under the same conditions as nationals of the Member State of establishment without being required to satisfy any additional conditions.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 28 June 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 8 JUNE 1977 [1]

Mr President,
Members of the Court,

A decision on this reference to the Court for a preliminary ruling by the Tribunal Administratif, Paris, is, in my view, governed by the interpretation which the Court placed on Article 52 of the Treaty of Rome in its judgment of 21 June 1974 in *Reyners* v *Belgian State* (Case 2/74 [1974] ECR 631) and reaffirmed, quite recently, in the Court's judgment of 28 April 1977 in *Thieffry* v *Conseil de l'Ordre des Avocats* (Case 71/76).

The facts are really quite straightforward. Mr Richard H. Patrick, a British subject, has, since 1961, held an architect's certificate issued by the Architectural Association, London. He has worked as a professional architect in the United Kingdom on his own account or as a member of various partnerships and, during the period 1968 to 1970, was official architect to the County of Hampshire for its school building programme.

In April 1973, he ceased work in Britain, and settled in France, where he established his residence at St Germain-en-Laye.

The plaintiff in the main action forthwith applied to the competent French authority for permission to practise his profession on French territory.

To this end he invoked the provisions of the Law of 31 December 1940 governing the title and the exercise of the profession of architect, Article 2 (2) of which provides that, on the

1 — Translated from the French.

recommendation of the General Council of the Order of Architects, foreign nationals shall be authorized to practise the profession of architect on two conditions:

— The first requires that a diplomatic convention shall exist between France and the country of which the person concerned is a national providing for reciprocity;
— The second requires proof of a qualification equivalent to the certificate required for French architects.

Even if the first condition is not satisfied, that is to say, if there is no convention providing for reciprocity, the production of a certificate recognized as equivalent is itself sufficient to enable the national authority to issue the authorization applied for, but only as an exception; in that event, therefore, this body enjoys a very wide discretion.

Mr Patrick accordingly found himself in the position that:

— On the one hand, the certificate issued by the Architectural Association of London was recognized as equivalent to the French architect's certificate by decree of the Minister for Cultural Affairs dated 22 June 1964; and
— On the other hand, there is no convention between France and the United Kingdom relating to the practice of the profession of architect.

In consequence, on 9 August 1973, the Minister for Cultural Affairs rejected Mr Patrick's application on the ground that, in the absence of such a convention, authority to practise his profession could be granted only as an exception.

This decision was the subject of an action for annulment, on the ground that it was *ultra vires,* before the Tribunal Administratif, Paris, before which court the applicant claimed his rights under the Treaty of Rome and, in particular, under Article 7 thereof, which prohibits any discrimination on grounds of nationality.

In his defence the Minister pointed out that the relevant provisions of the Treaty of Rome are Articles 52 to 57 rather than Article 7 and expressed the view that, at least at the material time, the Treaty did not constitute a sufficient legal basis to make good the absence of a bilateral convention providing for reciprocity.

The Tribunal Administratif, Paris, decided to stay the proceedings and referred the following question to the Court for a preliminary ruling, namely, 'whether, in the state of Community law on 9 August 1973, the day on which the contested decision was taken, a British subject was entitled to invoke in his favour the benefit of the right of establishement to practise the profession of architect in a Member State of the Community'.

Although, at the time when this dispute began, doubts could reasonably have arisen concerning the applicability, in Mr Patrick's case, of the Treaty of Rome and, in particular, of Article 52 thereof, it is now clear that it is no longer a matter for argument.

As this Court ruled in the *Reyners* case, Article 52 has, since the end of the transitional period, been a directly applicable provision which confers on the nationals of the Member States rights which they may properly invoke before the national courts since the latter have a duty to recognize and uphold those rights.

By virtue of these precedents, the right of establishment on the territory of a Member State for the pursuit of activities as a self-employed person can no longer be withheld from a national of another Member State solely on the ground of his foreign nationality.

The *Reyners* judgment went further by laying down that Article 52 has direct effect despite the possible absence, in a given field, of the directives provided for under Articles 54 (2) and 57 (1) of the Treaty.

In the case of this latter provision the issue of the directives for which it provides, particularly those concerning the mutual recognition of qualifications, certainly represents a valuable contribution to the attainment in practice of equality of treatment but it is not a legal prerequisite thereof.

Consequently, a national legislative provision laying down that a special and individual authorization shall be required exclusively from foreigners before they may practise the profession of architect is in itself a manifest restriction on freedom of establishment and on equality of treatment, which is its underlying purpose.

But this approach must be taken a stage further so as to include the concept of recognition by the competent national authority that a French certificate and a foreign certificate are equivalent qualifications.

This produces a legal situation resembling that of Mr Thieffry, an advocate ('avocat') of Belgian nationality, who, as we know, was refused entry to the Bar by the Paris Bar Council on the ground that he did not hold the French licentiate's degree in law despite the fact, which is admittedly of purely academic significance, that the University of Paris had recognized his degree of Doctor of Law of the University of Louvain as equivalent to the national qualification.

On 28 April last, this Court held that to require a national qualification in this way constitutes an unnecessary obstacle to the attainment of the objective of Community law in the matter of freedom of establishment.

This was not an overt or manifest but a disguised restriction on the attainment of the right of establishment.

The situation is clearer in the present case because the national legislature has provided that the recognition of foreign qualifications as equivalent to the French architect's certificate shall have civil effect, that is to say, for the purpose of enabling the holders to practise their profession in France.

In other words, the requirement of an individual and special authorization, more particularly if its issue is a matter of discretion, cannot be validly set up against Community citizens who enjoy the right of establishment under Article 52 of the Treaty.

This conclusion is endorsed by the French Government which, in its written observations, unreservedly accepts the finding of the *Reyners* judgment and declares its readiness to act accordingly in the present case and in every case of the same kind.

Perhaps I may be allowed to add that the French legislature had in any case adopted the same conclusion in a Law of 3 January 1977 concerning architects. For the purpose of admission to the profession of architect, the nationals of any other Member State of the Community who, in the absence of a French qualification, hold a foreign qualification or one recognized by the State are, under Article 10 of that Law, treated exactly as though they were French nationals.

The only explanation therefore of the decision, in August 1973, by the Minister for Cultural Affairs is that it was taken prior to both the delivery of the judgment in the *Reyners* case and the new legislation regulating the profession of architect in France.

It remains only for me to add that, so far as British subjects are concerned, Article 52 became directly applicable on the accession of the United Kingdom, that is to say, with effect from 1 January 1973, in accordance with the Court's ruling on Article 119 of the Treaty in its judgment of 8 April 1976 in *Defrenne* v *Sabena* (Case 43/75 [1976] ECR 478, paragraph No 59 of the decision).

My recommendation is that the Court should rule that:

1. On 9 August 1973, a national of a Member State was entitled to invoke in his favour the benefit of the right of establishment guaranteed by Article 52 of the Treaty establishing the European Economic Community in order to practise the profession of architect, notwithstanding the absence in the case of that profession of the directives provided for under Article 57 (1) of the Treaty;

2. In consequence, if he held a qualification recognized by the competent authority as equivalent to the qualification required of its own nationals, he was entitled to admission to this profession under the same conditions as the nationals of the host State;

3. The requirement of an individual and special authorization constitutes a clear restriction on his right to establishment and to engage in an occupation on the territory of the host State.