

In Case 271/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel (Chambre des Appels Correctionnels) [Court of Appeal, Criminal Appeals Division], Colmar, for a preliminary ruling in the proceedings pending before that court between

VINCENT RODOLPHE AUER, of Mulhouse, accused,

and

MINISTÈRE PUBLIC [Public Prosecutor],

Civil parties:

ORDRE NATIONAL DES VÉTÉRINAIRES DE FRANCE [National Society of Veterinary Surgeons of France], whose registered office is in Paris, in the person of its president,

and

SYNDICAT NATIONAL DES VÉTÉRINAIRES PRATICIENS DE FRANCE [National Union of Practising Veterinary Surgeons of France], whose registered office is in Paris, in the person of its president,

on the interpretation of Articles 52 to 57 of the EEC Treaty and of Council Directives Nos 78/1026/EEC and 78/1027/EEC of 18 December 1978, (Official Journal 1978, L 362, pp. 1 and 7),

THE COURT (First Chamber)

composed of: A. O'Keefe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

Mr Vincent Auer, who is of Austrian origin and who has been a French citizen by naturalization since 1961, holds a degree of doctor of veterinary medicine, issued on 13 December 1956 by the University of Parma (Italy). He also obtained from the same university, on 11 March 1957, a provisional practising certificate in veterinary medicine and, on 2 May 1980, the qualification of "abilitazione all'esercizio della medicina veterinaria" [practising certificate in veterinary medicine].

In 1958 he took up residence in Mulhouse (France), where he began to practise his profession under the direction of another veterinary surgeon, Dr Paul Gutknecht. He experienced no problems with the professional society. Some years later, having acquired French nationality, he requested, with a view to practising his profession on his own account, that the provisions of Decree No 62-1481, relating to "the medical and surgical treatment of animals by veterinary surgeons who have acquired or reacquired French nationality" should be applied to him. However, the committee set up by that decree, to which he applied on several occasions, always issued adverse opinions on his applications and maintained that there was no equivalence between the Italian and the French degrees of doctor of veterinary medicine. Those systematic refusals

continued until 1970, although on 22 October 1968 the committee in question agreed to recognize the validity of the degree awarded to Mr Auer solely as an "academic" qualification, and although — according to Mr Auer — the same committee had issued opinions in favour of authorizing other holders of Italian degrees to practise veterinary medicine. Mr Auer could not therefore be entered on the register of the Ordre National des Vétérinaires. Since he considered that those refusals were unjustified, he opened a surgery at Mulhouse where he has, in fact, practised veterinary medicine for several years.

Since French law regards enrolment on the register of the Ordre National des Vétérinaires as a necessary requirement for practising the profession, Mr Auer has on several occasions been prosecuted for unlawfully practising veterinary medicine. Those prosecutions resulted in convictions; the sentences imposed, however, were always restricted to small fines. In addition, Mr Auer has benefited from a law of amnesty.

On the occasion of one of those prosecutions, which were always brought at the instance of the Ordre National des Vétérinaires, a reference was made to the Court of Justice in June 1978 by the Cour d'Appel, Colmar, for a preliminary ruling on the question whether, under the Community provisions relating to the freedom of establishment, as they stood

at the time of the matters which were the subject of the prosecution before the national court, the defendant could rely in France on the right to practise as a veterinary surgeon which he had acquired in Italy, bearing in mind, in addition, the fact that, in the meantime, the defendant had acquired French nationality.

At the time of the events in question, the provisions of the Treaty concerning the mutual recognition of diplomas and other evidence of formal qualifications (namely Article 57) had not yet been implemented in respect of the profession of veterinary surgeon. A few months after those events, on 18 December 1978, two directives were adopted by the Council and were relied on by Mr Auer in the course of the criminal proceedings. The first was Council Directive No 78/1026/EEC (Official Journal 1978, L 362, p. 1) concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services; the second was Council Directive No 78/1027/EEC (Official Journal 1978, L 362, p. 7) concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons. The Member States were allowed a period of two years within which to comply with those directives which, when the reference for a preliminary ruling was made, had not yet expired inasmuch as it was due to expire on 20 December 1980. In those circumstances, the Court ruled in its judgment of 7 February 1979 (Case 136/78 *Auer* [1979] ECR 437) that "Article 52 of the Treaty must be interpreted as meaning that for the period prior to the date on which the Member States are required to have taken the measures necessary to comply with Council Directives Nos

78/1026 and 78/1027 of 18 December 1978, the nationals of a Member State cannot rely on that provision with a view to practising the profession of veterinary surgeon in that Member State on any conditions other than those laid down by national legislation".

The Court nevertheless specified that "this answer in no way prejudices the effects of the . . . directives from the time at which the Member States are required to have complied with them". It also stated that there was no provision of the Treaty which made it possible "to treat nationals of a Member State differently according to the time at which or the manner in which they acquired the nationality of that State, as long as, at the time at which they rely on the benefit of the provisions of Community law, they possess the nationality of one of the Member States".

By way of direct summons issued at the instance of the Ordre National des Vétérinaires and the Syndicat National des Vétérinaires de France Mr Auer was again prosecuted for unlawfully practising veterinary medicine and for other related offences, following certified reports drawn up by a huissier de justice on 26 January and 15 June 1981. The accused in no way contested the facts in relation to the offences with which he was charged, but claimed that his actions were lawful. As the events in question occurred after the expiry of the period within which Member States were required to comply with the above-mentioned directives, and as France, at the time of those events, had not yet implemented the directives, Mr Auer claimed that he was entitled to rely directly on the provisions concerning the mutual recognition of diplomas. The Italian degree which he held was

recognized as valid in all the countries of the EEC under Article 3 (f) of Directive No 78/1026. Therefore, since France had failed to fulfil its obligation to bring its legislation into conformity with the provisions of that directive within the prescribed period, the French authorities and the French courts might no longer refuse to recognize the equivalence of his diplomas nor could they object that he must be entered on the register of the *Ordre National des Vétérinaires* before being entitled to practise his profession.

The court of first instance did not accept that view. However, the *Cour d'Appel* considered, on the one hand, that, inasmuch as the reply given by the Court of Justice in the above-mentioned judgment of 7 February 1979 was expressly limited to the transitional period laid down for the implementation of the directives, it "provides reason for believing that a different answer might be given so far as the subsequent period is concerned". On the other hand, the court took the view that it appeared "inconceivable that a person who is a native of a foreign country and who holds a foreign qualification could be allowed to practise veterinary medicine in France without having to seek registration with the *Ordre* and thus enjoy more rights than a person who has always held French nationality and holds national qualifications". Therefore, the court found that there was a problem of interpretation of Community law and it referred the following question to the Court of Justice for a preliminary ruling:

"If a person who has become entitled to practise as a veterinary surgeon in a Member State of the European Community which has conferred upon him the qualifications referred to in Article 3 of Directive No 78/1206, and who has acquired the nationality of another Member State, is required, after the expiry of the two-year period

allowed for adopting the measures necessary to comply with Directive Nos 78/1206 and 78/1207, to be registered with a national body established under national law as a condition for practising that profession, does that requirement amount to a restriction on the freedom of establishment provided for in Articles 52 and 57 of the Treaty of Rome?"

The judgment making the reference, of 16 September 1982, was registered at the Court Registry on 4 November 1982,

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the accused in the main proceedings, Mr V. Auer, represented by Mr Y. Vanus, of the Mulhouse Bar, by the civil parties in the main proceedings, the *Ordre National des Vétérinaires de France*, in the person of its president, and the *Syndicat National des Vétérinaires Practiciens de France*, in the person of its president, represented by Mr P. Lafarge, of the Paris Bar, and by the Commission of the European Communities, represented by H. Delmoly, a member of its Legal Department.

Upon hearing the report of the *Judge-Rapporteur* and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. The Court also, by order of 23 February 1983, assigned the case to the First Chamber.

II — The relevant provisions

Directive No 78/1026 concerns the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine and

provides for measures to facilitate the effective exercise of the right of establishment and freedom to provide services.

In the first recital in the preamble thereto it is stated that:

"... all discriminatory treatment based on nationality with regard to establishment and provision of services is prohibited as from the end of the transitional period; ... the principle of such treatment based on nationality applies in particular to the grant of any authorization required to practise as a veterinary surgeon and also to the registration with or membership of professional organizations or bodies."

The fifth recital in the preamble states:

"... in view of the differences between Member States regarding the nature and the duration of the training of veterinary surgeons, certain coordinating provisions designed to enable Member States to proceed with the mutual recognition of diplomas, certificates and other evidence of formal qualifications should be laid down; ... such coordination has been effected by Council Directive No 78/1027/EEC of 18 December 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons."

Article 2 of the directive is worded as follows:

"Each Member State shall recognize the diplomas, certificates and other evidence of formal qualifications awarded to nationals of Member States by other Member States in accordance with Article 1 of Directive No 78/1027/EEC and which are listed in Article 3, by

giving such qualifications, as far as the right to take up and pursue the activities of a veterinary surgeon is concerned, the same effect in its territory as those which the Member State itself awards."

"Where a diploma, certificate or other evidence of formal qualifications as listed in Article 3 was issued before the implementation of this directive, it shall be accompanied by a certificate from the competent authorities of the issuing country stating that it complies with Article 1 of Directive No 78/1027/EEC."

Article 3 contains the list of diplomas, certificates and other evidence of formal qualifications referred to in Article 2 and, under (f), in respect of qualifications in Italy, states:

"il diploma di laurea di dottore in medicina veterinaria accompagnato dal diploma di abilitazione all'esercizio della medicina veterinaria awarded by the Minister of Education on the basis of the findings of the competent State Examining Board."

Article 4 which concerns acquired rights, provides:

"In the case of nationals of Member States whose diplomas, certificates and other evidence of formal qualifications do not satisfy all the minimum training requirements laid down in Article 1 of Directive No 78/1027/EEC, each Member State shall recognize, as being sufficient proof, the diplomas, certificates and other evidence of formal qualifications in veterinary medicine awarded by those Member States before the implementation of Directive No 78/1027/EEC, accompanied by a certificate stating that those nationals have effectively and lawfully been engaged in the activities in question for at least three consecutive years during the five years

prior to the date of issue of the certificate.”

Articles 6 and 7 govern respectively cases in which the host Member State requires of its nationals proof of good character or good repute when they take up for the first time activities as a veterinary surgeon, and the case in which there are in force, in a host Member State, provisions laid down by law, regulation or administrative action relating to good character or good repute, including provisions prescribing disciplinary sanctions in respect of serious professional misconduct or conviction for criminal offences and relating to the practising of veterinary medicine. It is acknowledged, by implication, that such national provisions are legitimate.

Finally, Article 12, relating to the provision of services, provides:

“Where a Member State requires of its own nationals wishing to take up or pursue the activities referred to in Article 1, an authorization or membership of, or registration with, a professional organization or body, that Member State shall in the case of the provision of services exempt the nationals of Member States from that requirement.”

Directive No 78/1027 states, *inter alia*, in the first recital in the preamble thereto, that

“... the comparable nature of training courses (for veterinary surgeons) in the Member States enables coordination in this field to be confined to the requirement that minimum standards be observed ...”

Those minimum standards are defined in Article 1, which stipulates, in particular, that the Member States are to require

persons wishing to take up and pursue the profession of veterinary surgeon to hold a diploma, certificate or other evidence of formal qualifications in veterinary medicine referred to in Article 3 of Directive No 78/1026/EEC which guarantees that during his complete training period the person concerned has acquired knowledge in certain specific areas, which are listed in detail, and certain clinical and other practical experience. It provides that the training must comprise in all at least five years theoretical and practical full-time instruction given in a university or an equivalent institution and must include at least study of the subjects listed in the annex to the directive. However, that annex specifies that instruction in one or more of these subjects may be given as part of, or in association with, other courses.

Sixteen months after the last of the events in question and shortly after the expiry of the period prescribed in the directives for their implementation, the French Republic adopted Law No 82-899 of 20 October 1982, concerning the pursuit of activities of veterinary surgeons (*Journal Officiel de la République Française* [*French Official Journal*] of 21 October 1982, p. 3179). That was followed by the order of the Minister for Agriculture, provided for by the above-mentioned Law and published in the *Journal Officiel de la République Française* of 14 November 1982. In their written observations, the parties did not express their views on the new legislative situation in the French Republic in the matter in question.

III — Observations of the parties

Mr Auer observes that the *Cour d'Appel*, Colmar, has itself acknowledged that he holds the diplomas referred to in Article

3 (f) of Directive No 78/1026, and that, at the dates of the relevant events, France had not yet fulfilled its obligation to bring its national law into conformity with the provisions of that directive. In those circumstances he considers that those provisions must be directly applicable to him. That follows *a contrario* from the above-mentioned judgment of the Court of 7 February 1979 and from the judgment of 10 December 1980 of the French Cour de Cassation [Court of Cassation]. In both of those judgments it was held, in the context of the criminal proceedings of 1978, that only the national legislation was applicable inasmuch as the acts with which the accused was charged had taken place prior to the expiry of the period granted to Member States for giving effect to the directive. Once that period has expired, the "direct effect" of that directive precludes any Member State from applying its national law, which has not yet been adapted so as to comply with a directive, even if that law carries with it criminal penalties, to a person who has complied with the provisions of that directive.

Mr Auer considers that the statement of grounds in the judgment making the reference is irrelevant in so far as it refers to the specific matter of the nationality of an accused who is of foreign origin and who subsequently became a French citizen by naturalization. He claims that that problem has already been resolved by the Court in its judgment of 7 February 1979, in which it stated that there was no provision of the Treaty which made it possible to treat nationals of a Member State differently according to the time at which or the manner in which they acquired the nationality of that State. The only problem which remains to be solved is therefore that of the direct effect of

directives which have not been transposed into national law within the prescribed period. In accordance with what is now firmly established case-law of the Court of Justice, provisions of directives which impose unconditional obligations on Member States and which are sufficiently precise may be relied on by any interested person, even where national implementing measures have not been adopted or where the directives have been incorrectly implemented. The effectiveness of the provisions of the directives would be diminished if individuals were prevented from relying on them before the courts and if the national courts were prevented from taking them into consideration as elements of Community law.

In this instance, the two directives of 18 December 1978 impose on Member States obligations which are unconditional and sufficiently clear, in particular those contained in Articles 2 and 3 of Directive No 78/1026. It follows that Mr Auer can rely on those provisions to compel the French authorities to recognize the right to practise veterinary medicine in France which Community law confers on him by virtue of his Italian degree and practising certificate. However, the *Ordre National des Vétérinaires* replied to Mr Auer's representatives, by letter of 2 March 1981, that his case could not be resolved on the basis of the above-mentioned directives, because they applied only to "migrant" veterinary surgeons, in other words those who possessed a degree corresponding to their nationality, and entitling them to practise in their country of origin. It is therefore clearly the intention of the professional society to find pretexts for preventing Mr Auer from being entered on the register. The requirement of being registered with a professional society or body must, therefore, be regarded as incompatible with Community law, in so

far as that registration is required by a national provision which does not conform to that law.

Mr Auer considers, in conclusion, that in reply to the question referred to the Court of Justice by the Cour d'Appel, Colmar, it should be stated that, after the expiry of the period prescribed for its implementation, Directive No 78/1026 has direct effect and is binding on all the Member States, so that no provision of national law, in particular provisions requiring registration with a professional society, may be used to prevent holders of degrees which satisfy the requirements of Articles 2 and 3 of Directive No 78/1026 and Article 1 of Directive No 78/1027 from taking up the profession of veterinary surgeon.

The *civil parties* in the main proceedings consider that the obligation of enrolment on the register of the *Ordre National Vétérinaires* does not in itself amount to any kind of restriction on the freedom of establishment, provided always that the principle of non-discrimination is respected. The French provisions relating to the *Ordre national des Vétérinaires* are designed to meet the requirements of the public interest and public policy, based on the need to control access to the profession and to ensure professional discipline. Those requirements are safeguarded by Directive No 78/1026, in particular in the first recital in the preamble thereto, which acknowledges the validity, in principle, of national provisions relating to professional organizations, and in Article 7 which permits the application of requirements as to good character or good repute, including those which provide for disciplinary measures, and which is limited to providing for procedures of coordination and assistance between the host State and the Member State of

origin in the event of acts committed by a member of the profession which are capable of having consequences on his practising of the profession. Moreover, under the recent Law of 20 October 1982 (*Journal Officiel de la République Française* of 21 October 1982), which was adopted precisely with a view to implementing the directives in question, enrolment on the register of the *Ordre National des Vétérinaires* continues to be required for any veterinary surgeon who claims the right to establishment in France and that law has not been contested by the Community authorities as being contrary to the provisions of the Treaty. It is therefore for Mr Auer to show that registration with the *Ordre* constitutes nothing more than a device for circumventing the right of establishment. Nor can the accused in the main proceedings rely, in support of his views, on the judgment of the Court of 6 October 1981 (Case 246/80 *Broekmeulen* [1981] ECR 2311), concerning the freedom of establishment of doctors who are general practitioners, inasmuch as that judgment refers to a situation of fact and of law which is not comparable to that with which the present case is concerned. Directive No 75/362/EEC on the freedom of establishment of doctors prohibits any Member State from making entry to the profession of general practitioner by holders of the diplomas referred to in Article 3 subject to additional training requirements, such as are prescribed, for example, under Netherlands legislation. Directive No 78/1026 concerning the freedom of establishment of veterinary surgeons, on the other hand, expressly allows for national legislation to make the taking up of that profession subject to enrolment on the register of the professional society.

On that basis, the civil parties dispute the relevance of the case-law of the Court concerning the direct effect of directives, relied on by Mr Auer, inasmuch as that

case-law does not authorize the latter to practise veterinary medicine without being entered on the register of the professional body, even assuming that he has submitted an application in due and proper form for registration to the competent authority and that he can show that he holds a degree recognized as equivalent by virtue of Directives Nos 78/1026 and 78/1027.

In any event, they consider that the degree which Mr Auer holds in no way satisfies the training requirements provided for by Directive No 78/1027; that the certificate of proficiency in the profession of veterinary surgeon issued on 2 May 1980 by the University of Parma does not constitute a genuine and authentic confirmation that Mr Auer has satisfied the training requirements laid down by that directive; that Mr Auer cannot benefit from the provisions relating to acquired rights under Article 4 of Directive No 78/1026, and that he could not produce a certificate stating that he has effectively and "lawfully" been engaged in the activities in question for at least three consecutive years during the five years prior to the date of issue of the certificate.

The civil parties claim that the Court should reply in the negative to the question referred to it for a preliminary ruling.

The *Commission* shares Mr Auer's view, according to which the considerations expressed in the judgment making the reference concerning the accused's recent acquisition of French nationality are not relevant, so that the only question to be settled is whether the national administrative and judicial authorities are under an obligation to apply the provisions of

the directives in question, notwithstanding the fact that, at the time of the relevant events, national implementing measures had not been adopted within the prescribed period. In that sense, this case differs considerably from Case 136/78, which was decided by the judgment of the Court of 7 February 1979, cited above, inasmuch as in this instance the Court is no longer concerned to ascertain the exact scope of Articles 52 to 57 of the EEC Treaty; rather it must determine the effect of the provisions of the directives in question.

Therefore, although the *Commission* does not wish to extract from the judgment of 7 February 1979 an argument *a contrario*, it considers that it is permissible to state that the Court, in that judgment, left open the question of the direct effect of those directives.

The *Commission* considers that the provisions of Articles 2 and 3 (f) of Directive No 78/1026 impose on all the Member States clear, complete and unconditional obligations. If the second paragraph of Article 2 leaves a certain discretion to the Member State on the occasion of issuing the certificate in relation to degrees awarded before the implementation of the directive, that certificate, once issued, may not be contested by the host Member State. Those provisions must therefore be acknowledged as having a direct effect, in accordance with the case-law of the Court, in the sense that subjective rights may be created for individuals where the State fails to fulfil its obligations in regard to the transposition of directives into national law. Individuals may therefore rely in the national courts on provisions of the directives which, at the time of the relevant events, had not been transposed into the national law of the Member State.

In this instance, the directives in question ought to have been the subject of national implementing measures before 20 December 1980. At that date France had failed to adopt any measures with the result that, in 1981, the Commission initiated a procedure under Article 169 of the EEC Treaty, which led to the communication of a reasoned opinion on 4 May 1982. Moreover, the Commission has received five official complaints from veterinary surgeons who are nationals of a Member State and who have been refused registration with the French professional society, because the latter systematically refuses to register holders of foreign degrees which have not been recognized for the purposes of the profession of veterinary surgeon in France by the examining committee set up by Decree No 62-1421 of 27 November 1962.

The Commission maintains that it is common ground that in France the failure to register with the professional society exposes practitioners of veterinary medicine to civil and criminal penalties. Moreover, it considers that such consequences, which are peculiar to the national law, cannot disguise the lack of conformity of the French legal system, in that area, with the Community directives. It follows from that lack of conformity, on the one hand, that national administrative bodies are under a duty to apply directly the provisions of the directives, and, on the other hand, that national courts must make the rules of the directives take precedence over national provisions and unlawful administrative practices and in that way place the administrative authorities under a duty to comply with Community law.

The foregoing considerations are valid if the degrees which Mr Auer holds fully satisfy the requirements of Articles 2 and

3 of Directive No 78/1026. If that were not the case, in other words, if the degrees did not meet the minimum training requirements laid down in Article 1 of Directive No 78/1027, the Commission considers that Article 4 of Directive No 78/1026 concerning acquired rights, should be applied and that that article also contains provisions which are capable of having direct effect. It is true that the said article refers to a "lawful" exercise of the activities of a veterinary surgeon and that, on the other hand, Mr Auer, since taking up residence in France, has exercised his activity in contravention of French laws. However, the French courts have never imposed on Mr Auer penalties which are really dissuasive, nor ordered the closure of his surgery, so that a practice involving a certain tolerance seems to have been adopted in his case. It follows that the French State could scarcely take a more severe view of Mr Auer's position today, without laying itself open to criticism under the rule "*venire contra factum proprium*". Moreover, the accused could, perhaps, provide evidence of having practised veterinary medicine in Italy, which would remove the difficulty. The Commission emphasizes, in any event, that it is doubtful whether that problem comes within the terms of the question for a preliminary ruling as formulated by the national court, in particular because Mr Auer did not rely on Article 4 of Directive No 78/1026 in the main proceedings.

In conclusion the Commission considers that the reply to the question submitted by the Cour d'Appel, Colmar, should be based on the following principles:

1. Articles 2 and 3 (f) of Directive No 78/1026 have direct effect after the expiry of the period for implementation prescribed in that directive;

2. No provision of national law, relating to professional qualifications, may prevent holders of diplomas which satisfy the requirements of Articles 2 and 3 of Directive No 78/1026 and Article 1 of Directive No 78/1027 from taking up the profession of veterinary surgeon;
3. The competent national authorities — administrative and judicial — must give the provisions of the directive their full effect notwithstanding the fact that they have not been formally transposed into national law.

IV — Oral procedure

At the sitting on 17 March 1983, the accused in the main proceedings, represented by Y. Canus, of the Mulhouse Bar, the civil parties in the main proceedings, represented by P. Lafarge, of the Paris Bar, and the Commission of the European Communities, represented by J. Delmoly, a member of its Legal Department, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 19 May 1983.

Decision

- 1 By judgment of 16 September 1982, received at the Court on 4 November 1982, the Court d'Appel [Court of Appeal], Colmar, submitted to the Court, a question pursuant to Article 177 of the EEC Treaty, for a preliminary ruling on the interpretation of Articles 52 and 57 of the Treaty, and of Council Directives Nos 78/1026/EEC and 78/1027/EEC of 18 December 1979, the first concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, and the second concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons (Official Journal 1978, L 362, pp. 1 and 7).
- 2 That question was raised in the context of criminal proceedings brought against Vincent Rodolphe Auer, who was charged, *inter alia*, with unlawfully practising veterinary medicine in France. Mr Auer, who was originally of Austrian nationality, studied veterinary medicine in Vienna (Austria), then at Lyon and finally in Parma (Italy), where he obtained, on 1 December 1956, the degree of Doctor of Veterinary Medicine (*laurea in medicina veterinaria*), on 11 March 1957, a provisional practising certificate in veterinary medicine and, on 2 May 1980, the definitive practising certificate for that profession. In 1958, he settled in France in order to practise his profession there, first as an assistant to French veterinary surgeons and subsequently on his own account.

- 3 Mr Auer became a naturalized French citizen in 1961 and on several occasions applied for the authorization to engage in the medical and surgical treatment of animals within the meaning of Ministerial Decree No 62-1481 of 27 November 1962, according to which that authorization may be granted to veterinary surgeons of foreign origin who have acquired French nationality and who are holders of a degree in veterinary medicine awarded abroad which has been recognized as equivalent to the French degree by a committee set up for that purpose. However his applications have always been rejected since that committee has refused to accept such equivalence in his case and his degree has been recognized as valid "solely as an academic qualification". Mr Auer has therefore not succeeded in obtaining the enrolment which he sought on the register of the professional society.

- 4 Nevertheless, since he considered that refusal to be unjustified, Mr Auer opened a veterinary surgery in Mulhouse, where he began to practise. As a result of complaints by the Ordre National des Vétérinaires [National Society of Veterinary Surgeons], he has been prosecuted on several occasions for improperly practising veterinary medicine. It was in the context of one of those prosecutions, initiated in 1978, that the Cour d'Appel, Colmar, referred to the Court for a preliminary ruling a first question as to whether the fact of prohibiting, in France, a person who has acquired the right to practise as a veterinary surgeon in another Member State from practising that profession constitutes a restriction on the freedom of establishment recognized by Articles 52 and 57 of the Treaty.

- 5 At that time Article 57 of the EEC Treaty had not yet been implemented as regards taking up the profession of veterinary surgeon. Only on 18 December 1978 were the two directives mentioned above adopted by the Council. The directives provide, in Articles 18 (1) and 3 (1) respectively, that Member States are to bring into force the measures necessary to comply with the directives within two years of their notification, namely 20 December 1980.

- 6 Since Mr Auer relied on the direct application in his favour of the provisions of the directives in question, the Court, in its judgment of 7 February 1979 (Case 136/79, *Auer* [1979] ECR 437) held:

that for the period prior to the date on which the Member States were required to have taken the measures necessary to comply with the directives in question, the nationals of a Member State could not rely on that provision with a view to practising the profession of veterinary surgeon in that Member State on any conditions other than those laid down by the national legislation;

that, moreover, that answer in no way prejudged the effects of the above-mentioned directives from the time at which Member States were required to have complied with them;

and, finally, that there was no provision of the Treaty which made it possible to treat nationals of a Member State differently according to the time at which or the manner in which they acquired the nationality of that State.

- 7 At 20 December 1980, the French Republic had still not complied with the above-mentioned directives. Implementing measures were only adopted by Law No 82899 of 20 October 1982. In the meantime, Mr Auer continued to practise his profession in Mulhouse, still without being entered on the register of the veterinary surgeons' professional society. Following a new complaint from the Ordre National des Vétérinaires de France [National Society of Veterinary Surgeons of France] and Syndicat National des Vétérinaires Practiciens Français [National Society of Practising Veterinary Surgeons of France], he was again prosecuted for the unlawful practice of veterinary medicine, in respect of acts which were officially recorded on 26 January and 15 June 1981. Those acts were carried out after the expiry of the period prescribed for the implementation of the directives in question, but prior to the adoption of the French Law which implemented them.
- 8 In the course of those proceedings Mr Auer relied on rights based on Community rules. In particular he maintained that since, at the material time, the period within which Member States were required to comply with the directives had expired, and France had not adopted the measures necessary for implementing them, the provisions of the directives had become directly applicable and that he was therefore entitled to practise his profession in France.
- 9 The court of first instance rejected that argument. The Cour d'Appel, [Court of Appeal], Colmar, considered that "on the one hand, it is clear that the

answer given in the judgment of 7 February 1979 of the Court of Justice is expressly limited to the two-year transitional period, which provides reason for believing that a different answer might be given so far as the subsequent period is concerned” and that “on the other hand . . . it seems inconceivable that a person who is a native of a foreign country and who holds a foreign qualification could be allowed to practise veterinary medicine in France without having to seek registration with the professional society, and thus enjoy more rights than a person who has always held French nationality and holds national qualifications”. It therefore referred the following question to the Court of Justice for a preliminary ruling:

“If a person who has become entitled to practise the profession of veterinary surgeon in a Member State of the European Community which has conferred on him the qualifications referred to in Article 3 of Directive No 78/1206, and who has acquired the nationality of another Member State, is required, after the expiry of the two-year period allowed for adopting the measures necessary to comply with Directives Nos 78/1206 and 78/1207, to be registered with a national body established under national law as a condition for practising that profession, does that requirement amount to a restriction on the freedom of establishment provided for in Articles 52 and 57 of the Treaty of Rome?”

- 10 The civil parties in the main proceedings, namely the Ordre National des Vétérinaires and the Syndicat National des Vétérinaires, observe that the degree which Mr Auer holds in no way satisfies the training requirements laid down in Article 1 of Directive No 78/1027 and that the practising certificate issued to the accused on 2 May 1980 does not constitute confirmation that he has satisfied the training conditions laid down in that provision.
- 11 Mr Auer emphasizes that Article 2 of Directive No 78/1026 requires Member States to recognize the diplomas listed in Article 3, and that that list includes under (f) precisely those diplomas which were awarded to him in Italy. It follows that he is entitled to practise the profession of veterinary surgeon in France, inasmuch as the directive imposes on Member States clear, precise and unconditional obligations and is therefore capable of direct application, in the sense that an individual may rely on it as against a Member State which has failed to fulfil its obligation to comply with the directive within the prescribed period. The Commission essentially shares that opinion.

12 In order to assess the arguments of the parties, it is necessary to examine in the first place those provisions of the above-mentioned directives, which are applicable in this instance. Article 2 (1) of Directive No 78/1026 provides that "each Member State shall recognize the diplomas, certificates and other evidence of formal qualifications awarded to nationals of Member States by the other Member States in accordance with Article 1 of Directive No 78/1027/EEC and which are listed in Article 3, by giving such qualifications, as far as the right to take up and pursue the activities of a veterinary surgeon is concerned, the same effect in its territory as those which the Member State itself awards." The second paragraph of that article adds that "where a diploma, certificate or other evidence of formal qualifications as listed in Article 3 was issued before the implementation of this directive, it shall be accompanied by a certificate from the competent authorities of the issuing country stating that it complies with Article 1 of Directive No 78/1027/EEC." Article 3 of Directive No 78/1026 mentions, under (f), in respect of qualifications awarded in Italy, "il diploma di laurea di dottore in medicina veterinaria accompagnato dal diploma di abilitazione all'esercizio della medicina veterinaria awarded by the Minister of Education on the basis of the findings of the competent State Examining Board."

13 It should be noted that the diploma of "laurea" [doctor] and the certificate of "abilitazione" [practising certificate] which Mr Auer holds correspond precisely to those set forth in Article 3 (f) of Directive No 78/1026, as, moreover, the Cour d'Appel, Colmar, itself observes in its judgment making the reference to the Court. Since those qualifications were awarded (in 1956 and 1980 respectively) before the implementation of the directive, the second paragraph of Article 2 applies.

14 In that respect, it must be recorded that at the hearing Mr Auer's lawyer produced a document, dated 3 December 1982, issued by the Dean ("Preside") of the Faculty of Veterinary Medicine at the University of Parma, which states that the "diploma di laurea" and the "certificato di abilitazione" issued to Mr Auer in 1956 and 1980 respectively comply with Article 1 of Directive No 78/1027.

15 The fact that that certificate was drawn up after the events which led to Mr Auer's being charged with criminal offences does not alter his legal position, because the document in question does not have the effect of

creating "*ex nunc*" the right to practise the profession of veterinary surgeon, but merely proves that the diplomas awarded at an earlier date are in conformity with Directive No 78/1027. The requirement laid down in the second paragraph of Article 2 of Directive No 78/1026 has therefore been satisfied in this instance.

- 16 The above-mentioned provisions of Directive No 78/1026 impose on each Member State clear, complete, precise and unconditional obligations which exclude the possibility of discretionary assessments. In those circumstances, in accordance with a consistent line of decisions of the Court, an individual may rely, before the national court, on the provisions of a Community directive which has not been implemented or which has been only partially implemented by the Member State concerned. That is the case of Mr Auer whose right to practise veterinary medicine in France, as from the date on which the directives in question should have been implemented by the French Republic, by virtue of the university degrees and qualifications acquired in Italy, cannot therefore be contested.
- 17 As regards the specific question raised by the national court whether a national of a Member State who has obtained in another Member State qualifications which entitle him to practise the profession of veterinary surgeon has the right to practise that profession even if he is not entered on the register of the professional society, the civil parties in the main proceedings contend that such a person cannot be exempted from the obligation of registration even if the degrees or certificates which he holds are valid.
- 18 In that respect, it should be noted that compulsory registration with or membership of a professional organization or body are referred to in several provisions of Directive No 78/1026 — in particular in the first recital in the preamble thereto and in Articles 7 and 12 thereof and must be regarded as lawful, inasmuch as they seek to ensure the observance of moral and ethical principles and the disciplinary control of the activity of veterinary surgeons, requirements which are worthy of protection. The laws of Member States which provide for compulsory registration with the professional society are not, therefore, as such, incompatible with Community law.

19 However, as the civil parties themselves acknowledge, the conformity of that obligation with Community law is subject to the condition that the fundamental principles of that law, and in particular the principle of non-discrimination, are respected. It is not permissible to refuse to enter a person on the register of the professional society on grounds which disregard the validity of a professional qualification obtained in another Member State, when that qualification is one of those which all the Member States, and their professional societies, as bodies entrusted with a public duty, are required to recognize under Community law. Therefore legislation which provides for criminal or administrative proceedings against a veterinary surgeon who practises his profession without being registered with the professional society, in so far as that registration has been refused in contravention of Community law, is not compatible with Community law inasmuch as it would ultimately render wholly ineffective the provisions of the Treaty and of Directive No 78/1026 which, according to the second recital of the preamble to the latter, are designed to facilitate the "effective" exercise of the right of establishment and freedom to provide services in respect of the services of veterinary surgeons.

20 The answer to be given to the question put to the Court by the Cour d'Appel, Colmar, should therefore be as follows:

A national of a Member State who is qualified to practise the profession of veterinary surgeon in another Member State which has issued to him one of the diplomas, certificates or other evidence of formal qualifications referred to in Article 3 of Directive No 78/1026 even before that directive has been implemented, is entitled to practise that profession in the first-mentioned State as from 20 December 1980, provided that the competent authorities of the State in which he obtained his diploma have issued to him a certificate stating that the diploma is in conformity with the requirements of Article 1 of Directive No 78/1027;

The fact that a person is not registered with a national society of veterinary surgeons cannot prevent that person from practising the profession and cannot provide grounds for a prosecution for improper practise thereof when such registration is refused in contravention of Community law.

Costs

- 21 The costs incurred by the Commission of the European Communities which submitted observations to the Court are not recoverable. As these proceedings are, in so far as the parties in the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, costs are a matter for that court.

On those grounds

THE COURT (First Chamber),

in answer to the question referred to it by the Cour d'Appel, Colmar, (Chambre des Appels Correctionnels), by judgment of 16 September 1982, hereby rules:

1. A national of a Member State who has the right to practise the profession of veterinary surgeon in another Member State which has issued to him one of the diplomas, certificates or other evidence of formal qualifications referred to in Article 3 of Directive No 78/1026 even before that directive has been implemented, is entitled to practise that profession in the first-mentioned State as from 20 December 1980; provided that the competent authorities in the Member State in which he obtained his diploma have issued to him a certificate stating that the diploma is in conformity with the requirements of Article 1 of Directive No 78/1027.
2. The fact that a person is not registered with a national society of veterinary surgeons cannot prevent him from practising the profession and cannot provide grounds for prosecution for improper practise thereof when that registration is refused in contravention of Community law.

O'Keefe

Bosco

Koopmans

Delivered in open court in Luxembourg on 22 September 1983.

J. A. Pompe
Deputy Registrar

A. O'Keefe
President of the First Chamber