Ordre

at the oral procedure before this Court — the Conseil accepted the direct effect of Article 52 of the Treaty, but, basing itself on the Law of 31 December 1971 on the reform of the legal professions, that professional body took the view that the obligation to offer the French diploma of a licentiate's or doctor's degree in law which is imposed by Article 11 of the said Law had 'not been repealed' by the Treaty; and that consequently, since he did not possess the licentiate's degree in law, Mr Thieffry's application for membership had to be rejected.

For the time being, I shall merely observe that this ground of rejection is mistaken on an essential point of law. It is incorrect to write that Article 52 of the Treaty of Rome — or the directives provided for by Articles 54 and 57 — are such as to repeal the second paragraph of Article 11 of the Law in question.

Just like secondary Community law, the Treaty can have the effect of rendering that national legislative provision unenforceable against Community nationals desirous of practising the profession of advocate in France. They cannot repeal it, because at all events the obligation to possess a French diploma remains applicable to nationals of States which are not Members of the Community, unless there is a bilateral agreement providing for the recognition of equivalence of legal diplomas or rather for the automatic recognition of validity of certain foreign diplomas in France.

Be that as it may, the applicant brought the matter before the Cour d'Appel, Paris, the court having jurisdiction over the decisions of the Conseil de l'Ordre, in particular regarding refusals to inscribe applicants on the roll; on 13 July 1976 the first three Chambers of that court, the competent formation, sitting in chambers, decided to stay the proceedings and to refer the following question to this Court for a preliminary ruling:

'When a national of one Member State desirous of exercising the profession of Advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the university authority of the country of establishment and which has enabled him to sit in the latter country the advocate's professional qualifying examinations — which he has passed — does the act of demanding the national diploma prescribed by the law of the country of establishment constitute, in the absence of the directives provided for in Article 57 (1) and (2) of the Treaty of Rome, an obstacle to the attainment of the objective of the Community provisions in question?'

Worded in that way, the question is clear. It carefully avoids the mistaken statement of reasons which I felt that I had to point out in the decision of the Conseil de l'Ordre and it situates the debate in the proper legal area. Let me add that I have no doubt as to the admissibility of the request for a preliminary ruling or as to the jurisdiction of this Court to decide the issue.

Thus, the Court is now able to give a cogent answer to the question so defined. For my part, I will set out the reasons for which it seems to me that, even in the absence of any Community directive relating to the mutual recognition of legal diplomas with a view to the practice of the profession of advocate, the act of demanding a national legal diploma of the country of establishment is, taking into account the conditions peculiar to France in the sphere of the education of advocates and their membership of the Bar, indeed 'an obstacle to the attainment of the objective of the Community provisions in question'.

But first, it is important to explain the nature of the French system of admission to the national Bars. As has been said, this matter is currently governed by the Law of 31 December 1971, which

moreover reiterates previous legislation on most points.

Apart from verification by the Conseils de l'Ordre of the 'good character' of the future advocate, three conditions are imposed by Article 11 of the said Law:

(1) Possession of French nationality, subject to any international agreements. According to the decision in the *Reyners* case, this first condition is no longer enforceable against a national of another Member State of the Community; I shall not come back to it;
(2) Possession of a licentiate's or doctor's degree in law. Although not clearly stated, this is patently a question of possessing diplomas awarded by the French university authorities;
(3) Apart from certain exemptions laid down by regulation which are not in question here, possession of the Certificat d'Aptitude à la Profession d'Avocat.

This professional examination, specially designed for the education of candidates for the profession of advocate, was established in 1941, and today is regulated by Decree No 72-715 of 31 July 1972. It is prepared and the certificate awarded by the institutes or centres of legal studies set up within the universities.

Neither the possession of the licentiate's degree in law nor, *a fortiori*, of the doctor's degree are required for the purposes of the preparation of the Certificat d'Aptitude à la Profession d'Avocat, since students in the fourth year of a licentiate's degree may enrol for that preparation and sit the examination.

However, it goes without saying that even if those students receive the Certificat d'Aptitude, they will subsequently have to submit evidence of the fact that they have obtained the licentiate's degree in law in order to apply with any effect for admission to the Bar.

What is involved in the teaching given for the Certificat d'Aptitude in the institutes or centres of legal studies?

It is in essence a practical professional education, based not only on classes, but above all on practical work and exercises concerning:

— The role of the advocate, the organization of the profession and professional ethics;
— The various functions of the advocate: consultation, drafting and advocacy, as well as the procedures in use before the various courts, and the means of enforcement of judgments.

This preparation is provided both by teachers of law and by judges and also by members of the Bar.

Consequently, although the Certificat d'Aptitude is a university diploma in that the preparation for it is provided by bodies which are subordinate to the faculties, or as is said nowadays, legal teaching and research units, it is necessary to be clearly aware that advocates, as a profession, participate directly in that preparation, both in the classes, and even more as regards the practical exercises which frequently take place in advocates' chambers.

As for the examination, it involves, first, written qualifying tests and, secondly, oral tests to decide which of the eligible candidates shall pass.

The written tests cover both the candidates' general education and their technical legal knowledge regarding civil, commercial, penal or administrative procedure.

The oral tests comprise questions on:

— the organization of the courts and civil procedure; special penal law;
— means of enforcement of judgments;
— tax law and accountancy;
— and finally, the role of the advocate, the practice of the profession and professional ethics.

In addition, a 15 minute dissertation, which may take the form of a consultation or of a speech before a court on a practical case drawn by lot, as well as a discussion with the board of examiners, also 15 minutes in length, enable the qualities of the candidate to be assessed in the light of the duties and requirements of the function of an advocate.

The board of examiners is tripartite; its chairman is a teacher of law, and it is made up of teachers, judges and advocates in equal numbers.

Such are the syllabus, the manner of preparation and the manner of examination of the Certificat d'Aptitude à la Profession d'Avocat, which make it the strictly technical and professional part of the education of candidates for entry into the profession. This is important both generally and particularly, in relation to the facts of this case. By obtaining the Certificat d'Aptitude, Mr Thieffry has proved that, apart from a general legal knowledge equivalent to that which makes it possible to obtain a licentiate's degree in law in France, he possesses the specific knowledge required for admission to a French Bar.

Let me turn now to the circumstances in which the appellant in the main action obtained recognition of the equivalence of his diploma of Doctor of Laws of the University of Louvain to the French licentiate's degree, and consider the effects which such an equivalence can have not only in French law and in the internal law of the Member States, but also in the field of Community law and for the purposes of the implementation of Article 52 of the Treaty of Rome.

First of all, there can be no question that recognition of equivalence is solely within the jurisdiction of the university authorities, over whom the Conseils de l'Ordre have no control.

When presented with an application for the recognition of equivalence of a foreign diploma, the university — in this case that of Paris 1 — does not confine itself to checking whether the diploma submitted appears on an equivalence list previously drawn up. It carefully examines the subjects studied, year by year, compares them with the syllabus of the French licentiate's degree and also checks the marks obtained by the person concerned in each of those subjects, with the purpose of drawing up what is referred to as a 'transcrit d'études' (transcript of studies). Thus the university carries out exhaustive and objective research into the equivalence, taking into account the level of knowledge acquired by the person concerned and having regard to the results achieved by him in examinations.

This amounts to saying that the decision to recognize equivalence implies the certainty that the applicant must be regarded as offering guarantees concerning the level of his general legal knowledge equal to those which are required of the holder of a French licentiate's degree in law.

But then there arises the question, which is really the fundamental question in this case, of the effects of the decision to recognize equivalence.

It is provided in the Decree of 15 February 1921, a rather old item of legislation which goes back to a time when no one could have anticipated the establishment of a European Community and the implementation within the Community of freedom of establishment, that:

'*Article 1* — For the purposes of the doctorate, recognition of equivalence to the degree of licentiate in law [as well as to the degree of licentiate in science or arts] may be granted, either by an individual measure [which is the case in this instance], or by virtue of decisions of principle.

First paragraph of Article 2 — Individual applications for exemption shall be investigated by the Deans and submitted to the faculty to which the applicant states that he is presenting himself as a candidate for the doctorate, for its examination.

Finally, under *Article 6* — A recognition of equivalence to the licentiate's degree in law cannot confer any right to the licentiate's diploma; it is valid only for the purpose of enrolling for a doctorate in the faculties of law.'

It must therefore be acknowledged that on the basis of this piece of legislation, the effect in internal law of the concept of recognition of equivalence is a purely academic one. Such recognition is intended exclusively to enable the holder of the foreign diploma which has been recognized as equivalent to the licentiate's degree to pursue his legal studies in France up to the level of the doctorate.

During the oral procedure, the representative of the Conseil de l'Ordre de Paris gave a clear exposition of the organization of the French system regarding recognition of the equivalence of foreign legal diplomas.

According to him, a distinction must be drawn between three situations:

— First, there is a system which results in acknowledging the *automatic validity* of diplomas awarded by certain French-speaking States in Africa, which are former French overseas territories, under bilateral agreements. The list of these diplomas is determined by ministerial orders. Automatic validity means that the equivalence thus recognized involves civil effects, that is to say that those diplomas themselves constitute legal evidence of qualifications for the purpose of entry into the profession of advocate.

— Secondly, there is automatic academic equivalence, governed by an order of 16 October 1924, which is still in force and which recognizes the equivalence of diplomas awarded in 35 foreign countries, but only for the purpose of gaining a doctorate in law; thus the equivalence in question here is a university matter.

— Finally, the effect of a recognition of equivalence granted by means of an individual decision by the university, after verification of the knowledge acquired by the foreign candidate, is also a purely academic one; it gives the applicant the legal opportunity of entering the next stage of higher studies in law, that is to say of preparing the French doctor's degree; only if he obtains the doctor's degree does he acquire valid legal evidence of qualification for admission to the Bar, always subject, however, to his obtaining the Certificat d'Aptitude à la Profession d'Avocat, and of course to the verification of his good character by the Conseil de l'Ordre.

The author of the report on which the Conseil de l'Ordre de Paris acted stated that if Mr Thieffry had followed that course, that is to say, if he had enrolled for the doctorate and had finally obtained the degree of Doctor of Laws, whilst having sat and passed the tests for the Certificat d'Aptitude à la Profession d'Avocat, as he did, the Conseil de l'Ordre would have raised no objection to his admission to the Bar.

This line of argument is not without cogency. Moreover, it finds support in the legislation of many foreign countries, in which it is provided that the recognition of foreign diplomas has in principle only an academic or university effect, in that it confers a right only to the pursuit of higher legal studies, and not directly to entry into those professions for which the possession of a *national* diploma is a legal condition.

However, there is internal legislation in certain States under which the recognition of foreign diplomas involves a civil effect, frequently containing the proviso that foreign diplomas which have

been recognized as equivalent are valid for entry into regulated professions only if they have been acquired by nationals. Thus the material factor is not so much the professional qualification of the holders of the diploma as their status as nationals of the country of establishment.

As the Commission stated in its reply to one of the questions asked by the Court, the holders of certain French diplomas can work as assistant lecturers in German Arts faculties, while the French Government reciprocally allows holders of the German 'Staatsexamen' to hold certain public teaching posts.

Moreover, certain agreements concluded within the framework of the Franco-German conference of university vice-chancellors have allowed the recognition of automatic equivalence between, for example, the French 'Doctorat d'État' and the corresponding German professional qualification, as well as between the French diploma of 'Docteur Ingénieur' and its German counterpart; however, these agreements have not yet been approved by the governmental authorities of each of the two States.

In Belgium, the Law of 19 March 1971, supplemented by a Royal Order of 20 July 1971, makes a sharp distinction between civil and academic effects, but at the same time deals with the entry of foreigners into certain regulated professions when such entry is subject to the production of national diplomas.

In that case, if the legal degrees are recognized as equivalent by the competent authority, the right to practise a profession, entry to which is conditional upon possession of a diploma, is extended to foreign nationals, either under bilateral agreements, or on scientific or humanitarian grounds.

However, that item of legislation is not applicable as regards entry into certain professions such as that of advocate.

In Italy, the consolidated legislation on higher education provides that university certificates acquired abroad have no legal validity inside the country, except as otherwise provided by special laws.

Entry into the regulated professions remains subject to possession of a national diploma.

In the Netherlands, under the university education system (Law of 22 December 1960) entitlement to the qualification of doctor or engineer obtained abroad is recognized, in so far as those qualifications appear on a list drawn up by the Minister of Education. Practise of the professions to which possession of those qualifications gives entry is free.

There is at present between Belgium and the Netherlands mutual recognition, with civil effect, of certain diplomas in primary and secondary education. Finally, the Netherlands law on higher education authorizes, for the purposes of obtaining a Netherlands diploma, partial or total exemption from examinations if the person concerned holds a foreign diploma which has been recognized as equivalent by the Minister of Education. That provision applies, *inter alia*, to the Belgian degree of Doctor of Laws.

As to the United Kingdom, the circumstances of the problem are very special there, since the distinction between the civil effect and the academic effect of a recognition of equivalence is in a way meaningless, at least as regards entry into the professions of barrister or solicitor. Indeed, education and the conditions for entry depend completely on the governing bodies of the professions themselves, so that the university diplomas of the continental Member States are in principle not recognized. That is one consequence of the fundamental difference between the teaching of common law and the teaching of continental private law.

Certainly these various details demonstrate the existence in most

Member States of a distinction between the civil effect and the academic effect of the recognition of equivalence of diplomas.

Therefore, although it is clear that under the French Decree of 15 February 1921 the only effect of the recognition by the University of Paris 1 of the equivalence of the foreign diploma in question is to allow enrolment for the doctorate and is consequently purely academic, that restriction, which was formerly valid against any foreign candidate, and perhaps even against national candidates, has ceased to be compatible, in the present state of Community law, with the provisions of Articles 52 and 57 of the Treaty.

Indeed, Article 57 (1) provides for the mutual recognition of diplomas, by means of directives of the Council, for the purpose not of *establishing* freedom of entry into a profession — which follows from Article 52 alone — but only of *making* such entry *easier* and thus of promoting the exercise of the right of establishment by the self-employed.

The absence, in the present state of Community law, of any directive concerning freedom of establishment for advocates in the Community cannot have the consequence of frustrating the attainment of the right of establishment and by that fact alone of depriving the provisions of Article 52 of all practical effect, at least in cases where the competent authority in the country of establishment has the power to recognize a foreign diploma as being equivalent, even if strictly for university purposes, to a national diploma.

In other words, before Article 52, as a provision having direct effect, entered into force, the legitimate concern of a Member State such as France to restrict entry to the profession of advocate only to candidates who possessed the diploma of the licentiate's degree in law could be justified, not by a condition pertaining to the nationality of those candidates, but by the intention of restricting membership of the Bar to persons with legal knowledge equivalent to that which is examined by the national universities and evidenced by the possession of the French diploma of the licentiate's degree in law.

The legislation of each of the Member States contains provisions restricting the pursuit of certain professional activities by foreigners.

The aim of those provisions may be the protection of public policy, but in many cases the true aim is the protection of the activities themselves. In addition to such provisions, there are in each Member State a number of laws or regulations — and even mere administrative practices — governing entry into certain occupations, in particular the professions, and the pursuit thereof.

In most cases, those rules apply without distinction to nationals and foreigners. They are designed to impose certain requirements concerning the professional ability of the person applying for admission.

Therefore these are legal provisions which are not discriminatory in theory, but which can result in discrimination in practice, because it will in general be easier for a national than for a foreigner to satisfy the requirements imposed, such as, for example, the obtaining of a national diploma.

In national provisions which relate to the taking up by foreigners of activities as self-employed persons, matters pertaining to guarantees of professional ability must therefore be carefully distinguished from those relating to restrictions, on grounds of public policy, peculiar to the status of foreigners.

Before the entry into force of the rules of the Treaty of Rome relating to freedom of movement for persons and the right of

establishment, the situation of foreigners was dominated in each country by considerations of a political, economic or social nature and by motives of *professional protectionism* not necessarily related to requirements as to qualifications and university certificates.

However, now that the system applying to nationals of Member States is very largely, if not exclusively, governed by the Community provisions with which the Court is well acquainted, it is necessary for restrictions applied to the right of establishment by the expedient of the recognition of professional qualifications corresponding to the award of national diplomas to be considered autonomously, to be examined in themselves.

Whereas the comparison to be drawn is fairly simple when it concerns qualifications for access to scientific activities, the problem is more difficult in respect of the practice of the profession of advocate, since, despite the existence of general principles which are similar if not common from one State to another, the systems of legal education have particular features peculiar to each State or rather to each legal system, so that it is not easy for the national authorities of the country of establishment to resign themselves to allowing entry into the profession of advocate to nationals of other Member States who have not followed the syllabus taught in the national universities.

Having said that, however, a distinction must also be drawn between legal knowledge of a general nature, the possession of which is guaranteed by the licentiate's degree in law, and the more specific and technical knowledge which future advocates acquire in France by preparing the Certificat d'Aptitude for the profession.

Let me add that, although in theory an advocate undergoing his period of practical training and having only recently completed his studies at the faculty and the institute of legal studies can plead before any French court other than the Conseil d'État and the Cour de Cassation, he cannot be said to have acquired extensive professional experience, and will usually have to supplement his education and acquire that experience in the chambers of an experienced advocate or in group chambers.

The same is true of nationals of other Member States, who have received recognition of the equivalence of their diploma which enables them to be regarded as having acquired general knowledge at least equal to that evidenced by the licentiate's degree in law. Not only do they have, in addition, to prepare and pass the tests for the Certificat d'Aptitude à la Profession d'Avocat, but they also have to complete a three year period of practical training before they can be inscribed on the roll as fully practising advocates. In most cases, they will work with an experienced advocate, or will enter a group, whether or not incorporated as a professional limited partnership, as mere assistants or, more rarely, as partners.

The foregoing makes it clear that further practical training will be essential to them in order to establish their own chambers after several years in practice, unless they prefer simply to remain full partners in the chambers of the group in which they made their début.

However, these factual considerations cannot take precedence over the principle of freedom of establishment, and even in the absence of any directive concerning the mutual recognition of diplomas for the purposes of entry into the profession of advocate, such entry cannot be refused to the nationals of Member States other than France when their national legal diploma has been legally recognized as being equivalent to the licentiate's degree in law.

The question referred by the Cour d'Appel, Paris, must be answered exclusively by reference to the Community rules relating to the right of establishment and taking into account the repercussions of Article 52 of the Treaty upon the national systems.

Let me point out that under that provision, as regards activities as self-employed persons, the Member States must abolish all discrimination liable to prevent, impede, or even merely to hinder a national of another Member State desirous of establishing himself in its territory; it is immaterial whether this abolition is carried out upon a directive from the Council or *proprio motu* by the authorities of the country of establishment. Article 52 imposes upon them an obligation to attain a result.

Although it is difficult to list exhaustively all the possible types of discrimination and even more so to define them, especially if they are disguised and hidden under the cover of a degree of professional protectionism, Articles 52 and 54 of the Treaty as well as the General Programme on the right of establishment provide a key to interpretation which enables those prohibited restrictions or discrimination to be identified.

Indeed, the second paragraph of Article 52 provides that freedom of establishment *shall include* the right to take up and pursue activities as self-employed persons; Article 54 (3) (c) defines the content of the General Programme on the right of establishment by stating in particular that that measure should abolish: 'those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, *the maintenance of which would form an obstacle to freedom of establishment*'.

The General Programme itself refers in particular to: 'Any measure which, pursuant to any provision laid down by law, regulation or administrative action in a Member State, or as the result of the application of such a provision, or of administrative practices, prohibits or hinders nationals of other Member States in their pursuit of an activity as a self-employed person by treating nationals of other Member States differently from nationals of the country concerned' (General Programme, Title III (A)).

These ideas refer both to direct restrictions and to disguised discrimination, that is, which results from a provision which is theoretically applicable to nationals and foreigners alike, but which in practice constitutes an obstacle mainly for foreigners.

In my opinion, it is clear in the light of these provisions that the requirement of the national diploma of a licentiate's degree in law, imposed by Article 11 (2) of the Law of 31 December 1971 on the reform of the legal professions, in fact constitutes an indirect and disguised but quite definite restriction with regard to nationals of other Member States desirous of entering the profession of advocate in France. In fact it is a question here of the *nationality of the diploma,* no longer that of the person, constituting an obstacle to the effective exercise of the right of establishment.

According to the current case-law of this Court, freedom of establishment is a fundamental right, enforceable by all the nationals of the Member States; any limitation upon the effective exercise of that right can only be interpreted strictly; the attainment of freedom of establishment is in no way subject to the adoption of the directives provided for in Article 57, particularly in Article 57 (1), which refers to the mutual recognition of diplomas. The role of those directives is merely secondary and subsidiary; they are intended only, as the Court has held, to facilitate the effective exercise of the right of establishment, and failure or delay on the part of the Council in

adopting them cannot paralyse the implementation of Article 52.

What, then, is in question in the present case? The effect (which, according to the Conseil de l'Ordre and the French Government, is a purely academic one) of the recognition that the diploma of Doctor of Laws of the University of Louvain is equivalent to the French licentiate's degree in law.

That line of argument, which would have been admissible before 1970, does not take account of the real innovation brought about by the entry into force of Article 52 of the Treaty as a directly applicable provision.

Although it is not for this Court to interpret national law, at least it does not hesitate to appraise the effects thereof in regard to the Treaty, and, if necessary, to rule that they are incompatible with the Community rules in force.

What is the purpose of Article 11 (2) of the Law of 31 December 1971? That provision is intended to ensure that any candidate for membership of a French Bar has acquired a level of general legal knowledge corresponding to the level of the licentiate's degree in law. It is not a question of anything else.

Consequently, is that requirement not satisfied when, after a comparative examination and a scrupulous check of the legal subjects taught and the level of knowledge reached, the competent authority — that is, the university — by an individual decision recognizes a foreign diploma as equivalent to the French licentiate's degree, especially when, as in the present case, the foreign diploma was awarded in a country having a legal system fairly similar to the French one?

What is more, the possession of a licentiate's degree in law is not the only condition for membership of the Bar. It is also necessary to have sat a professional examination, which is the necessary complement to the diploma of general legal knowledge represented by the licentiate's degree. Not only did the university authority allow Mr Thieffry to study for the Certificat d'Aptitude à la Profession d'Avocat, but he obtained the said Certificat. In these circumstances, the requirement of the French licentiate's degree in law becomes a pure formality; it is deprived of any objective justification since, on the one hand, the appellant in the main action possesses, without any doubt, general legal knowledge comparable to that obtained through the studies for a licentiate's degree in law, and on the other hand, he has given proof that he has the specific technical knowledge which is evidenced by the award of the Certificat d'Aptitude à la Profession d'Avocat.

Let me add that the General Programme provides that 'Pending [the] mutual recognition of diplomas, or [the] co-ordination [of the national provisions concerning the taking up and pursuit of activities as self-employed persons], and in order to facilitate the taking up and pursuit of activities as self-employed persons and to avoid distortions, a transitional system may be applied; such system may where appropriate include provision for the production of a certificate establishing that the activity in question was actually and lawfully carried on in the country of origin'.

The duration and details of this transitional system were to have been settled when the directive provided for by Article 57 were drawn up. As those directives have not yet been issued — at least as regards the profession of advocate — the way in which account is to be taken of the exercise of the activity of advocate in the country of origin have also not been settled. But the fact that Mr Thieffry was actually an advocate at the Brussels Bar for more than 10 years and the fact that thereafter he collaborated with a Parisian advocate well known to the Conseil de l'Ordre, should have been taken into consideration by that body.

Thus Mr Thieffry, whose good character is not in issue here, satisfies the requirement regarding professional qualifications laid down for entry into the profession of advocate as it is organized in France.

The solution at which I arrive in this way cannot automatically be transposed to other Member States. Indeed, it depends to a great extent upon the precise conditions laid down by national legislation for the training of advocates; and I understand very well the import of the observations submitted by the Government of the United Kingdom, in which country, as I have said before, the training of advocates and the conditions of entry into the profession are regulated by the governing bodies of the professions themselves quite independently, although no condition as to the nationality of candidates is imposed.

However, to confine myself to the French system, an objection has been raised against the liberal solution which I suggest, both by the Conseil de l'Ordre de Paris and by the Procureur Général at the Cour d'Appel in his conclusions.

It was argued that in reality the right of establishment consists in the application to nationals of other Member States of equal treatment with nationals of the State concerned, and it was contended, on the basis of a strict interpretation of that principle of equality of treatment, that in this instance a French national who was the holder of a foreign diploma recognized as equivalent to the licentiate's degree in law, in circumstances indentical to those applying to Mr Thieffry, himself could not be admitted to a French Bar because he only possessed a foreign diploma; and that consequently, there is a kind of reverse discrimination, since the French national would in this way be more harshly treated than a national of another Member State. In support of this line of argument, reliance is placed upon a judgment given by the Cour d'Appel, Paris, on 30 October 1974 in the case of a certain Vaccaro.

The main contention of the person concerned, an Italian by origin but French by naturalization, was that the diploma of 'Laurea di Dottore in Giurisprudenza' awarded to him by the University of Ferrara in 1940 should be recognized as equivalent to the French diploma in law; he added that since Articles 52 and 57 of the Treaty of Rome has provided for freedom of establishment for nationals of one Member State of the Community in the territory of another Member State and had laid down the principle of mutual recognition of diplomas, the fact that he was not a licentiate in French law could not be relied upon against him when he gave proof of an Italian diploma equivalent and even superior to the French licentiate's degree.

The Cour d'Appel recognized the existence, under the Ministerial Order of 24 July 1922, of the equivalence sought, but it dismissed the provisions of the Treaty of Rome as being in its opinion inapplicable with regard to a Frenchman establishing himself in France.

This judgment appears aberrant to me. It completely misunderstands the objectives of the Treaty, in particular that of Article 52 thereof which makes freedom of establishment one of the fundamental principles of the common market. To refuse a French national — even a naturalized one — the right to establish himself in the country of which he has become a citizen appears to me to be a blatant infringement of Article 52, the aim of which is to enable each national of every Member State to practise his profession in any State of the Community and above all in the State of which he has acquired the nationality.

This line of reasoning is certainly correct as regards the taking up and pursuit of activities as self-employed persons. Moreover, it applies *a fortiori* to the pursuit of activities as employed persons

on the basis of Article 48 of the Treaty. It is inconceivable that a French worker — even if he were originally a foreigner — should be forbidden to pursue, for example, the trade of a welder on the ground that he did not have the qualifying certificate for that particular trade, but only had equivalent vocational training which he had received abroad.

With all the respect due to such an important court, I have no hesitation in saying that in the *Vaccaro* case the Cour d'Appel, Paris, came to a decision which was legally mistaken, at least as regards the ground of judgment to which I have just alluded.

Moreover, in the cases, still rare as yet, in which the Council, by way of directive, has applied Article 57 (1), it has accepted the principle of the objective nature of the mutual recognition of diplomas without any consideration based on the nationality of the persons who hold them.

Thus, Article 2 of Directive No 75/362, concerning the medical profession, imposes recognition in all the Member States in which the diplomas were awarded, without making any distinction based on the nationality of the holders of the diplomas.

The Council also added a particularly explicit statement to this directive: 'The Council confirms 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'.

This clarification, which is of an interpretative nature, confirms the analysis which I have made of the legal situation in the present case.

However, I wish to point out, as the Commission has done, that even if one accepts the argument which was upheld in the judgment in the *Vaccaro* case, to the effect that it is impossible for a national of a Member State to avail himself of Article 52 of the Treaty within the said State, the objection raised by the Conseil de l'Ordre de Paris should none the less be rejected.

Let me point out, indeed, that discrimination in connexion with the right of establishment does not only consist of direct and overt restrictions imposed by reason of the nationality of the persons seeking to avail themselves thereof, but can also consist of disguised discrimination based for example on residence, as this Court acknowledged in the judgment of 12 February 1974 (Case 152/73, *Sotgiu* v *Deutsche Bundespost* [1974] ECR 153).

Even if a legislative provision, such as that laid down by Article 11 (2) of the Law of 31 December 1971, theoretically applies regardless of nationality, it is sufficient that it should constitute an obstacle to freedom of establishment which mainly or exclusively operates against the adoption and pursuit by foreigners of a particular profession. This consideration is further confirmed by the General Programme of 18 December 1961 on the implementation of the right of establishment.

Such is indeed true of the legislative provision upon which the Conseil de l'Ordre de Paris is relying against Mr Thieffry. If one considers the facts, it is clear that in a country such as France — contrary, for example, to what happens in the Grand Duchy of Luxembourg — the number of French citizens holding a legal diploma obtained in another Member State can be regarded as minimal in relation to the number of foreign Community nationals who have acquired a law diploma awarded by a university in their country of origin. Thus, the requirement imposed upon the latter of possessing the French licentiate's degree in law is a discriminatory condition, which

constitutes an obstacle to the attainment of the objectives of the Community rules in question, and principally of Article 52 of the Treaty, since that discrimination involves hardship for them if not exclusively at least mainly.

I trust that in the interpretation which this Court supplies to the Cour d'Appel, Paris, it will not go further than what is required to resolve the particular dispute in which Mr Thieffry is involved. The Court should refrain from giving a judgment of principle such as to constitute a precedent having general scope, going so far as to deprive the directives provided for by Article 57 (1) or (2) of all purpose, in respect of all activities as self-employed persons and in all the Member States.

The right of establishment is by nature a subjective, individual right, and the court making the reference is under an obligation to consider the particular situation which is submitted to it.

In the present case, it cannot exclude the particular circumstances of Mr Thieffry's situation. But precisely, all the facts in the file on the case on the basis of which the Cour d'Appel, Paris, must give its decision tend to confirm that the recognition of equivalence obtained by the appellant in the main action guarantees that the level of the general legal knowledge which he gives proof of having acquired in Belgium is amply sufficient to justify its recognition as being objectively equivalent to that which the diploma of licentiate in law makes it possible to acquire in France.

Furthermore, by his possession of the Certificat d'Aptitude à la Profession d'Avocat, an exclusively French professional diploma, awarded by the Institut d'Études Judiciaires of the University of Paris 2, in accordance with the conditions laid down by the Decree of 31 July 1972, the appellant fulfils the supplementary but indispensable condition for his admission to the Bar, as provided by Article 11 (3) of the Law of 31 December 1971.

To sum up, since the candidate fulfils all the conditions for entry into the profession of advocate (as regards the Certificat d'Aptitude he does so directly, and in relation to possession of the diploma of the licentiate's degree in law he does so by way of recognition of an equivalent qualification) and since his Belgian nationality cannot be held against him by virtue of the decision in the *Reyners* case, I am firmly convinced that the purely formal requirement of the French licentiate's degree in law awarded by a university in the country of establishment constitutes an obstacle to his membership of the Bar and to the attainment of the objective of the Community provisions upon which he bases his appeal.

It is therefore my opinion that the Court should rule that:

When a national of one Member State desirous of establishing himself as an advocate in another Member State of the Community is the holder of a legal diploma awarded by a competent authority in his State of origin, which has been recognized as equivalent by the competent authority in the country of establishment, the act of demanding a national diploma required by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57 (1) and (2), a disguised restriction upon the right of establishment created by Article 52 and is consequently a demand which goes beyond what is objectively necessary for the attainment of the objective of the abovementioned Community rules.