by imposing the requirement, without any possible exception, that the lawyer providing services is to be accompanied by a German lawyer if he visits a person held in custody and is not to correspond with that person except through the said German lawyer, and by making lawyers providing services subject to the rule of territorial exclusivity laid down in paragraph 52 (2) of the Bundesrechtsanwaltsordnung.

REPORT FOR THE HEARING
delivered in Case 427/85 *

I — Facts and procedure

1. *Legal framework*

(a) *Community provisions*

The third recital in the preamble to Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (Official Journal L 78, p. 17, hereinafter referred to as 'the directive', states that 'if lawyers are to exercise effectively the freedom to provide services host Member States must recognize as lawyers those persons practising the profession in the various Member States'.

Article 1 (1) of the directive provides in particular that it is to 'apply, within the limits and under the conditions laid down herein, to the activities of lawyers pursued by way of provision of services'. According to Article 1 (2), 'lawyer' means any person entitled to pursue his professional activities under one of the designations mentioned therein, and Article 2 of the directive provides that such persons are to be recognized as 'a lawyer' for the purpose of pursuing their activities by way of provision of services.

Article 4 (1) of the directive reads as follows:

'Activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each host Member State under the conditions laid down for lawyers established in that State, with the exception of any conditions requiring residence, or registration with a professional organization, in that State.'

Article 5 provides as follows:

'For the pursuit of activities relating to the representation of a client in legal proceedings, a Member State may require lawyers to whom Article 1 applies:

* Language of the Case: German.

to be introduced, in accordance with local rules or customs, to the presiding judge and, where appropriate, to the President of the relevant Bar in the host Member State;

to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority, or with an "avoué" or "procuratore" practising before it.'

(b) *National legislation*

In the Federal Republic of Germany, procedure in civil actions is governed by the Zivilprozessordnung (Code of Civil Procedure). Under paragraph 78 (1) of the Code of Civil Procedure, the parties must be represented before Landgerichte (Regional Courts) and higher courts by lawyers admitted to practise before the court before which proceedings are being brought. Paragraph 79 of the Code of Civil Procedure provides that in so far as representation by a lawyer is not compulsory, the parties to litigation may appear themselves or may be represented by a natural person of their choice having the capacity to bring proceedings. Paragraph 157 (1) of the Code of Civil Procedure provides that at the hearing only lawyers may appear as representatives on a professional basis. Under paragraph 139 of the Code of Civil Procedure, the judge is required to question the parties. The first two subparagraphs of that paragraph read as follows:

'(1) The presiding judge must see to it that the parties provide a complete explanation of all the important facts, that they submit pertinent applications, in particular, that they complete the information concerning the facts relied on and that they indicate the evidence to be produced. To that end, and as far as is necessary, he must consider the various matters in dispute, both of fact and of law, with the parties and question them thereon.

(2) The presiding judge must draw the attention of the parties to any objections which arise with respect to points which must be taken into account *ex officio*.'

The Strafprozeßordnung (Code of Criminal Procedure) governs procedure in criminal cases. The involvement of defence Counsel prescribed in the cases of 'compulsory representation' which include, besides a few special cases, all charges tried at first instance before a Landgericht or a Oberlandesgericht (Higher Regional Court) and before the Amtsgericht (Local Court) if conviction could give rise to a term of imprisonment of one year or more (paragraph 140 (1) of the Code of Criminal Procedure). The presence of a defence counsel is also required when the Amtsgericht so orders, having regard to the seriousness of the offence, the difficulty of the matters of fact or law involved or because the accused cannot defend himself (paragraph 140 (2) of the Code of Criminal Procedure). Under paragraph 138 (1) of the Code of Criminal Procedure, the persons who may appear as defence counsel are lawyers entitled to appear before a German court or professors of law in a German institution of higher education. The second subparagraph of the said paragraph provides that the court may authorize other persons to appear for the defence, but in cases in which representation is compulsory, they must act in conjunction with a lawyer or a professor authorized under the first subparagraph of that paragraph.

As well as the specific provisions mentioned above, the Rechtsberatungsgesetz (Law on Legal Practice) prohibits, other than in a strictly limited number of areas in which

authorization may be granted, representation on a professional basis other than by lawyers, notaries, patent agents and so forth, or accountants, estate managers and so forth, acting in the normal course of their duties (paragraph 1 (1), (3), (5), (6) and (7) of the law on Legal Practice). Under paragraph 1 (3) (2) of the same law, the restrictive provisions contained therein concerning legal practice do not apply to German lawyers.

The exercise of the profession of lawyer is governed by the Bundesrechtsanwaltordnung (Federal regulation concerning lawyers), hereinafter referred to as 'the Regulation on Lawyers'. Under paragraph 18 (1), any lawyer who wishes to practise must be admitted to practise before one of the ordinary courts. Admission may be granted, on the application of the person concerned, to practise before an Amtsgericht or Landgericht, an Oberlandesgericht (on condition, in general, that the lawyer has practised for at least five years: paragraph 20 (1) (4) of the Regulation on Lawyers) or the Bundesgerichtshof (Federal Court of Justice) (on condition that the lawyer has been selected by a committee of high-ranking judges and lawyers: paragraph 164 *et seq.* of the Regulation on Lawyers). With the exception of simultaneous admission to practise before an Amtsgericht and the Landgericht in the district of which the Amtsgericht is situated (paragraph 23 of the Regulation on Lawyers), admission is in principle granted only in respect of a single court (paragraphs 24, 25 and 171 of the Regulation on Lawyers).

With regard to the right of representation, paragraph 52 (1) and (2) of the Regulation on Lawyers provides as follows:

'(1) Where representation by a lawyer is mandatory, the lawyer appointed to represent a party for the purpose of proceedings may delegate the task of representing that party only to a lawyer who may himself act as duly authorized attorney.

(2) A lawyer appointed to represent a party in legal proceedings before the competent court may, during the hearing, delegate the task of defending his client's rights, with his assistance, to a lawyer who may not himself represent that client as duly authorized attorney.'

The activities of lawyers providing services are governed by the provisions of the Law of 16 August 1980 implementing the directive (hereinafter referred to as 'the implementing law'). With regard to the persons to whom the implementing law applies, paragraph 1 (1) thereof adopts verbatim the list of persons contained in Article 1 (2) of the directive.

Paragraph 4 of the implementing law reads as follows:

'(1) The persons designated in paragraph 1 (1) may represent or defend a client in proceedings before a court of law and in administrative proceedings brought in respect of criminal offences, breach of administrative regulations, misfeasance in office or professional misconduct only if they act in conjunction with a lawyer who is himself an authorized representative or defending Counsel. Furthermore, they may appear in oral proceedings or at a criminal trial only if they are accompanied by a lawyer. When acting as defending counsel, they may visit a person held in custody only if they are accompanied by a lawyer and they may correspond with such a person only through a lawyer.

(2) The word in conjunction required by subparagraph 1 must be proved each time that a step is taken. Steps taken by the persons listed in paragraph 1 (1) contrary to the provisions of that subparagraph or in respect of which proof of work in conjunction has not been provided at the time when they are taken shall be null and void. During oral proceedings or at a criminal trial, work in conjunction will be presumed if the step is not immediately countermanded or amended by the lawyer.

(3) In cases in which representation by a lawyer admitted to practise before the court hearing the case is required, paragraph 52 (2) of the Bundesrechtsanwaltsordnung is to be applied by analogy.'

2. *Background to the dispute*

By a letter of 26 May 1983, the Commission called upon the Government of the Federal Republic of Germany to submit its observations within 30 days on certain provisions of the implementing law and in particular, paragraph 4 thereof. The Commission considered that that provision was not compatible with the second indent of Article 5 of the directive. It observed that its complaints primarily concerned the obligation to work in conjunction, in so far as the implementing law requires a lawyer from a Member State who is providing services to work in conjunction with a German lawyer in proceedings in which representation by a lawyer is not mandatory under German law. Secondly, its complaints concerned the detailed rules governing work in conjunction as laid down in paragraph 4 (1) and (2) of the implementing law. Thirdly, the Commission criticized the application by analogy of paragraph 52 (2) of the Regulation on Lawyers in accordance with paragraph 4 (3) of the implementing law.

By letter of the Federal Minister for Justice of 27 October 1983, the Federal German Government replied to the Commission's letter and rejected its criticisms. In essence, the Federal Government contended that the provisions of the implementing law at issue are necessary in order to ensure the smooth administration of justice.

Since it was not satisified with the Federal Government's reply, the Commission, on 10 April 1985, delivered the reasoned opinion provided for in Article 169 of the Treaty and called upon the Federal Republic of Germany to adopt the measures necessary to comply therewith within two months.

In a *note verbale* of 5 November 1985, the Federal Government submitted its observations on the reasoned opinion. It stated in particular that it was prepared, without prejudice to its interpretation of the directive, to take steps to ensure that the work in conjunction provided for in Article 5 of the directive would be required solely in proceedings in which representation or defence by a lawyer is required by law. Furthermore, it stated that it was prepared to reconsider its legislation on certain points concerning the arrangements governing work in conjunction. However, it observed that the legislation at issue could not be amended within the two-month period laid down in the Commission's reasoned opinion.

Since it considered that the Federal Government had not complied with the reasoned opinion neither to the extent necessary nor in the desired manner, the Commission brought this action.

3. *Procedure*

The Commission's application was lodged at the Court Registry on 22 December 1985.

The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The Commission claims that the Court should:

(1) Declare that providing in paragraph 4 of the Law of 16 August 1980 implementing Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services,

(a) that a lawyer from another Member State who, in connection with the provision of services, carries on in the Federal Republic of Germany activities relating to the representation or the defence of a client in legal proceedings, may act only in conjunction with a German lawyer, even in those cases where under German law there is no mandatory requirement of representation by a lawyer;

(b) that the German lawyer in conjunction with whom the lawyer from the other Member State acts must himself be the authorized representative or defending Counsel in the proceedings;

(c) that, in addition, the lawyer providing the service:

(i) may not appear in oral proceedings or at criminal trials unless he is accompanied by the German lawyer, and

(ii) may not visit, as defending counsel, a person held in custody unless accompanied by the German lawyer and may communicate in writing, as defending counsel, with a person held in custody only through the German lawyer;

(d) that the necesssary co-involvement of the German lawyer must be proved whenever a step is taken; that any step which is taken in contravention of the aforementioned provisions by the lawyer providing the services or in respect of which such co-involvement is proved at the time when it is taken is to have no effect; that such co-involvement is presumed to exist in the case of oral proceedings or criminal trials unless the German lawyer immediately countermands or amends the step;

(e) that, in cases where it is mandatory to be represented by a lawyer admitted to practise before the judicial authority in question, paragraph 52 (2) of the Bundesrechtsanwaltsordnung is to be applied;

(2) Order the Federal Republic of Germany to pay the costs.

The Federal Republic of Germany, the defendant, contends that the Court should:

(1) Dismiss the application;

(2) Order the defendant to pay the costs.

III — Submissions and arguments of the parties

A — *Work in conjunction with a German lawyer*

1. *Activities before courts of law*

The Commission considers that the provisions of paragraph 4 of the implementing law are incompatible with Community law inasmuch as they require work in conjunction with a German lawyer in those judicial proceedings in regard to which representation by a lawyer is not required under domestic law.

In that regard, the Commission claims primarily that it follows from the wording of the directive that the Federal Republic has exceeded its legislative powers. According to the second indent of Article 5 of the directive, Member States may require lawyers pursuing their activities by way of provision of services 'to work in conjunction with a lawyer who practises before the judicial authority in question'. It follows that the obligation to work in conjunction may be imposed only where someone cannot conduct his case himself or defend himself.

According to the German Government, the meaning of Article 5 of the directive is, on the contrary, that that provision covers all activities related to the representation and defence of a client by a lawyer. There is no question of a restriction of the scope of the article solely to proceedings in which representation by a lawyer is mandatory. Furthermore, the fact that a lawyer is admitted to practise before a court in no way means that the representation by a lawyer is mandatory before the court concerned. The German Government explains that in its legal system the concepts of 'admission to practise of a lawyer' and 'mandatory representation by a lawyer' do not refer to the same circumstances. Under paragraph 18 (1) of the Regulation of Lawyers every lawyer must be admitted to practise before an ordinary court. Independently of that question of professional rules, the codes of procedure govern the question of whether representation by a lawyer is mandatory.

In the second place, the Commission claims that the prohibition under which lawyers providing services cannot act as the sole representative or as defending Counsel of a client in cases in which German procedure does not provide for mandatory representation by a lawyer is incompatible with Article 59 of the Treaty and with the principle, laid down in the third paragraph of Article 60 of the Treaty, that foreigners should be treated in the same way as nationals of the Member State concerned. In that regard, it observes in particular that the third paragraph of Article 60 of the Treaty may not be relied upon as a justification for applying paragraph 1 (1) and (8) of the Law on Legal Practice, which prohibits lay persons from representing or defending clients on a professional basis, to lawyers pursuing their activities by way of the provision of services. According to the Commission, the aim of the provisions of the Treaty excludes any comparison of lawyers from other Member States with lay persons from the Member State concerned: the only comparison which may be made is with lawyers from that Member State. Furthermore, Article 4 (1) of the directive provides that the activities listed therein 'shall be pursued . . . under the conditions laid down for *lawyers* established in that State . . . '. Similarly, Article 2 of the directive provides that each Member State is to 'recognize as a lawyer' for the purpose of pursuing the activities in question any person listed in Article 1 of the directive. Finally, the Commission points out that the German Law on Legal Practice does not apply to professional activities exercised

from an establishment situated outside the territory of the Federal Republic.

The German Government observes that the principal purpose of the rules of German procedure, such as, for example, those contained in paragraph 79 of the Code of Civil Procedure, which permit representation by persons with capacity to conduct legal proceedings, is to make it possible for the parties to conduct their cases themselves. The question of the material capacity of third parties to represent or defend parties in proceedings in which representation by a lawyer is not mandatory is governed by the relevant codes of professional ethics and by the Law on Legal Practice. The German Government explains in that regard that paragraph 1 (1) and (8) of the Law on Legal Practice prohibits all persons other than lawyers, notaries, patent agents or approved tax advisers, acting in accordance with their respective professional rules and within the limits of their recognized professional capacities, from acting professionally as a representative in legal proceedings involving other persons. In accordance with that general prohibition, paragraph 157 (1) of the Code of Civil Procedure excludes, in civil cases, representation on a professional basis at oral proceedings by persons other than by lawyers. Similarly, in criminal proceedings, the courts are required to refuse the authorization required under paragraph 138 (2) of the Code of Criminal Procedure in cases where a representative is neither a lawyer nor a professor of law at a German institution of higher education. The group of persons, quite large at first sight, entitled to act as representatives in proceedings in which representation by a lawyer is not mandatory is consequently limited to persons acting other than on a professional basis, in a single case and without having the intention of providing legal representation on a regular basis. It is therefore incorrect to consider that lawyers from other Member States, who, by definition, are acting on a professional basis, are placed in a less favourable position than lay persons, whether of German or other nationality.

Finally, the Commission claims that the general interest, and in particular, the smooth administration of justice, does not require lawyers from other Member States to work in conjunction with a German lawyer in legal proceedings in which representation by a lawyer is not mandatory. First, a client will use a foreign lawyer only if there are particular reasons for doing so. Since the foreign lawyer must, under the first sentence of paragraph 2 (1) of the implementing law, indicate by his professional title expressed in the language of his country of origin that he is not a German lawyer, the client is perfectly well able, even as a lay person, to assess the qualifications of that lawyer. Furthermore, representation by a person trained as a lawyer, acting by way of the provision of services, is generally more favourable to the course of the proceedings than representation by the client himself. Normally a foreign lawyer will represent or defend a client before a German court only if he has an adequate command of the German language and is sufficiently familiar with the German legal system. Otherwise, he would not have complied with the rules of professional conduct, which in that regard are the same in all the Member States and which he is required to observe under Article 4 (2) of the directive. Finally, the proper administration of justice in Germany cannot be impaired by the provision of services which, of their very nature, can only be occasional or provisional.

The German Government takes the view that it is necessary, even where representation by a lawyer is not mandatory, for the relations between the parties and the court to be handled by a representative whose

professional training and experience have made him particularly familiar with German law and, in particular, with the rules of procedure and judicial practice. It is for that reason that national law has limited as far as possible representation by lay persons so that such persons may act only in exceptional cases and even then, only on condition that there are special reasons justifying their intervention and that they do not so act on a regular basis. Furthermore, in proceedings before the administrative, financial, labour and social courts, where there is no requirement to be represented by a lawyer in the lower courts, the courts cannot fulfil their duty to raise points in regard to a lawyer in the same way as in regard to a party who is not represented, at least by a lawyer. It is consequently in the interests of the client that, even in proceedings in which representation by a lawyer is not mandatory, the person providing services should act only in conjunction with a German lawyer.

2. *Activities before the administrative authorities*

The Commission observes that Article 5 of the directive applies to proceedings before the administrative authorities only when those authorities act in the judicial domain. That appears to be the case in regard to 'administrative proceedings brought in respect of criminal offences, breach of administrative regulations, misfeasance in office or professional misconduct', to which reference is made in paragraph 4 (1) of the implementing law. However, even in regard to such proceedings, the obligation to work in conjunction with a German lawyer is justified solely if the national law reserves the right of representation or defence before such authorities solely to lawyers. However, that is not the case.

The German Government explains that its argument concerning activities before courts of law applies by analogy to appearances before administrative authorities acting in the judicial domain.

3. *Contact with persons in custody*

Finally, the Commission considers that paragraph 4 (1) of the implementing law is contrary to Community law inasmuch as it provides that a lawyer providing services as defence Counsel may visit a person held in custody only if accompanied by a German lawyer and may correspond with such a person only through the said lawyer. The provisions of internal law contain no restriction of that nature in regard to other persons in positions of confidence who are not German lawyers and whom persons in custody may lawfully entrust with their defence.

The *German Government* observes in particular that even in regard to contact with persons in custody, it is necessary to be familiar with the provisions of internal law and the interpretations made thereof by the courts.

B — *The detailed rules for work in conjunction with a German lawyer*

The Commission considers that the implementing law exceeds the limits fixed by the Treaty and the directive in regard to the way in which it lays down detailed rules for 'work in conjunction' within the meaning of the second indent of Article 5 of the directive.

In that regard, it makes the following complaints:

(a) Work in conjunction with a lawyer who, in the proceedings concerned, is himself an authorized representative or defending counsel.

According to the first sentence of paragraph 4 (1) of the implementing law, a lawyer providing services may act as a representative or defending counsel of a client only if he acts in conjunction with a lawyer 'who is himself an authorized representative or defending counsel in the proceedings at issue'. In the Commission's view, that requirement cannot be justified on the basis of Article 5 of the directive, which refers solely to 'work in conjunction with a lawyer who practises before the judicial authority in question'. It points out in particular that the expression 'work in conjunction' must be interpreted independently and in a way which is in conformity with the Treaty. However, the obligation to have two legal representatives in all circumstances is an obstacle to the freedom to provide services which goes beyond the requirement to 'work in conjunction'. In so far as it is in the client's interest for the two lawyers working in conjunction both to be authorized representatives, it is for the persons concerned (client, lawyer providing services and German lawyer) to come to an agreement to that effect. Furthermore, Article 5 of the directive, according to which the national lawyer 'would, where necessary, be answerable' to the judicial authority in question, cannot support an obligation to appoint the German lawyer as authorized representative. According to the Commission, that answerability may be ensured by a less restrictive measure.

(b) The need to be accompanied by a German lawyer during oral proceedings or at a criminal trial.

According to the second sentence of paragraph 4 (1) of the implementing law, a lawyer providing services 'may appear in oral proceedings or at a criminal trial only if accompanied by the German lawyer'. The Commission considers that the requirement that the German lawyer should be constantly present during the judicial proceedings goes beyond the idea of 'work in conjunction'.

(c) Proof of work in conjunction.

The Commission explains that when Article 5 of the directive applies, the lawyer providing services must indicate and prove to the competent court that he is acting in conjunction with the German lawyer before commencing his activities. According to paragraph 4 (2) of the implementing law, the fact of working in conjunction with a German lawyer must be proved in regard to each step at the time at which it is taken. If such proof is not furnished, the step has no effect. That requirement is unlawful because it reduces the role of a lawyer providing services to that of an assistant to the German lawyer. In the Commission's view, a lawyer providing services must have the right to take valid steps, to lodge pleadings entirely on his own account and to take part alone in the oral procedure once he has indicated and, if necessary, proved that he is working in conjunction with a German lawyer and that situation should continue as long as such work in conjunction has not been revoked. If the lawyer providing services does not have the necessary knowledge or experience, he will not act on his own, having regard in particular to the rules of professional conduct to which he is subject. That question should not be regulated by the implementing law but by the arrangements between the lawyer providing services and the German lawyer. Furthermore, paragraph 139 of the Code of Civil Procedure constitutes in many cases a sufficient guarantee that the claims, submissions and arguments of a party represented by a lawyer providing services are sufficiently explained.

(d) Relations with persons in custody.

Under paragraph 4 (1) of the implementing law, the lawyer providing the service is required to make use of the services of a German lawyer in order to visit a person held in custody or to correspond with such a person. According to the Commission, that requirement also goes beyond the context of work in conjunction.

The German Government observes that, according to the second indent of Article 5 of the directive, the German lawyer is entirely answerable to the courts. However, the rules for work in conjunction laid down in paragraph 4 (1) and (2) of the implementing law are necessary precisely in order to permit the German lawyer to meet that responsibility. In that regard, the German Government points out in particular that for the proper administration of justice the courts depend largely on professional representatives or defending counsel who have a thorough knowledge of the national legal system: the dynamics of judicial proceedings often require immediate reactions from the legal representative in order to ensure that the steps which are necessary if the proceedings are to be pursued in the interest of the client are taken. However, in the Community, the training of lawyers is based on the internal legal system and not on that of the other Member States. In the context of the provision of services, continual work in conjunction with a lawyer trained and established in the host country is consequently essential. However, that does not mean that the position of the lawyer providing the service is reduced to that of a mere assistant because the implementing law does not prohibit that lawyer from acting as a second authorized representative or defending Counsel alongside the German lawyer.

Furthermore, the Federal Government explains that the court's obligation to enquire into the case and to question the parties, laid down in paragraph 139 of the Code of Civil Procedure, should not compensate for a lack of legal knowledge on the part of the lawyer providing the service. That obligation is limited by the impartiality of the court and by the principle that the parties are *dominus litis*. The court's obligation to question the parties should not help to turn inconclusive applications into conclusive applications or permit the plaintiff to amend his application, or indicate to the defendant a line of defence which he has overlooked.

C — *The application by analogy of paragraph 52 (2) of the Regulation on Lawyers*

The Commission observes that the consequence of paragraph 4 (2) of the implementing law is that in the great majority of civil cases a lawyer providing services has only one right, namely that of making observations during the oral procedure with the assistance of a German lawyer admitted to practise before the Court in question. That follows from the fact that the said paragraph provides for the application by analogy of paragraph 52 (2) of the Regulation on Lawyers 'in cases in which representation by lawyers admitted to practise before the judicial authority in question is mandatory'. However, paragraph 78 (1) of the Code of Civil Procedure requires such representation in civil cases brought before the Landgerichte and higher courts (namely, the Oberlandesgerichte, the Bayerische Oberste Landesgericht (Supreme Court of Bavaria) and the Bundesgerichtshof (Federal Court of Justice)). The same is true in regard to representation

before the Familiengerichte (Family Courts). In so far as representation by a lawyer is mandatory in proceedings before those courts (that is to say, in most family matters, civil actions involving an amount of more than DM 5 000 and in appeals concerning smaller sums), the lawyer must consequently be admitted to practise before the court in question. In the Commission's view it is incompatible with Community law that the provision of services in such proceedings should be subject to rules concerning work in conjunction with a German lawyer which are more stringent than those laid down for proceedings in which any German lawyer may represent or defend a client.

In that regard, it submits first of all that the second indent of Article 5 of the directive merely makes it possible to require that the lawyer providing the service should work in conjunction with a lawyer who practises before the judicial authority in question and not to limit the provision of services to explanations during the oral procedure, with the assistance of the lawyer admitted to practise before the court in question.

In the second place, the Commission admits that the failure to apply paragraph 52 (2) of the Regulation on Lawyers to lawyers providing services could give the impression that the latter are in a privileged position compared with their German colleagues. However, that is not the case. In the first place, the position of the lawyer providing the service is not the same as that of the German lawyer. The latter has the centre of his professional activities in the place in which he is established and his admission to practise before the courts in the place in which that establishment is situated corresponds in most cases to the needs of his practice and of his clients whereas a lawyer providing services in another Member State does not have an establishment in that State nor is he admitted to practise before any of its courts. Furthermore, the provision of services is by its very nature different from the activities of a lawyer practising in his own country and from his own office. It is therefore in accordance with the assimiliation required by the third paragraph of Article 60 of the Treaty and Article 4 of the directive if a lawyer who wishes to appear before a given German court in order to provide a service is made subject to the same conditions which apply to a German lawyer admitted to practise before that court, in strict respect of the restriction laid down in the second indent of Article 5 of the directive.

Finally, the Commission points out that 'the interest of the proper administration of justice' may not be relied on in this case. In the first place, neither experience nor reasonable expectation suggests that a lawyer providing services would be inclined to conduct a large number of cases before various courts in one or more Member States. The link between the court and the lawyer, necessary for the proper functioning of the procedure, is sufficiently guaranteed by the fact that, in accordance with the first sentence of paragraph 5 of the implementing law, the lawyer providing the service must provide an address for service at the office of a German lawyer once he appears in a case before a court. In the interest of the proper administration of justice, that provision could be completed by providing that the address for service must be that of a German lawyer practising before the court concerned.

The German Government explains that the 'locality' principle was introduced in the interest of the proper administration of justice. Connection with a locality makes communication between the lawyers and the courts easier and facilitates the conduct of the proceedings, particularly by avoiding procedural delays which could result from frequent applications for adjournment made by a lawyer appearing before a large

number of courts. By virtue of that principle and in so far as paragraph 78 (1) of the Code of Civil Procedure applies, a German lawyer cannot be the authorized representative in a civil case if he is not admitted to practise before the court before which the case is pending. If he none the less wishes to take part in the proceedings, he must refer to the powers laid down in paragraph 52 (2) of the Regulation on Lawyers. Consequently, paragraph 4 (3) of the implementing law does not constitute an infringement of Community law since the lawyer providing the service is subject under that provision to the same treatment as any German lawyer. If the lawyer providing the service had to be placed in the same position as a lawyer admitted to practise before the court before which proceedings had been brought, German lawyers would be placed at a considerable disadvantage compared with their colleagues from other Member States. In that regard, the example of the Bundesgerichtshof is particularly illustrative: all lawyers from other Member States would be entitled to appear before that court, alongside the 22 specialized German lawyers admitted to practise before it.

T. Koopmans
Judge-Rapporteur