JUDGMENT OF THE COURT
30 November 1995 *

In Case C-55/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Consiglio Nazionale Forense (Italy) for a preliminary ruling in the proceedings pending before that court between

Reinhard Gebhard

and

Consiglio dell'Ordine degli Avvocati e Procuratori di Milano,

on the interpretation of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward (Rapporteur) and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges,

* Language of the case: Italian.

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the applicant in the main proceedings, by Reinhard Gebhard, Rechtsanwalt, Massimo Burghignoli, of the Milan Bar, Jim Penning, of the Luxembourg Bar, and Fabrizio Massoni, of the Brussels Bar,

— Consiglio dell'Ordine degli Avvocati e Procuratori di Milano, by Professor Bruno Nascimbene, Avvocato,

— the Greek Government, by Evi Skandalou, of the Special Community Legal Affairs Department of the Ministry of Foreign Affairs, and Stamatina Vodina, Jurist, researcher in that department, acting as Agents,

— the Spanish Government, by Alberto José Navarro González, Director-General for Community Legal and Institutional Coordination, and Miguel Bravo-Ferrer Delgado, Abogado del Estado in the Community Legal Affairs Department, acting as Agents,

— the French Government, by Philippe Martinet, Foreign Affairs Secretary in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Catherine de Salins, Deputy Director in that directorate, acting as Agents,

— the United Kingdom, by Stephen Braviner, of the Treasury Solicitor's Department, acting as Agent, and Daniel Bethlehem, Barrister,

— the Commission of the European Communities, by Marie-José Jonczy, Legal Adviser, and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Reinhard Gebhard, represented by Massimo Burghignoli; Consiglio dell'Ordine degli Avvocati e Procuratori di Milano, represented by Bruno Nascimbene; the Greek Government, represented by Evi Skandalou and Stamatina Vodina; the Spanish Government, represented by Miguel Bravo-Ferrer Delgado; the French Government, represented by Marc Perrin de Brichambaut, Legal Affairs Director in the Ministry of Foreign Affairs, acting as Agent, and Philippe Martinet; the Italian Government, represented by Pier Giorgio Ferri, Avvocato dello Stato; the United Kingdom, represented by Stephen Braviner and Daniel Bethlehem, and the Commission of the European Communities, represented by Marie-José Jonczy and Enrico Traversa, at the hearing on 10 May 1995,

after hearing the Opinion of the Advocate General at the sitting on 20 June 1995,

gives the following

Judgment

1 By order of 16 December 1993, received at the Court on 8 February 1994, the Consiglio Nazionale Forense (National Council of the Bar) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17).

2 The questions have been raised in the course of disciplinary proceedings opened by the Consiglio dell'Ordine degli Avvocati e Procuratori di Milano (Council of the Order of Advocates and Procurators of Milan, hereinafter 'the Milan Bar Council') against Mr Gebhard, who is accused of contravening his obligations under Law No 31 of 9 February 1982 on freedom for lawyers who are nationals of a Member State of the European Community to provide services (GURI No 42 of 12 February 1982) on the ground that he pursued a professional activity in Italy on a permanent basis in chambers set up by himself whilst using the title *avvocato*.

3 According to the case-file and information provided in answer to the written questions put by the Court, Mr Gebhard, a German national, has been authorized to practise as a *Rechtsanwalt* in Germany since 3 August 1977. He is a member of the Bar of Stuttgart, where he is an 'independent collaborator' in a set of chambers (*Bürogemeinschaft*) although he does not have chambers of his own in Germany.

4 Mr Gebhard has resided since March 1978 in Italy, where he lives with his wife, an Italian national, and his three children. His income is taxed entirely in Italy, his country of residence.

5 Mr Gebhard has pursued a professional activity in Italy since 1 March 1978, initially as a collaborator (*con un rapporto di libera collaborazione*) in a set of chambers of lawyers practising in association in Milan, and subsequently, from 1 January 1980 until the beginning of 1989, as an associate member (*associato*) of those chambers. No criticism has been made of him in relation to his activities in those chambers.

6 On 30 July 1989, Mr Gebhard opened his own chambers in Milan in which Italian *avvocati* and *procuratori* work in collaboration with him. In response to a written

question from the Court, Mr Gebhard stated that he instructed them from time to time to act in judicial proceedings involving Italian clients in Italy.

7 Mr Gebhard avers that his activity in Italy is essentially non-contentious, assisting and representing German-speakers (65% of his turnover) and representing Italian-speakers in Germany and Austria (30% of his turnover). The remaining 5% is accounted for by assistance to Italian practitioners whose clients are faced with problems of German law.

8 A number of Italian practitioners, including the Italian *avvocati* with whom Mr Gebhard was associated until 1989, lodged a complaint with the Milan Bar Council. They complained of his use of the title *avvocato* on the letterhead of notepaper which he used for professional purposes, of his having appeared using the title *avvocato* directly before the Pretura and the Tribunale di Milano and of his having practised professionally from 'Studio Legale Gebhard'.

9 The Milan Bar Council prohibited Mr Gebhard from using the title *avvocato*. Thereafter, on 19 September 1991, it decided to open disciplinary proceedings against him on the ground that he had contravened his obligations under Law No 31/82 by pursuing a professional activity in Italy on a permanent basis in chambers set up by himself whilst using the title *avvocato*.

10 On 14 October 1991 Mr Gebhard applied to the Milan Bar Council to be entered on the roll of members of the Bar. His application was based on Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and

training of at least three years' duration (OJ 1989 L 19, p. 16) and on his having completed a ten-year training period in Italy. It does not appear that the Bar Council has taken any formal decision on that application.

11 The disciplinary proceedings opened on 19 September 1991 were completed by a decision of 30 December 1992 by which the Milan Bar Council imposed on Mr Gebhard the sanction of suspension from pursuing his professional activity (*sospensione dell'esercizio dell'attività professionale*) for six months.

12 Mr Gebhard appealed against that decision to the Consiglio Nazionale Forense, making it clear, however, that he was also appealing against the implied rejection of his application to be entered on the roll. In particular, he argued in his appeal that Directive 77/249 entitled him to pursue his professional activities from his own chambers in Milan.

13 Directive 77/249 applies to the activities of lawyers pursued by way of provision of services. It states that a lawyer providing services is to adopt the professional title used in the Member State from which he comes, expressed in the language or one of the languages of that State, with an indication of the professional organization by which he is authorized to practise or the court of law before which he is entitled to practise pursuant to the laws of that State (Article 3).

14 The directive draws a distinction between (a) activities relating to the representation of a client in legal proceedings or before public authorities and (b) all other activities.

15 In pursuing activities relating to representation, the lawyer must observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes (Article 4(2)). As far as the pur-

suit of all other activities is concerned, the lawyer remains subject to the conditions and rules of professional conduct of the Member State from which he comes, without prejudice to respect for the rules, whatever their source, which govern the profession in the host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that State, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and secrecy (Article 4(4)).

16 Article 4(1) of Directive 77/249 provides that '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.'

17 Directive 77/249 was implemented in Italy by Law No 31/82, Article 2 of which provides as follows:

' [Nationals of Member States authorized to practise as lawyers in the Member State from which they come] shall be permitted to pursue lawyers' professional activities on a temporary basis (*con carattere di temporaneità*) in contentious and non-contentious matters in accordance with the detailed rules laid down in this title.

For the purpose of the pursuit of the professional activities referred to in the preceding paragraph, the establishment on the territory of the Republic either of chambers or of a principal or branch office is not permitted.'

18 In those circumstances, the Consiglio Nazionale Forense stayed the proceedings and referred questions to the Court for a preliminary ruling:

'(a) as to whether Article 2 of Law No 31 of 9 February 1982 on freedom for lawyers who are nationals of the Member States of the European Community to provide services (enacted in implementation of Council Directive 77/249/EEC of 22 March 1977) which prohibits "the establishment on the territory of the Republic either of chambers or of a principal or branch office", is compatible with the rules laid down by that directive, given that in the directive there is no reference to the fact that the possibility of opening an office could be interpreted as reflecting a practitioner's intention to carry on his activities, not on a temporary or occasional basis, but on a regular basis;

(b) as to the criteria to be applied in assessing whether activities are of a temporary nature, with respect to the continuous and repetitive nature of the services provided by lawyers practising under the system referred to in the abovementioned directive of 22 March 1977.'

19 In view of the wording of the preliminary questions, it should be remembered that the Court has consistently held that it does not have jurisdiction to rule on the compatibility of a national measure with Community law. However, the Court is competent to provide the national court with all criteria for the interpretation of Community law which may enable it to determine the issue of compatibility for the purposes of the decision in the case before it (see in particular Case C-63/94 *Groupement National des Négociants en Pommes de Terre de Belgique (Belgapom)* [1995] ECR I-2467, paragraph 7).

20 The situation of a Community national who moves to another Member State of the Community in order there to pursue an economic activity is governed by the

chapter of the Treaty on the free movement of workers, or the chapter on the right of establishment or the chapter on services, these being mutually exclusive.

21 Since the questions referred are concerned essentially with the concepts of 'establishment' and 'provision of services', the chapter on workers can be disregarded as having no bearing on those questions.

22 The provisions of the chapter on services are subordinate to those of the chapter on the right of establishment in so far, first, as the wording of the first paragraph of Article 59 assumes that the provider and the recipient of the service concerned are 'established' in two different Member States and, second, as the first paragraph of Article 60 specifies that the provisions relating to services apply only if those relating to the right of establishment do not apply. It is therefore necessary to consider the scope of the concept of 'establishment'.

23 The right of establishment, provided for in Articles 52 to 58 of the Treaty, is granted both to legal persons within the meaning of Article 58 and to natural persons who are nationals of a Member State of the Community. Subject to the exceptions and conditions laid down, it allows all types of self-employed activity to be taken up and pursued on the territory of any other Member State, undertakings to be formed and operated, and agencies, branches or subsidiaries to be set up.

24 It follows that a person may be established, within the meaning of the Treaty, in more than one Member State — in particular, in the case of companies, through

the setting-up of agencies, branches or subsidiaries (Article 52) and, as the Court has held, in the case of members of the professions, by establishing a second professional base (see Case 107/83 *Ordre des Avocats au Barreau de Paris* v *Klopp* [1984] ECR 2971, paragraph 19).

25 The concept of establishment within the meaning of the Treaty is therefore a very broad one, allowing a Community national to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom, so contributing to economic and social interpenetration within the Community in the sphere of activities as self-employed persons (see, to this effect, Case 2/74 *Reyners* v *Belgium* [1974] ECR 631, paragraph 21).

26 In contrast, where the provider of services moves to another Member State, the provisions of the chapter on services, in particular the third paragraph of Article 60, envisage that he is to pursue his activity there on a temporary basis.

27 As the Advocate General has pointed out, the temporary nature of the activities in question has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity. The fact that the provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question.

28 However, that situation is to be distinguished from that of Mr Gebhard who, as a national of a Member State, pursues a professional activity on a stable and contin-

uous basis in another Member State where he holds himself out from an established professional base to, amongst others, nationals of that State. Such a national comes under the provisions of the chapter relating to the right of establishment and not those of the chapter relating to services.

29 The Milan Bar Council has argued that a person such as Mr Gebhard cannot be regarded for the purposes of the Treaty as being 'established' in a Member State — in his case, Italy — unless he belongs to the professional body of that State or, at least, pursues his activity in collaboration or in association with persons belonging to that body.

30 That argument cannot be accepted.

31 The provisions relating to the right of establishment cover the taking-up and pursuit of activities (see, in particular, the judgment in *Reyners*, paragraphs 46 and 47). Membership of a professional body may be a condition of taking up and pursuit of particular activities. It cannot itself be constitutive of establishment.

32 It follows that the question whether it is possible for a national of a Member State to exercise his right of establishment and the conditions for exercise of that right must be determined in the light of the activities which he intends to pursue on the territory of the host Member State.

33 Under the terms of the second paragraph of Article 52, freedom of establishment is to be exercised under the conditions laid down for its own nationals by the law of the country where establishment is effected.

34 In the event that the specific activities in question are not subject to any rules in the host State, so that a national of that Member State does not have to have any specific qualification in order to pursue them, a national of any other Member State is entitled to establish himself on the territory of the first State and pursue those activities there.

35 However, the taking-up and pursuit of certain self-employed activities may be conditional on complying with certain provisions laid down by law, regulation or administrative action justified by the general good, such as rules relating to organization, qualifications, professional ethics, supervision and liability (see Case C-71/76 *Thieffry* v *Conseil de l'Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraph 12). Such provisions may stipulate in particular that pursuit of a particular activity is restricted to holders of a diploma, certificate or other evidence of formal qualifications, to persons belonging to a professional body or to persons subject to particular rules or supervision, as the case may be. They may also lay down the conditions for the use of professional titles, such as *avvocato*.

36 Where the taking-up or pursuit of a specific activity is subject to such conditions in the host Member State, a national of another Member State intending to pursue that activity must in principle comply with them. It is for this reason that Article 57 provides that the Council is to issue directives, such as Directive 89/48, for the mutual recognition of diplomas, certificates and other evidence of formal qualifications or, as the case may be, for the coordination of national provisions concerning the taking-up and pursuit of activities as self-employed persons.

37 It follows, however, from the Court's case-law that national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the

general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it (see Case C-19/92 *Kraus* v *Land Baden-Württemberg* [1993] ECR I-1663, paragraph 32).

38 Likewise, in applying their national provisions, Member States may not ignore the knowledge and qualifications already acquired by the person concerned in another Member State (see Case C-340/89 *Vlassopoulou* v *Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg* [1991] ECR I-2357, paragraph 15). Consequently, they must take account of the equivalence of diplomas (see the judgment in *Thieffry*, paragraphs 19 and 27) and, if necessary, proceed to a comparison of the knowledge and qualifications required by their national rules and those of the person concerned (see the judgment in *Vlassopoulou*, paragraph 16).

39 Accordingly, it should be stated in reply to the questions from the Consiglio Nazionale Forense that:

— the temporary nature of the provision of services, envisaged in the third paragraph of Article 60 of the EC Treaty, is to be determined in the light of its duration, regularity, periodicity and continuity;

— the provider of services, within the meaning of the Treaty, may equip himself in the host Member State with the infrastructure necessary for the purposes of performing the services in question;

— a national of a Member State who pursues a professional activity on a stable and continuous basis in another Member State where he holds himself out from an established professional base to, amongst others, nationals of that State comes under the provisions of the chapter relating to the right of establishment and not those of the chapter relating to services;

— the possibility for a national of a Member State to exercise his right of establishment, and the conditions for his exercise of that right, must be determined in the light of the activities which he intends to pursue on the territory of the host Member State;

— where the taking-up of a specific activity is not subject to any rules in the host State, a national of any other Member State will be entitled to establish himself on the territory of the first State and pursue that activity there. On the other hand, where the taking-up or the pursuit of a specific activity is subject to certain conditions in the host Member State, a national of another Member State intending to pursue that activity must in principle comply with them;

— however, national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it;

— likewise, Member States must take account of the equivalence of diplomas and, if necessary, proceed to a comparison of the knowledge and qualifications required by their national rules and those of the person concerned.

Costs

40 The costs incurred by the Italian, Greek, Spanish and French Governments, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Consiglio Nazionale Forense, by order of 16 December 1993, hereby rules:

1. **The temporary nature of the provision of services, envisaged in the third paragraph of Article 60 of the EC Treaty, is to be determined in the light of its duration, regularity, periodicity and continuity.**

2. **The provider of services, within the meaning of the Treaty, may equip himself in the host Member State with the infrastructure necessary for the purposes of performing the services in question.**

3. **A national of a Member State who pursues a professional activity on a stable and continuous basis in another Member State where he holds himself out from an established professional base to, amongst others, nationals of that State comes under the provisions of the chapter relating to the right of establishment and not those of the chapter relating to services.**

4. **The possibility for a national of a Member State to exercise his right of establishment, and the conditions for the exercise of that right, must be determined in the light of the activities which he intends to pursue on the territory of the host Member State.**

5. **Where the taking-up of a specific activity is not subject to any rules in the host State, a national of any other Member State will be entitled to establish**

himself on the territory of the first State and pursue that activity there. On the other hand, where the taking-up or the pursuit of a specific activity is subject to certain conditions in the host Member State, a national of another Member State intending to pursue that activity must in principle comply with them.

6. National measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it.

7. Member States must take account of the equivalence of diplomas and, if necessary, proceed to a comparison of the knowledge and qualifications required by their national rules and those of the person concerned.

Rodríguez Iglesias Kakouris Edward Hirsch

Mancini Schockweiler Moitinho de Almeida

Kapteyn Gulmann Murray

Jann Ragnemalm Sevón

Delivered in open court in Luxembourg on 30 November 1995.

R. Grass G. C. Rodríguez Iglesias

Registrar President