

the legislation of the country of establishment for its own nationals.

3. The legal requirement, in the various Member States, relating to the possession of qualifications for admission to certain professions constitutes a restriction on the effective exercise of the freedom of establishment the abolition of which is, under Article 57 (1), to be made easier by directives of the Council for the mutual recognition of diplomas, certificates

and other evidence of formal qualifications. Nevertheless, the fact that those directives have not yet been issued does not entitle a Member State to deny the practical benefit of that freedom to a person subject to Community law when the freedom of establishment provided for by Article 52 can be ensured in that Member State by virtue in particular of the provisions of the laws and regulations already in force.

In Case 11/77

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal Administratif, Paris, for a preliminary ruling in the action pending before that court between

RICHARD HUGH PATRICK

and

LE MINISTRE DES AFFAIRES CULTURELLES (Minister for Cultural Affairs)

on the interpretation of Articles 52 to 54 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keefe, G. Bosco and A. Touffait, Judges,

Advocate-General: H. Mayras

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

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

I — Facts and procedure

1. Article 2 (2) of the French Law of 31 December 1940 governing the title and profession of architect provides as follows:

'Nationals of foreign countries shall be authorized to practise the profession of architect in France subject to the conditions of reciprocity laid down by diplomatic conventions and to production of a certificate equivalent to the certificate required for French architects. ... Foreigners not covered by the provisions of a convention may, exceptionally, receive the said authorization.'

The Law adds that foreign architects who have been thus authorized shall not be members of the Order of Architects but shall nevertheless be subject to its discipline.

A decree of the Minister for Cultural Affairs dated 22 June 1964 recognized the certificates issued in the United Kingdom by the Architectural Association as an equivalent qualification within the meaning of the aforesaid Law although there is no reciprocal convention between the United Kingdom and France relating to the practice of the profession of architect.

2. Richard Patrick, a British subject, who has held the certificate of the

Architectural Association since 29 May 1961, wished to transfer his office to France and applied for authorization to practise his profession there as an architect. His application was, however, rejected by decision of the Minister for Cultural Affairs dated 9 August 1973 on the ground that such authorization 'pursuant to the actual provisions of the Law of 31 December 1940 continues to be exceptional if there is no convention of reciprocity between France and the applicant's country of origin'.

On 8 October 1973 Patrick brought an application, based on Article 7 of the EEC Treaty, for annulment of this decision before the Tribunal Administratif Paris. According to the defence lodged with the Tribunal Administratif on 16 January 1974 by the Minister for Cultural Affairs, the rejection of the application on the ground of want of reciprocity was based on the fact that there was no specific diplomatic convention relating to conditions of reciprocity between France and the United Kingdom and that, moreover, the relevant provision of the Treaty of Rome was not Article 7 but Articles 52 to 58 on freedom of establishment. The defence contended that those provisions could not be regarded as sufficient legal justification because they made the attainment of freedom of establishment subject to the issue of directives by the Council which, as far as the free establishment of architects was concerned, had not yet been adopted.

3. The Tribunal Administratif, Paris, held that the settlement of the dispute raised questions of interpretation of Community law, and, by order of 3 January 1977, asked the Court of Justice

'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 establishment to practise the profession of architect in a Member State of the Community'.

The order making the reference was entered at the Court Registry on 25 January 1977. After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to proceed without any preparatory inquiry.

The Commission and the French Government submitted written observations.

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

A — *Observations of the French Government*

The French Government points out that the contested decision preceded the judgment of 21 June 1974 in Case 2/74 *Reyners v Belgium*, [1974] ECR 631. It adds that it is prepared to act in this case, and in all cases of the same kind, in accordance with the judgment and in particular in accordance with paragraph 1 of the operative part of the judgment in which the Court ruled that 'since the end of the transitional period Article 52 of the Treaty is a directly applicable provision, despite the absence, in a particular sphere, of the directives prescribed by Articles 54 (2) and 57 (1) of the Treaty'.

B — *Observations of the Commission*

The Commission states that the contentions of the parties before the national court rested on an out-of-date legal

concept which was still in existence at that time: the basic issue was whether, under Article 2 (2) of the Law of 31 December 1940 which, it was assumed, could still be invoked against the subjects of a Member State, the words 'diplomatic convention' of reciprocity also covered the EEC Treaty.

Meanwhile the legal position has become clear: the nationals of another Member State derive from the Treaty itself, that is to say from Article 52 thereof, the right to pursue activities as self-employed persons under the same conditions as nationals. A provision laying down that a special and individual authorization shall be required only from foreigners before they can practise the profession of architect is a manifest restriction which cannot be invoked against a person who is entitled to freedom of establishment. Since the judgment in the *Reyners* case the requirement that a convention of reciprocity should have been concluded between France and, in the case of a national of another Member State, the applicant's country of origin has been obsolete and irrelevant. Accordingly, in order to establish the conditions on which a Community citizen is entitled to free establishment, it is enough to ascertain the conditions which a French national must satisfy in order to have the right to practise the profession of architect, including membership of the Order of Architects. Apart from the fact that he must not have lost the enjoyment of his civil rights, the essential condition is that he possesses an architectural qualification.

In the present case, in contrast to Case 71/76, *Thieffry*, foreign qualifications are recognized by law as equivalent for the specific purpose of enabling those holding such qualifications to enter the profession of architect in France. Provided that the national of another Member State proves that he holds a qualification which is officially recognized in this way he no longer has to comply with the requirement of special

authorization or the additional condition that there should be a convention.

As far as the new Member States are concerned, Article 52 became fully effective on 1 January 1973, the date of accession. It automatically follows from this that on the date referred to by the national court, 9 August 1973, a British subject could avail himself of it.

The Commission suggests that the answer should be as follows:

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 to practise the profession of architect in another Member State.
2. It follows that he could enter this profession under the same conditions as the nationals of the host State

provided that he proved that he possessed a qualification recognized by the competent authorities of that State as equivalent to the certificate issued and required in that State without having to satisfy additional conditions such as, for example, the requirement of a special authorization or that of a convention of reciprocity between his Member State of origin and the host State.'

The plaintiff in the main action, represented by Mr Guillot-Louys, of the Paris Bar, and the Commission of the European Communities, represented by its Agent, Mr Séché, submitted oral observations at the hearing on 24 May 1977.

The Advocate General delivered his opinion at the hearing on 8 June 1977.

Decision

- 1 By order of 3 January 1977, lodged at the Court Registry on 25 January 1977, the Tribunal Administratif, Paris, referred to the Court a question concerning the interpretation of Articles 52 to 54 of the EEC Treaty concerning the right of establishment.
- 2 This question was submitted in connexion with a dispute between the French Minister for Cultural Affairs and a British subject who possessed an architect's certificate issued in the United Kingdom by the Architectural Association and who, early in 1973, applied for authorization to practise as an architect in France.
- 3 Under the first subparagraph of Article 2 (2) of the French Law of 31 December 1940 establishing the Order of Architects and governing the title and profession of architect, 'Nationals of foreign countries shall be authorized to practise the profession of architect in France subject to the conditions of reciprocity laid down by diplomatic conventions and to production of a certificate equivalent to the certificate required for French architects'.

- 4 Under the third subparagraph of Article 2 (2), 'Foreigners not covered by provisions of a convention may, exceptionally, receive the said authorization'.
- 5 Under a Ministerial decree of 22 June 1964, adopted in implementation of this provision, holders of certificates issued by the aforesaid Architectural Association were considered to fulfil the conditions concerning equivalent qualifications laid down in the above-mentioned Article 2 (2).
- 6 By decision of 9 August 1973 the applicant was refused the authorization requested on the ground that, under the provisions of the Law of 31 December 1940, such authorization continued to be exceptional in cases where there was no convention of reciprocity between France and the applicant's country of origin and that, in the absence of a specific convention for this purpose between Member States of the EEC and, in particular, between France and the United Kingdom, the Treaty establishing the European Economic Community could not be a substitute for such a convention because Articles 52 to 58 concerning freedom of establishment referred, for the attainment of this freedom, to directives of the Council which had not yet been issued.
- 7 The Tribunal Administratif, Paris, to which an application has been made for the annulment of this decision, asks the Court whether, 'in the state of Community law on 9 August 1973, ... a British subject was entitled to invoke in his favour the benefit of the right of establishment to practise the profession of architect in a Member State of the Community'.
- 8 Under the provisions of Article 52 of the Treaty, freedom of establishment shall include the right to take up activities as self-employed persons and to pursue them 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected'.
- 9 As the Court of Justice held in its judgment of 21 June 1974 (*Reyners v Belgium*, Case 2/74 [1974] ECR 631), the rule on equal treatment with nationals is one of the fundamental legal provisions of the Community and, as a reference to a set of legislative provisions effectively applied by the country of establishment to its own nationals, this rule is, by its essence, capable of being directly invoked by nationals of all the other Member States.

- 10 In laying down that, in the case of the old Member States and their nationals, freedom of establishment shall be attained at the end of the transitional period, Article 52 thus imposes an obligation to attain a precise result, the fulfilment of which had to be made easier by, but not made dependent on, the implementation of a programme of progressive measures.
- 11 The fact that this progression has not been adhered to leaves the obligation itself intact beyond the end of the period provided for its fulfilment.
- 12 It is not possible to invoke against the direct effect of the rule on equal treatment with nationals contained in Article 52 the fact that the Council has failed to issue the directives provided for by Articles 54 and 57 or the fact that certain of the directives actually issued have not fully attained the objectives of non-discrimination required by Article 52.
- 13 After the expiry of the transitional period the directives provided for by the chapter on the right of establishment have become superfluous with regard to implementing the rule on nationality, since this is henceforth sanctioned by the Treaty itself with direct effect.
- 14 In the absence of transitional provisions concerning the right of establishment in the Treaty of Accession of 22 January 1972, the principle contained in Article 52 has, in the case of the new Member States and their nationals, been fully effective since the entry into force of the said Treaty, that is, since 1 January 1973.
- 15 Thus a Member State cannot, after 1 January 1973, make the exercise of the right to free establishment by a national of a new Member State subject to an exceptional authorization in so far as he fulfils the conditions laid down by the legislation of the country of establishment for its own nationals.
- 16 In this connexion the legal requirement, in the various Member States, relating to the possession of qualifications for admission to certain professions constitutes a restriction on the effective exercise of the freedom of establishment the abolition of which is, under Article 57 (1), to be made easier by directives of the Council for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

- 17 Nevertheless, the fact that those directives have not yet been issued does not entitle a Member State to deny the practical benefit of that freedom to a person subject to Community law when the freedom of establishment provided for by Article 52 can be ensured in that Member State by virtue in particular of the provisions of the laws and regulations already in force.
- 18 The answer to the question referred to the Court must therefore be that, with effect from 1 January 1973, a national of a new Member State who holds a qualification recognized by the competent authorities of the Member State of establishment as equivalent to the certificate issued and required in that State enjoys the right to be admitted to the profession of architect and to practise it under the same conditions as nationals of the Member State *of establishment* without being required to satisfy any additional conditions.

Costs

- 19 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.
- 20 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 question referred to it by the Tribunal Administratif, Paris, by order of 3 January 1977 hereby rules:

With effect from 1 January 1973, a national of a new Member State who holds a qualification recognized by the competent authorities of the Member State of establishment as equivalent to the certificate issued and required in that State enjoys the right to be admitted to the profession of architect and to practise it

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 1977¹

*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.