4. Prohibition of discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.

5. The rule on non-discrimination applies to all legal relationships which can be located within the territory of the Community by reason either of the place where they are entered into or of the place where they take effect.

6. The first paragraph of Article 59, in any event in so far as it refers to the abolition of any discrimination based on nationality, creates individual rights which national courts must protect.

In Case 36/74

Reference to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank (District Court) Utrecht, for a preliminary ruling in the action pending before that court between

1. Bruno Nils Olaf Walrave

2. Longinus Johannes Norbert Koch

and

1. Association Union Cycliste Internationale

2. Koninklijke Nederlandsche Wielren Unie

3. Federacion Española Ciclismo

on the interpretation of Articles 7, 48 and 59 of the EEC Treaty and the provisions of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community (OJ L 257 of 19. 10. 1968, p. 2),

THE COURT

composed of: R. Lecourt, President, C. Ó Dálaigh and A. J. Mackenzie Stuart, Presidents of Chamber, A. M. Donner, R. Monaco, J. Mertens de Wilmars (Rapporteur), P. Pescatore, H. Kutscher and M. Sørensen, Judges,

Advocate-General: J. P. Warner,
Registrar: A. Van Houtte,

gives the following

JUDGMENT

Facts

The order making the reference and the written observations submitted under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

It is the practice of the plaintiffs in the main action, both of whom are Dutch, to offer their services for remuneration to act as pacemakers on motorcycles in medium distance cycle races with so-called stayers, who cycle in the lee of the motorcycle. They provide these services under agreements with the stayers or the cycling associations or with organizations outside the sport (sponsors). These competitions include the world championships, the rules of which, made by the first defendant, include a provision that 'as from 1973 the pacemaker must be of the same nationality as the stayer'. The plaintiffs in the main action consider that this provision is incompatible with the Treaty of Rome in so far as it prevents a pacemaker of one Member State from offering his services to a stayer of another Member State and have brought an action against the three defendants for a declaration that the rule is void and an order that the defendants allow teams made up of the plaintiffs and stayers who are not of Dutch nationality to take part in the world championships provided that such stayers are nationals of another Member State.

The Arrondissementsrechtbank, Utrecht, has taken the view that questions of the interpretation of Community law arise and by judgment dated 15 May 1974 has referred the following questions to this Court for a preliminary ruling:

1. Assuming that the agreement between a pacemaker on the one hand and a stayer, a cycling association and/or a sponsor on the other hand, is to be regarded as a contract of employment, are Article 48 EEC Treaty and the provisions of EEC Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading 'Dès l'année 1973 l'entraineur doit être de la nationalité du coureur' (from the year 1973 the pacemaker must be of the same nationality as the stayer) can be regarded as incompatible with them?

1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?
2. If sub-question (1) is answered in the affirmative, does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?
3. Does it also matter whether the world championships in question are held on the territory of a Member State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level?

2. Assuming that the agreement between a pacemaker on the one hand and a stayer, a cycling association

and/or a sponsor on the other hand, is to be regarded as a contract for the provision of individual services, is Article 59 EEC Treaty to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading 'Dès l'année 1973 l'entraineur doit être de la nationalité du coureur' can be regarded as incompatible with it?

1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?
2. If sub-question (1) is answered in the affirmative, does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?
3. Does it also matter whether the world championships in question are held on the territory of a Member State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level?
4. Does Article 59 EEC Treaty by reason of its nature have direct effect within the legal orders of the Member States of the EEC?

3. If either of the two questions above is answered in the negative:

Is Article 7 EEC Treaty to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading 'Dès l'année 1973 l'entraineur doit être de la nationalité du coureur' can be regarded as incompatible with it?

1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?
2. If sub-question (1) is answered in the affirmative, does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?
3. Does it also matter whether the world championships in question are held on the territory of a Member State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions on the national level?
4. Does Article 7 of the EEC Treaty by reason of its nature have direct effect within the legal orders of the Member States of the EEC?

The order of reference was registered at the Court on 24 May 1974. The Court, after hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, decided to proceed without a preparatory inquiry.

The Commission, the Government of the United Kingdom, the first and second defendants and the plaintiffs have submitted written observations.

II — Observations submitted under Article 20 of the Statute of the Court of Justice

A — *Observations of the Commission*

First question (Article 48 of the Treaty and Regulation No 1612/68)

1. The Commission observes that the national court has contemplated a series of various alternatives as to the legal nature of the contract entered into by the pacemaker and the Commission states that it is for the national court to settle this question. If it comes to the

conclusion that there is a contract of employment because the pacemaker works for another person to whom he subjects himself — which the Commission thinks is in fact the case — the pacemaker would be an employee to whom Article 48 of the Treaty would apply and the provision in question would be void or, in any event, could not affect such contracts since Article 7 (4) of Regulation No 1612/68 prohibits discrimination based on nationality in 'any clause of a collective or individual agreement or of any other collective regulation'.

In a general way, the provision in question of the first defendant's rule is, for the same reason, contrary to Article 48 (2), the directly applicable nature of which has been recognized by the Court (Case 167/73 *Commission v French Republic* [1974] ECR 359). Such discrimination would also infringe the provisions of Articles 1 and 2 of Regulation No 1612/68.

Conditions of work which distinguish between nationals and aliens do not however necessarily constitute in every case discrimination and in particular not when there are 'objective differences' between the respective circumstances of the workers in question (Case 152/73 *Sotgiu v Deutsche Bundespost* [1974] ECR 153).

On considering whether such 'objective differences' may exist in relation to employment in sport, the Commission makes the following observations:

(a) Article 48 applies to recreational activities, including sport, as to all economic activities, but only if the activities are pursued professionally. Article 48 therefore does not apply to amateur activities. The example of racing behind motorcycles shows however that it is not always possible to make a general classification in this respect of a sporting competition since the professional pacemaker offers his services both to amateurs and to professionals. It is therefore necessary to consider the activity of each participant separately.

(b) A clause excluding aliens is quite proper where a national sporting team is being constituted, but only in relation to the constitution of such a team. On the other hand, so-called 'alien' clauses in the statutes of sporting associations prohibiting aliens or limiting their number are void.

(c) Not only 'team sports' but also 'individual sports' may involve belonging to a national team. The present case raises precisely the question of belonging to a sporting team.

2. The first sub-question asks whether in relation to the answer to the main question it matters whether it is a question 'of a sporting event in which countries or nationalities compete for the world title'.

The Commission considers that as soon as a clause excluding aliens is acceptable for constituting a national team, albeit professional, the nature of the competition in which the national team is competing (world, European or local championship etc.) is of no importance in deciding the case.

3. The answer to the second sub-question, on the other hand, is crucial in deciding the case. It amounts to asking whether the pacemaker is a member of the national team in the same way as the cyclist, in which case objection to him could be validly made on the basis of the nationality clause.

This is a factual assessment which must be made by the national court in each individual case, according to the different sports, but in such a way as not to give the concept 'national team' a scope exceeding the objective for which it is acceptable. Thus persons attached to the team (seconds, sport directors and persons in charge of equipment) who do not take part in the actual competition

could not, in any event, be regarded as part of a national team.

Even in cases — such as the present — where there is participation in the event itself, the national court must watch that the conditions required for inferring absence of discrimination do not bring this concept into question. The Commission proposes, in this respect, certain matters for consideration: the technical characteristics of the activity in question (qualities of the pacemaker as a sportsman), the frequency of participation in the activities of the team, the scope of the organizers in applying the rules of the events and the conditions of the award of prizes for winning.

4. The third subquestion asks whether a distinction must be made as to whether the world championships are held on the territory of a Member State of the EEC or outside such territory, 'bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level'.

A reply to the question is important only in the event of the clause excluding aliens being judged incompatible with Article 48. In this event, since the Treaty applies only in the territory where Member States have jurisdiction, the discriminatory nature of the clause could not be invoked for events organized in a third country.

The question, on the other hand, does not arise if the pacemaker is a member of the national team in the same way as the cyclist. If the exclusion clause is considered lawful, the cyclist will be induced to choose a compatriot for the rest of his activity, and it is possible that such a situation would come under Articles 85 and 86 of the Treaty, but from the point of view of possible discrimination for the events of national teams — which alone must be considered — it must be recognized that such discrimination is inherent in the concept of a national team.

Second question (Article 59 of the Treaty)

1. The Commission notes that by reason of the 'residual' nature, according to the first paragraph of Article 60, of the concept 'services', the second question requires a reply only if the activity of the pacemaker is not covered by a contract of employment.

In this event a specific question arises. As distinct from Regulation No 1612/68 the provisions relating to freedom of establishment and freedom to provide services provide for abolition only of discrimination arising from provisions laid down by law, regulation or administrative action of the Member States or those 'administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States . . .' (Article 54 (3) (c)). It is doubtful whether, in spite of its legislative appearance, the rules of the first defendant, which is a private society made up of two international federations of national cycling organizations, may be regarded as coming within the categories referred to by the provision in question.

2. If it is a question of provisions coming under Article 59, the replies proposed in relation to Article 48 to the first three sub-questions, in particular in relation to the question of the existence of discrimination, would apply likewise in the context of Article 59.

3. Although a reply to the fourth sub-question, on the direct effect of Article 59, is in the Commission's view unnecessary for a decision in the case by reason of the private nature of the first defendant's rules, its theoretical interest is nevertheless fundamental.

As regards freedom to provide services in the sphere of sport, the Council has not yet issued directives implementing the general programme of 18 December 1961, which, under Article 54 (2), should however have been done before the end of the transitional period. In a

proposal for a directive of 23 December 1969 (OJ C 21 of 19. 2. 1970) the Commission proposed liberalizing a certain number of activities including sport, but this directive has not yet been adopted by the Council.

As regards the directly applicable nature of Article 59, the Commission, after having referred to the case-law of the Court on the direct effect of Articles 48 (Case 167/73 *Commission v French Republic* [1974] ECR 359), 53 (Case 6/64 *Costa v Enel* [1964] ECR 585 615) and 52 (Case 2/74 *Reyners* [1974] ECR 651), states that the provisions of Article 59 — as well as the third paragraph of Article 60 — satisfy the requirements laid down by the Court of Justice for directly applicable provisions: (a) the rule is clear and precise; (b) it is not subject to any reservation; and (c) the implementation of the obligation which it contains is not subject to measures being taken by Member States or Community Institutions.

First of all, the rule is clear and precise because the restrictions which Article 59 requires to be abolished are all legal provisions or administrative practices which:

(a) require the provider of services to have his address or residence in the country in which he wishes to supply the services in question;

(b) give rise to different treatment between nationals of the Community who are resident in the territory of the Member State where the service is supplied and others;

(c) apply different treatment based on nationality to the provision of services.

This same concept of 'restrictions' is moreover likewise employed in Article 62, the direct effect of which has never been doubted by anyone, whereas the Court has already decided that the problems which the national court could have in deciding whether a particular case amounted to a restriction do not present an obstacle to the direct application (Case 2/72 *Reyners v Belgium* [1974] ECR 631).

The obligation contained in Article 59 is not subject, at the end of the transitional period, to any reservation, nor to any measures being taken by Member States or Community institutions. Although Article 59 provides that liberalization shall take place 'within the framework of the provisions set out below', this clause is given expression in Article 63, providing for the drawing up of a general programme, to be implemented by directives. This general programme has been adopted, while Articles 59 and 63 leave the Council no discretion as to the date when these directives had to be issued. Once the limiting date has expired, the Treaty does not subject the abolition of restrictions either to the directives to be issued or already issued or to directives based on Article 57 of the Treaty relating to the coordination of the provisions laid down by law, regulation or administrative action concerning the taking up of professions or the mutual recognition of certificates.

Third question (Article 7 of the Treaty)

This question raises, as regards the compatibility of the clause in question with Article 7 of the Treaty, the same sub-questions as the first, to which it adds that of the direct applicability of Article 7.

1. As regards the direct applicability of Article 7, the Commission refers to its observations in Case 14/68 *Wilhelm v Bundeskartellamt*, Rec. 1969, p. 12, in which it proposed an affirmative reply to this question. The Court, moreover, has already pronounced in favour of the direct applicability of Article 7 in Case 13/63 *Italian Republic v Commission* [1963] ECR 165.

2. However, since this provision applies only 'without prejudice to any special provision' of the Treaty and therefore has a subsidiary character, its

scope within the sphere of free movement of persons is considerably limited. It could apply only in isolated cases of discrimination not arising from national provisions laid down by law, regulation or administrative action in force but from a private person, as seems to be the case in the present instance. Further, it is of course necessary that the clause in question should be regarded as discriminatory.

B — Observations of the Government of the United Kingdom

The observations of the Government of the United Kingdom relate solely to the reply to be given to sub-question (4) of the second question, relating to the direct effect of Article 59. The United Kingdom refers to its observations in Case 33/74 *Van Binsbergen*. According to the Government of the United Kingdom it appears that Articles 59 and 60 have been directly applicable since the end of the transitional period despite the fact that the directives provided for in Articles 63 (2) and Article 57 (1) (to which Article 66 refers in relation to services) have not yet been able to be issued (the Government of the United Kingdom refers to the Judgment of the Court in Case 2/74 *Reyners v Belgium* [1974] ECR 631).

C — Observations of the first and second defendants

1. Prior to considering the questions raised by the national court, the first and second defendants give an outline of the history, composition and objectives of the Union Cycliste Internationale, the principal arrangements for the organization of world championships, the characteristics of medium-distance races and the *raison d'être* of the nationality clause.

It appears that:

— the first defendant is constituted at present by the Fédération Internationale Amateur de Cyclisme (FIAC) comprising 108 national federations and the Fédération Internationale de Cyclisme Professionnel (FICP), comprising 18 national federations.

— the organization of world championships, both amateur and professional, is the responsibility each year of a national federation and is supervised by the first defendant.

— the pacemaker is important in medium-distance races: he alone determines the speed to be maintained, taking into account the physical resources of the cyclist, who from the tactical point of view has only a very limited view of the course of the race by reason of his position behind the pacemaker.

— the introduction into the first defendant's rules of the nationality clause in question is based on the consideration that since the object of world championships is to have representatives of various Member countries compete, the participants must in fact have the nationality of the country which they are regarded as representing. As regards medium-distance races this condition applies both to the pacemaker and to the cyclist.

2. Passing to the consideration of the questions raised by the Arrondissementsrechtbank Utrecht, the first and second defendants challenge in the first place the reference for a preliminary ruling:

— a reply to the questions in the form in which they are raised would involve this court in an examination of the particular case going beyond the scope of Article 177 of the Treaty.

— in asking questions on the interpretation of Articles 48 and 59, the national court has omitted to consider whether in the particular case there are contractual ties such as are referred to in the said Articles, and, prior to the reference for a

preliminary ruling, it ought to have selected the applicable provision from among Articles 7, 48 or 59 of the Treaty.

— the sub-questions relating to the direct effect of Articles 7 and 59 do not raise the question which is essential in this case of whether Articles 7, 48 and 59 have a direct effect not only with regard to national authorities but also in relationships between individuals.

3. According to the first and second defendants, the disputed clause of the first defendant's rules lies outside the scope of the EEC Treaty:

— its territorial application stretches far beyond the territory of the EEC;

— since it is part not of national law but of international rules of a private nature, it is alien to the provisions of Articles 7, 48 and 59 intended to harmonize or even unify the legal systems in the Community;

— even if the applicability of Community law and the discriminatory nature of the provision in question were admitted, it is in any case not established that the Community rules have priority over international rules;

— this Court cannot find as possibly void an international rule applicable in more than a hundred countries.

Since the first defendant's rules have been validly passed and the Community rules do not apply to them, the nationality clause is valid and as a result the contracts made having regard to this clause are all valid.

4. In order to define the concept of 'discrimination' the first and second defendants make two observations regarding the definition of this concept by the Court in Case 13/63 *Government of the Italian Republic v EEC Commission* [1963] ECR 165 178, according to which 'Discrimination in substance would consist in treating either similar situations differently or different situations identically'.

According to the first and second defendants, although the different treatment of identical situations is discriminatory this is not the case where the situations are only similar. Moreover, even where the situations are identical, there is discrimination only if the different treatment is obviously without basis.

Thus in the present case the unfavourable treatment of the Dutch pacemaker prevented from contracting with a Belgian cyclist is justified by the rule basic to world championships that a national team can be made up only of members of the same nationality. The different treatment is not therefore obviously without basis.

5. As regards the questions raised by the national court, the first and second defendants consider that it is necessary to reply to sub-questions (1) and the main questions together, while the other sub-questions must be considered separately. The clause in question relates only to world championships, which are organized only once a year. In relation to the whole medium-distance season it is thus rather the exception than the rule, which explains the importance of sub-questions (1).

First question and sub-question (1)

The first and second defendants doubt whether the relationship between the pacemaker and the cyclist may be regarded as coming within a contract of employment. The importance of the part of the pacemaker in the race excludes first of all the existence of a subordinate relationship. Moreover, it has not been shown that the plaintiffs act as pacemakers in a professional capacity and that it is in a professional capacity that they take part in the world championships (for the rules of the first defendant do not classify pacemakers as professionals or amateurs). A purely recreational activity, without an

economic objective, does not come under the application of Community law (reply by the Commission to the question raised by Mr Seefeld, OJ C 12 of 3. 2. 1971, pp. 10 to 11).

If the applicability of Article 48 has to be admitted, it is still necessary to examine the more specific applicability of Article 7 (4) of Regulation No 1612/68 of 15 October 1968 (OJ L 257, p. 2), according to which any clause of a collective or individual agreement or of any collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorizes discriminatory conditions in respect of workers who are nationals of the other Member States. Although this provision indicates that agreements made by individuals come under the application of Regulation No 1612/68, it would however be necessary, in order to apply Article 7 (4) of Regulation No 1612/68 to the contract concluded between a pacemaker and a cyclist, federation or sponsor, to admit that the disputed clause of the first defendant's rules is part of this contract, which would not be very easy.

According to the first and second defendants, both the excessive effect of automatic nullity of the said clause and the subtle distinctions involved in the concept of discrimination militate against the application of Article 48 and Regulation No 1612/68.

Sub-question (2)

The distinction based on the capacity as participant in the competition or assistant does not provide a sufficiently clear criterion to decide whether the nationality clause conforms with Community law or not. It is necessary rather to enquire whether the pacemaker is part of the national team in the same way as the cyclist. The affirmative reply to this question arises both from the important part that the pacemaker plays and from the fact that prizes are presented to the cyclist and pacemaker.

Sub-question (3)

As regards the territorial scope of Article 48, the first and second defendants observe that the application of Community provisions is subject to the following conditions:

(a) the contracting parties must be nationals of a Member State;

(b) the contract must have been entered into in the territory of a Member State;

(c) the services forming the subject of the contract must be performed within the territory of one of the Member States.

As regards the 'indirect' effect of the nationality clause on the participation in events other than world championships properly so called, the question amounts to examining to what extent restrictions on the constitution of a team for world championships may reflect on the other events within the Common Market, even if world championships are organized outside the territory of Member States.

In this respect the first and second defendants observe that both in Case 52/69 *Geigy v Commission* Recueil 1972, p. 826 and in Case 6/72 *Europemballage and Continental Can* v *Commission* [1973] ECR 241 the Court has given judgment only on acts taking place within the territory of the Common Market and has not pronounced upon the applicability of Community law to acts outside the Community but capable of producing effects within the Common Market.

In any event 'indirect' discrimination by reason of the clause in dispute could not be controlled according to Community rules unless pacemakers proved: (a) that there was discrimination in the formation of teams for events other than the world championships taking place within the Common Market and (b) that

this 'indirect' discrimination inevitably arises from the nationality clause in question.

In the opinion of the first and second defendants, the selection heats for the world championships could not be subjected to such an examination, since the link with the world championships is too obvious; rules warranted for the organization of world championships must necessarily have precedence in selection heats wherever they take place. Outside the selection heats no such indirect discrimination could be shown. Outside world championships sportsmen are able to form a team with the partners of their choice whatever their nationality.

Second question and sub-question (1)

The first and second defendants stress in the first place the residual character of the provisions relating to freedom to provide services and freedom of establishment in relation to those governing freedom of movement for workers. The former apply only where the latter do not.

Further, there is a fundamental difference between Article 48 et seq. on the one hand and Article 59 et seq. on the other. Whereas the rules relating to freedom of movement for workers (Article 48 et seq.) involve obligations both for individuals and for Member States and Community Institutions, as appears in particular from Article 7 (4) of Regulation No 1612/68, this is not the case as regards freedom to provide services. Article 59 et seq. involve obligations only for Member States and Community Institutions. It cannot therefore be applied to the first defendant's rules.

Sub-questions (2) and (3)

Reference is made to the observations on sub-questions (2) and (3) of the first question.

Sub-question (4)

Although, in contrast to the position as regards Articles 48 and 52, the direct effect of Article 59 has not yet been the subject of a judgment by this Court, the first and second defendants are of the opinion that the wording of Article 59 leaves no doubt that this provisions fulfils the conditions which this Court has laid down for direct effect, in particular in Case 13/68 *Salgoil v Ministry of External Trade of the Italian Republic,* Recueil 1968, p. 661: the obligation is clear and at the end of the transitional period it is not subject to any reservation and does not leave the Member States any discretion.

Third question and sub-question (1)

The prohibition on discrimination contained in Article 7 of the Treaty applies only where Articles 48 and 59 do not. In contrast to Article 59, Article 7 applies however where, as in the present case, the discriminatory conduct is attributable to a private party. The first and second defendants repeat, however, that in their opinion there can be no question of 'discrimination' in the present case.

Sub-questions (2) and (3)

Reference is made to the observations on sub-questions (2) and (3) of the first question.

Sub-question (4)

As a general principle, of a subordinate nature in relation to Articles 48 and 59, Article 7, although expressing a sufficiently clear obligation, requires more detailed implementation such as is privided for in paragraph 2 thereof. It cannot therefore have direct effect.

D — Observations of the plaintiffs

First question (Article 48)

According to the plantiffs in the main action, the contract concluded between

the pacemaker and the cyclist is a contract of employment. The so-called 'exclusion of aliens' clause clearly constitutes discrimination based on nationality. By reason of the importance, in this sphere of sport, of a world title, this clause seriously limits their professional activity.

As regards sub-question (2), the plaintiffs state that the pacemaker fulfils a supporting function on behalf of the participant.

The place where the world championships are held (sub-question (3) is irrelevant in view of their decisive influence on employment possibilities in the sphere of sport within the EEC.

Second question (Article 59)

The replies proposed for sub-questions (1) to (3) are identical with those set out above. Article 59 (sub-question (4)) must be recognized as having a direct effect.

Third question

The nationality clause in question is incompatible with Article 7 of the EEC Treaty which has direct effect (sub-question (4)). The fact that it relates to a competition in which countries or nationalities compete for a world title is irrelevant in the sphere of professional sport.

The answers proposed for sub-questions (2) and (3) are identical with those set out in relation to the first question.

III — Oral procedure

1. The oral observations of the plaintiffs, represented by J. L. Janssen van Raay, and the Commission, represented by J. Cl. Séché, assisted by H. Bronkhorst, were made at the hearing on 8 October 1974.

The plaintiffs replied to questions put to them by the Court relating to the 'sporting' nature of the team made up of the racing cyclist and pacemaker. The plaintiffs state that cycling competitions behind motorcycles are competitions solely between racing cyclists and not between teams made up of a cyclist and a motorcyclist. Various facts confirm this point of view: stayer competitions are organized between cycling and not motorcycling federations and the official publications of the results of world championships show that in events behind motor cycles only the racing cyclists are classified. In the plaintiffs' opinion a decisive factor is that in spite of the very clear distinction in sporting competitions between amateurs and professionals, professional pacemakers may take part in competitions for amateur cyclists.

As regards the first defendant's statement that its rules do not distinguish between professional and amateur pacemakers, the plaintiffs observe that it is contradictory to maintain on the one hand that in a pacemaker/cyclist association, pacemakers play as important a part as cyclists and on the other hand that no distrinction is made as to whether they are amateur or professional.

The Commission, developing the argument it made in its written observations, states that contrary to what the first defendant maintains, the finding that discrimination exists need not necessarily involve the nullity of the disputed rules of the first defendant. They would only be non-applicable. Under Article 7 (4) of Regulation No 1612/68 the clause in the contract which infringes Article 48 of the Treaty would be automatically null and void.

2. The Advocate-General delivered his opinion on 24 October 1974.

Law

1 By order dated 15 May 1974 filed at the Court Registry on 24 May 1974, the Arrondissementsrechtbank Utrecht referred under Article 177 of the EEC Treaty various questions relating to the interpretation of the first paragraph of Article 7, Article 48 and the first paragraph of Article 59 of the EEC Treaty and of Regulation No 1612/68 of the Council of 15 October 1968 (OJ L 257, p. 2) on freedom of movement for workers within the Community.

2 The basic question is whether these Articles and Regulation must be interpreted in such a way that the provision in the rules of the Union Cycliste Internationale relating to medium-distance world cycling championships behind motorcycles, according to which 'L'entraîneur doit être de la nationalité de coureur' (the pacemaker must be of the same nationality as the stayer) is incompatible with them.

3 These questions were raised in an action directed against the Union Cycliste Internationale and the Dutch and Spanish cycling federations by two Dutch nationals who normally take part as pacemakers in races of the said type and who regard the aforementioned provision of the rules of UCI as discriminatory.

4 Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

5 When such activity has the character of gainful employment or remunerated service it comes more particularly within the scope, according to the case, of Articles 48 to 51 or 59 to 66 of the Treaty.

6 These provisions, which give effect to the general rule of Article 7 of the Treaty, prohibit any discrimination based on nationality in the performance of the activity to which they refer.

7 In this respect the exact nature of the legal relationship under which such services are performed is of no importance since the rule of non-discrimination covers in identical terms all work or services.

8 This prohibition however does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity.

9 This restriction on the scope of the provisions in question must however remain limited to its proper objective.

10 Having regard to the above, it is for the national court to determine the nature of the activity submitted to its judgment and to decide in particular whether in the sport in question the pacemaker and stayer do or do not constitute a team.

11 The answers are given within the limits defined above of the scope of Community law.

12 The questions raised relate to the interpretation of Articles 48 and 59 and to a lesser extent of Article 7 of the Treaty.

13 Basically they relate to the applicability of the said provisions to legal relationships which do not come under public law, the determination of their territorial scope in the light of rules of sport emanating from a world-wide federation and the direct applicability of certain of those provisions.

14 The main question in respect of all the Articles referred to is whether the rules of an international sporting federation can be regarded as incompatible with the Treaty.

15 It has been alleged that the prohibitions in these Articles refer only to restrictions which have their origin in acts of an authority and not to those resulting from legal acts of persons or associations who do not come under public law.

16 Articles 7, 48, 59 have in common the prohibition, in their respective spheres of application, of any discrimination on grounds of nationality.

17 Prohibition of such discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.

18 The abolition as between Member States of obstacles to freedom of movement for persons and to freedom to provide services, which are fundamental objectives of the Community contained in Article 3 (c) of the Treaty, would be compromised if the abolition of barriers of national origin could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations which do not come under public law.

19 Since, moreover, working conditions in the various Member States are governed sometimes by means of provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons, to limit the prohibitions in question to acts of a public authority would risk creating inequality in their application.

20 Although the third paragraph of Article 60, and Articles 62 and 64, specifically relate, as regards the provision of services, to the abolition of measures by the State, this fact does not defeat the general nature of the terms of Article 59, which makes no distinction between the source of the restrictions to be abolished.

21 It is established, moreover, that Article 48, relating to the abolition of any discrimination based on nationality as regards gainful employment, extends likewise to agreements and rules which do not emanate from public authorities.

22 Article 7 (4) of Regulation No 1612/68 in consequence provides that the prohibition on discrimination shall apply to agreements and any other collective regulations concerning employment.

23 The activities referred to in Article 59 are not to be distinguished by their nature from those in Article 48, but only by the fact that they are performed outside the ties of a contract of employment.

24 This single distinction cannot justify a more restrictive interpretation of the scope of the freedom to be ensured.

25 It follows that the provisions of Articles 7, 48 and 59 of the Treaty may be taken into account by the national court in judging the validity or the effects of a provision inserted in the rules of a sporting organization.

26 The national court then raises the question of the extent to which the rule on non-discrimination may be applied to legal relationships established in the context of the activities of a sporting federation of world-wide proportions.

27 The Court is also invited to say whether the legal position may depend on whether the sporting competition is held within or outside the Community.

28 By reason of the fact that it is imperative, the rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or of the place where they take effect, can be located within the territory of the Community.

29 It is for the national judge to decide whether they can be so located, having regard to the facts of each particular case, and, as regards the legal effect of these relationships, to draw the consequences of any infringement of the rule on non-discrimination.

30 Finally, the national court has raised the question whether the first paragraph of Article 59, and possibly the first paragraph of Article 7, of the Treaty have direct effects within the legal orders of the Member States.

31 As has been shown above, the objective of Article 59 is to prohibit in the sphere of the provision of services, *inter alia*, any discrimination on the grounds of the nationality of the person providing the services.

32 In the sector relating to services, Article 59 constitutes the implementation of the non-discrimination rule formulated by Article 7 for the general application of the Treaty and by Article 48 for gainful employment.

33 Thus, as has already been ruled (Judgment of 3 December 1974 in Case 33/74, *Van Binsbergen*) Article 59 comprises, as at the end of the transitional period, an unconditional prohibition preventing, in the legal order of each Member State, as regards the provision of services — and in so far as it is a question of nationals of Member States — the imposition of obstacles or limitations based on the nationality of the person providing the services.

34 It is therefore right to reply to the question raised that as from the end of the transitional period the first paragraph of Article 59, in any event in so far

as it refers to the abolition of any discrimination based on nationality, create individual rights which national courts must protect.

Costs

35 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

36 Since these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Arrondissementsrechtbank Utrecht, hereby rules:

1. **Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.**

2. **The prohibition on discrimination based on nationality contained in Articles 7, 48 and 59 of the Treaty does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity.**

3. **Prohibition on such discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at collectively regulating gainful employment and services.**

4. **The rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or of the place where they take effect, can be located within the territory of the Community.**

5. The first paragraph of Article 59, in any event in so far as it refers to the abolition of any discrimination based on nationality, creates individual rights which national courts must protect.

Lecourt Ó Dálaigh Mackenzie Stuart Donner Monaco
Mertens de Wilmars Pescatore Kutscher Sørensen

Delivered in open court in Luxembourg on 12 December 1974

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 24 OCTOBER 1974

My Lords,

Strictly this case is about the impact of Community law on a particular sport, namely motor-paced bicycle racing. But Your Lordships' Judgment in it will be of general importance in the world of professional sport.

The case comes to this Court by way of a reference for a preliminary ruling by the Arrondissementsrechtbank of Utrecht, and one of the difficulties I find in reminding Your Lordships of the facts of it is that one cannot readily describe what a motor-paced bicycle race is without seeming to prejudge a crucial issue of fact which, in my view, it will be for that Court to decide. On the one hand one can describe such a race as one between teams each consisting of a man on a motorcycle, known as a 'pacemaker' or 'pacer', followed by one on a bicycle, known as the 'stayer'; or one can describe it as a race between men on bicycles ('stayers') each of which is preceded by a man on a motorcycle (the 'pacemaker' or 'pacer'). What is undoubted is that the function of the pacemaker or pacer, who wears special clothing, is to create a moving vacuum for the stayer, who can thus achieve speeds — of up to 100 k.p.h. — that a man alone on a bicycle could never attain. Nor is it in doubt that both men require considerable skill.

Most, if not all, pacers are professionals. A professional pacer serves, or provides his services, under a contract with the stayer, or with a cycling association, or with a sponsor. Stayers may be either professional or amateur.

In 1900 there was founded in Paris the Union Cycliste Internationale ('UCI'), an association of national bodies concerned with cycling as a sport. In 1967 the offices of the UCI were moved to Geneva.