

# Case C-35/99

## Criminal proceedings against Manuele Arduino

(Reference for a preliminary ruling  
from the Pretore di Pinerolo)

(Compulsory tariff for fees of members of the Bar — Decision of the National Council of the Bar — Approval by the Minister for Justice — Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC))

Opinion of Advocate General Léger delivered on 10 July 2001 . . . . . I-1532  
Judgment of the Court, 19 February 2002 . . . . . I-1561

### Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Manifestly irrelevant questions and questions regarding hypothetical problems in a context which precludes any useful answer — Questions not related to the purpose of the main proceedings (EC Treaty, Art. 177 (now Art. 234 EC))*

2. *Competition — Community rules — Obligations of the Member States — Rules designed to reinforce the effects of preexisting agreements — Definition — Fee tariff proposed by a professional organisation and approved by the Minister — Exclusion — Conditions*  
 (EC Treaty, Arts 5 and 85 (now Arts 10 EC and 81 EC))

1. In the context of the cooperation between the Court of Justice and the national courts provided for by Article 177 of the Treaty (now Article 234 EC) it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling.

Nevertheless, in exceptional circumstances, the Court can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to

give a useful answer to the questions submitted to it.

(see paras 24–25)

2. Although Article 85 of the Treaty (now Article 81 EC) is, in itself, concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, that article, read in conjunction with Article 5 of the Treaty (now Article 10 EC), none the less requires the Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings. Articles 5 and 85 of the Treaty are infringed where a Member State requires or favours the adoption of agreements, decisions or concerted practices contrary to Article 85 or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere.

In that regard, a Member State cannot be said to have delegated to private economic operators responsibility for taking decisions affecting the economic sphere, which would have the effect of depriving the provisions of the character of legislation, where, first, the professional organisation concerned is responsible only for producing a draft tariff which, as such, is not compulsory, since the Minister has the power to have the draft amended by that organisation, and, second, the national legislation provides that fees are to be settled by the courts on the basis of the criteria referred to in that legislation and, moreover, in certain exceptional circumstances and by duly reasoned decision, authorises the court to depart from the maximum and minimum limits fixed. In those circumstances, nor is the Member State open to the criticism that it requires or encourages

the adoption of agreements, decisions or concerted practices contrary to Article 85 of the Treaty or reinforces their effects.

It follows that Articles 5 and 85 of the Treaty do not preclude a Member State from adopting, in the context of such a procedure, a law or regulation which approves, on the basis of a draft produced by a professional organisation, a tariff fixing minimum and maximum fees for members of the profession.

(see paras 34–35, 41–44, operative part)