II. THE FREE MOVEMENT OF PERSONS

There has been much activity since the last report on this topic,[1] not least that the citizenship provisions of the Treaty have burst into life with a series of cases and proposals which threaten to overturn the old order. The Commission's initial proposal[2] to consolidate and radically reshape rights of residence has been revised in the legislative process,[3] but is still un-adopted; the cases though are more dramatic.

A. Residence and Citizenship

In *Rudy Grzelczyk*, a French student studying in Belgium was found to be entitled to receive a non-contributory state benefit, this despite the relevant EC secondary law seemingly insisting that students should not be a burden on the public purse.[4] Though Rudy had been a worker, and, as one knows, this status can linger once employment ceases,[5] the European Court of Justice (the Court) chose to emphasis his 'lawful presence'[6] in another Member State and European citizenship[7] as triggering the right to a benefit that, under national law, was unavailable to him. In doing so *Brown* was distinguished,[8] and the Directive, in particular Article 1, construed to favour students.

In *Baumbast and R* the Court stated that the right to reside within the territory of the Member States 'is conferred directly on every citizen of the Union by a clear and precise provision of the EC Treaty'.[9] Limits to that right had to be proportionate, and the sole fact that the migrant's health insurance did not cover emergency treatment was an insufficient ground to limit a citizen's right to residence. The Court also confirmed

[1] J Lonbay 'The free movement of persons' (2001) 50 ICLQ 168.

[2] COM(2001) 257 Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

[3] COM(2003) 199 final; Amended proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (presented by the Commission pursuant to Art 250 (2) of the EC Treaty).

[4] Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, [2001] ECR I-6193. Under Art 1 of Council Directive 93/96 on the right of residence for students (OJ [1993] L317/59) entry is gained only by those students with, inter alia, 'sufficient resources' (Article 1). The Court found that the condition was exercised on entry and that later penury should not result in 'automatic consequences' or withdrawal of the offending student's residence permit (paras 42-43) which should happen only if they posed 'unreasonable burdens' on the State (para 44).

[5] Case C-413/01 *Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verker und Kunst* (judgment of 6 Nov 2003, not yet reported), where the Court emphasized the objective nature of the criteria defining a worker under EC law, and confirmed that the status of worker lingered enabling them to become students with full rights to any social advantages (para 35) though abuse of these rights would not be tolerated (para 36).

[6] Case C-85/96 *Martínez Sala* [1998] ECR I-2691.

[7] Above n 4, para 31 'Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.'

[8] Ibid, paras 34–5.

[9] Case C-413/99 *Baumbast v Secretary of State for the Home Department* [2002] ECR I-7091, para 84.

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that the children of either spouse (whether or not nationals of the Member State) could benefit from the provisions of Article 12 of Regulation 1612/68, which included the right to continue their education in another Member State.[10] This ruling thus removes the doubt left by *Echternach and Moritz.*[11] Finally the case is also authority for the proposition that a non-national parent of such children, even when divorced from the EU citizen who had been a migrant worker, had a right of residence 'as primary carer' of such children. The Court utilized Article 8 ECHR to support this conclusion.[12] In *d'Hoop* the Court allowed Article 18 EC to benefit a Belgian citizen in Belgium (who was neither a worker nor a dependent of a migrant worker) who had been refused a grant under national rules that reserved such grants to those who had been educated in Belgium. [13]

Beyond the rosy future promised to EU citizens by these cases the multiple proposals to implement the Tampere promises are still largely in the legislative process.[14] It is clear however that citizenship of the EU is set to be a powerful force.

B. Establishment

It is clear that Member States, in the absence of harmonization of national rules regulating access to the professions, retain the right to control access as they see fit.[15] This is reinforced by Article 47(2) EC which requires a unanimous vote by Member States for any Directive which would involve amendment in any Member State of principles 'laid down by law governing the professions with respect to training and conditions of access for natural persons'.[16] However the exercise of these regulatory powers must respect the freedoms granted by Articles 43 and 49 EC (freedom to provide services) and must not undermine the mutual recognition Directives or other Community law.[17] In *Wouters*, which was primarily decided on competition grounds, the Court indicated that Articles 43 and 49 EC could also be used to assess the lawfulness in EC law of internal regulations of professional bodies which had the effect of obstructing or hindering the free movement of professionals.[18] The German profession of *Heilpraktiker* (lay

[10] OJ, English Special Edition 1968 (II) 475.

[11] Joined cases 389/87 and 390/87 *Echternach and Moritz* [1989] ECR 723.

[12] Above n 9, para 72. This was also utilized to bolster Art 49 EC in Case C-60/00 *Mary Carpenter v Secretary of State for the Home Department* [2002] ECR I-6279 to enable residence rights for a third country spouse of a service provider resident in her own Member State.

[13] Case C-224/98 *Marie-Nathalie D'Hoop v Office national de l'emploi* [2002] ECR I-6191.

[14] A few, for example, the previously agreed Dublin Treaty, have been adopted as Council Regulation 343/2003 (OJ [2003] L 50/1) establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. See Lonbay 'Free movement of Persons in the EU: the legal framework', in Arnull and Wincott (eds) *Accountability and Legitimacy in the EU* (Oxford OUP 2002) 437.

[15] Case C-61/89 *Bouchoucha* [1990] ECR I-3551, Joined cases 3/97 and C-194/97 *De Castra Freitas and Escallier* [1998] ECR I-6747 and Case C-108/96 *Criminal proceedings against Dennis Mac Quen and others* [2001] ECR I-837.

[16] Moreover Arts 149 and 150 EC specifically exclude any harmonization of laws and regulations of Member States dealing with the content of education and training 'respecting the responsibility of the Member States for the content of teaching and the organization of educational systems' and 'vocational training'.

[17] Case C-58/98 *Josef Corsten* [2000] ECR I-7919.

[18] Case C-309/99 *JCJ Wouters, JW Savelbergh, Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten* [2002] ECR I-1577.

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health practitioner) is unknown in Austria, where their activities are reserved to medical doctors. In *Gräbner* the Court ruled that as Austria did not regulate (or have any provisions for) the profession of *Heilpraktiker*, it was not a regulated profession in Austria and Directive 92/51 could not therefore apply.[19] The Court confirmed that the Austrian refusal to recognize the profession was contrary to Article 43 EC, but found that the justification in the general interest was proportionate.[20] The prohibition on the organization of training for the prohibited profession was also allowed as long as the prohibited training was liable to cause confusion about whether the activities trained for could be carried out in its territory. The prohibition on advertising for such training could violate Article 49 EC if the training was to be carried out in another Member State, and would have to be allowed as long as it indicated that the professions trained for could not be practised in the State where it is prohibited. So the Court here confirms the rule of national autonomy as regards the regulation of professions subject to EC scrutiny of any resulting obstacles to free movement.

In *Neri* the applicant decided to obtain a BA degree in International and Political Studies, from Nottingham Trent University by following courses in Italy provided by the European School of Economics (ESE Insight World Education System Ltd).[21] ESE was incorporated as a limited liability company in the UK and had secondary establishments in other Member States, including Italy.[22] Ms Neri paid four million lira as an advance of her course fee but later learned that recognition would not be granted to her potential university degree in Italy, as Italian administrative procedures indicated that students would only get such degrees recognized if the students had studied in the host State where the degrees were issued, even though the qualification was legally recognized in the United Kingdom. She sought the return of her money. The Court ruled that the organization of university courses for remuneration was 'an economic activity falling within the chapter of the treaty dealing with the right of establishment'. The *Humbel* case, which had indicated that public education was not within the scope of the Treaty, was not mentioned and must now be considered as limited to cases where no fees are involved, if it is not now entirely overruled.[23]

Article 43 EC requires the elimination of 'all measures which prohibit, impede or render less attractive' the exercise of the freedom of establishment.[24] The Court in *Neri* found that the non-recognition of UK degrees where studies were undertaken in Italy by Italians clearly would deter students from attending those courses and thus would hinder ESE's economic activity in Italy and so found that the administrative practice was contrary to Article 43 EC. The Italian Government sought to justify the restriction on the grounds of ensuring 'high standards of university education.'[25] It considered that university education was a matter of public interest involving historical and cultural

[19] Case C-294/00 *Gräbner* [2002] ECR I-6515.

[20] Public health is recognized by Arts 46(1) and 55EC as being capable of justifying restrictions on free movement.

[21] Case C-153/02 *Valentino Neri and the European School of Economics (ESE Insight World Education System Ltd)* (judgment of 13 Nov 2003, not yet reported)). Section 216 of the Education Reform Act 1982 provides that approved bodies may provide courses in preparation for a degree ultimately being granted by a recognized body such as Nottingham Trent University.

[22] See case C-439/99 *Commission v Italy* [2002] ECR I-305, para 21.

[23] Case 263/86 [1988] ECR 5365.

[24] Above n 21, para 41. See also Case C-145/99 *Commission v Italy* [2002] ECR I-2235, para 22.

[25] Ibid, para 45.

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values of the State. The Court considered that these considerations could legitimately justify a restriction on fundamental freedoms, but that such restrictions had to be 'suitable to securing the attainment of the objective which they pursue and must not go beyond what is necessary in order to attain it'.[26] The Court then pointed out that Italian establishments themselves could have agreements similar to that between the English university and ESE and that as the administrative practice solely related to degrees awarded to Italian nationals, it did not appear to be a suitable measure for attaining the objectives of ensuring high standards of university education.[27] The requirement of proportionality was not fulfilled and the practice was found to be contrary to Article 43.

C. Mutual recognition

The radical proposal to consolidate all the mutual recognition Directives into one is still in the legislative process and is unlikely to emerge until well into 2004.[28] It has many interesting features including the possibility of allowing those who cannot transmute into a host State professional because of insufficient functional overlap to practice only the narrow range of activities that do overlap, a sort of 'specialized practice' that, if adopted, would revolutionize practice and encourage the fragmentation of professions.[29] It also allows for 'common platforms' agreed by pan-European professional bodies to be 'automatically recognized' at the EC.[30] Naturally the Court too has been busy. The two most significant cases are *Morgenbesser* and *Burbaud*, dealt with below.

In *Morgenbesser*, a French national, with a qualifying French law degree (*Maitrise en droit*) awarded in 1996 joined an Italian firm of *avvocati* in Genova in 1998 after undertaking eight months legal work in Paris.[31] In October 1999 she applied to the Genova Bar for admission as a *praticanti* (trainee lawyer) and was rejected on the grounds that she did not have the necessary qualifications for admission to the roll of *praticanti*, namely she lacked the *laurea in giurisprudenza* or other diploma confirmed as equivalent to the Italian law degree. An appeal to the *Consiglio Nazionale Forense* (National Bar Council) was dismissed and the *Corte suprema di cassazione* asked the Court whether the French diploma could be relied on in Italy. The Court dismissed the notion that the traineeship could itself be 'a regulated profession'. Thus neither Directive 89/48 nor Directive 98/5 applied as Ms Morgenbesser was not a fully qualified professional in her home State.[32]

[26] Ibid, para 46; see also case C-439/99 *Commission v Italy* above n 22, para 23.
[27] Ibid, para 47.
[28] COM (2002) 119 final (7 March 2002) Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications.
[29] Ibid, Art 4(3).
[30] Ibid, Art 15.
[31] Case C-313/01 *Christine Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova*, judgment of 13 Nov 2003, not yet reported.
[32] Council Directive 89/48 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least 3 years' duration (OJ [1989] L 19/16), as amended by Directive 2001/19 of the European Parliament and of the Council, (OJ [2001] L206/1). Directive 98/5 of the European Parliament and of the Council of 16 Feb 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ [1998] L 77/36).

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In *Dreesen* the issue had been whether the Competent Authority could '*Vlassopoulou* assess' Dreesen using Article 43 EC when there was a Directive in the field by which he was not covered. [33] The Court stated: [34]

> It follows that Member States must comply with their obligations as regards mutual recognition of professional qualifications arising from the Court's interpretation of Articles 43 EC and 47 EC (see, in particular, *Vlassopoulou*, *Haim* and *Hocsman*), in examining any application for authorisation to practise a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience, where the diploma held by the Community national is not the subject of automatic recognition under a directive on the mutual recognition of diplomas, even if such a directive has been adopted in the professional field in question.

The existence of a mutual recognition Directive, which covers a particular profession (eg, solicitor), would not prevent the operation of Article 43 EC where such a Directive, in fact, did not operate in a particular case.[35]

In *Morgenbesser* the Court ruled that national 'authorities' must take into consideration 'the professional qualification' including diplomas, certificates or other formal qualifications and any professional experience wherever acquired.[36] The qualification should then be compared to that required nationally.[37] The Court ruled that the academic equivalence of diplomas is important but unnecessary in the context of assessment of the migrant's qualifications under Articles 39 and 43 EC. All qualifications of the migrant had to be taken into account in the assessment of his/her whole training, which must enable the authority of the host Member State to assess the equivalence of the candidates' qualifications objectively.[38] The qualifications need not be identical. Qualifications should be assessed 'having regard to the nature and duration of the studies and practical training'. Member States are entitled to take account objective differences. In the case of lawyers the different legal frameworks of the profession in the Member States of origin and the different fields of activity of the profession in the Member State of origin could be taken into account including the differences between the national legal systems. If, after this examination, the qualifications of the migrant are deemed equivalent then they must be accepted. If they are only partially equivalent the host State can require the applicant to show the acquisition of the knowledge, skills and qualifications that are lacking. The applicant can show this by learning and skill acquired in the host State or elsewhere.

The judgment in essence extends the right of mobility to those still in training and not yet lawyers. The ruling clearly applies to other professions as well. *Morgenbesser* indicates that competent authorities have the duty to assess migrating applicants, but

[33] Case C-31/00 *Conseil National de l'Ordre des Architectes v Nicholas Dreesen* [2002] ECR I-663.

[34] Ibid, para 27.

[35] Case C-232/99 *Commission v Spain* [2002] ECR I-4235, paras 22 and 25. See Case C-234/97 *Teresa Fernández de Bobadilla v Museo Nacional del Prado, Comité de Empresa del Museo Nacional del Prado and Ministerio Fiscal* [1999] ECR 4773.

[36] Above n 31, paras 57 and 58. Case C-110/01 *Malika Tennah-Durez and Conseil Nationae de l'Ordre de Médecins* (judgment of 19 June 2003, not yet reported) confirmed that 'world-wide scope' of the recognition rule in the context of medical qualification where Directive 93/16 is not explicit on this issue.

[37] Competent authorities should have already a 'list of subjects' required in their own Member States. This list should be normally reduced to a smaller list of topics, 'knowledge of which is essential in order to be able to exercise the profession' (Art 1(g) of Directive 89/48/EEC).

[38] Above n 31, paras 65 and 66.

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who is the competent authority in such cases? Most Member States had not foreseen the access rights of unfinished professionals. After all, Article 5 of Directive 89/48 made it clear that accepting trainees was optional for Member States.[39] There is not, in most countries, an identified gatekeeper in the national rules and regulations for this new mode of access. The established routes tend to be set out for applicants under Directives 98/5 and 89/48 only. Applicants coming through this new route would normally be directed to the typical route for ordinary locals who have completed a national degree. This means that the natural competent authority would normally be the body responsible for enrolling trainees. In most cases this will be the Bar or Law Society.[40]

The duty of the competent authority is to assess fully the applicant's qualifications, taking in the background of their legal training and experience and having regard to the framework of the legal system in which they trained. A new element in the judgment is that this assessment must be carried out in its entirety by the competent authority itself. Thus there is no longer the possibility for competent authorities to ask a third party to determine whether a diploma from a university is equivalent to the national diploma. In *Morgenbesser* the applicant had sought recognition of equivalence from an Italian university. This step, according to the Court, is unnecessary as the host State competent authority must itself make the assessment. This aspect of the ruling has clear implications for States where the tradition has been to ask the Ministry of Education or a specialized body or university for academic equivalence prior to considering such an application.[41] The competent authority must also assess the professional experience of the migrant. This has been a requirement since the *Vlassopoulou*[42] case whose ruling in this respect has since been incorporated into Directive 89/48.[43] This can be distinguished from the examination of professional experience under Directive 98/5 where the candidate simply has to show that he has in fact practised for three years, not that this practice has imparted any knowledge or skills. Testing is not allowed under Directive 98/5.

The *Burbaud* case has heavy implications for traditional modes of access to public services.[44] Ms Burbaud had worked from 1983 to 1989 as a hospital administrator for the Portuguese public service, being qualified as a hospital administrator from the National School of Public Health (Lisbon). Thereafter she had moved to France and in 1993 she applied to join the French public service as a hospital manager. Her admission was rejected on the grounds that she had not passed the entrance examination for

[39] 'Without prejudice to Arts 3 and 4, a host Member State may allow the applicant, with a view to improving his possibilities of adapting to the professional environment in that State, to undergo there, on the basis of equivalence, that part of his professional education and training represented by professional practice, acquired with the assistance of a qualified member of the profession, which he has not undergone in his Member State of origin or the Member State from which he has come.'

[40] Though in countries where the State regulates access to the *stage* it could be the organ of the State that is the competent authority, for example the *Referendarzeit* in Germany.

[41] See case C-234/97 *Teresa Fernández de Bobadilla v Museo Nacional del Prado, Comité de Empresa del Museo Nacional del & Ministerio Fiscal* [1999] ECR I-4773, noted at (2001) 50 ICLQ 168.

[42] Case C-340/79 [1991] ECR I-2357 and re-affirmed in case C-238/98 *Hocsman* [2000] ECR I-6623.

[43] Directive 2001/19, above n 32.

[44] Case C-285/01 *Isabel Burbaud v Ministère de l'Emploi et de la Solidarité* (judgment of 9 Sept 2003, not yet reported).

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the National School of Public Health (ENSP). Ms Burbaud sought annulment of the decision and eventually a reference to the Court was made asking whether a course of practical training such as the ENSP could be treated as a 'diploma' within the meaning of Directive 89/48, and, if it was to be considered a diploma, may a competent authority insist that the migrant applicant should pass the entrance examination even though they had sat a similar competition in their home State?

The French Government pointed out that the training in the ENSP was provided after recruitment by competition into the corps of hospital managers and was classified as a *stage* (traineeship). Recruitment was by examination and there follows the period of apprenticeship during which they are paid members of the public service and at the end of which, after success in the final examination, they are appointed permanently to a hospital public service. The French Government argued that the ENSP did not award any 'diploma' in the sense of the Directive. They further pointed that Article 5(2) of Decree No 2000-232 states: [45]

> Candidates admitted to a competition who have completed training in a Member State of the EU or a State within the European Economic Area other than France, which is of an equivalent level to the training course referred to in Article 4 above may, following an opinion of the Committee also referred to in Article 4, be exempted from all or part of the training course by the Minister responsible for health.

This, the French argued, satisfied the requirements of European law.

The Court pointed out that the definition of 'regulated profession' was a matter of Community law,[46] and that the training constituted post-secondary education of at least 3 years' duration including both the academic qualification necessary for participation in the entrance examination, followed by the ENSP course itself lasting up to 27 months. The final examination at ENSP clearly assesses whether the person has the necessary theoretical and practical knowledge to work in hospital management. The Court ruled that confirmation of passing the final examination could be regarded as a 'diploma' within the meaning of Article 1(a) of Directive 89/48. This was largely because 'its essential function was to confirm that the person concerned has successfully completed a post-secondary course of at least three years duration which confers professional qualifications required before taking up the regulated profession'.[47] The diploma need not necessarily take the form of a formal document.

The second issue concerned the mode of access to the French public service. The habit of having a competitive examination for entry to the training course is not limited to hospital managers in France, but is widely used for most public service jobs in France and elsewhere. The French Government defend the practice by considering that it ensures equality in terms of access to public service employment. An examination amounted to equal treatment and was a mode of recruitment and therefore could not be evaded by migrant applicants to the public service. The solution according to France was that Ms Burbaud should take the examination and, should she pass, she could then be exempted from all or part of the course depending on the assessment of her qualifications, but it would be unfair to enable her to evade the entrance examination. The Italian Government in a large measure supported the French position whereas the Swedish Government intervention indicated that the French rules obstructed free movement of workers as they did not pursue a legitimate objective justified by overriding reasons in the general interest. The recruitment process in France discriminated

[45] JORF, 13 Mar 2000. [46] Above n 41. [47] Above n 44, para 52.

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against qualified applicants from other Member States. The examination clearly did not assess their capacity to be hospital administrators and thus was inappropriate and a disproportionate requirement for qualified professionals from other Member States.

The European Commission itself initially maintained that the French were entitled to require an entrance examination as EC law only guaranteed recognition of qualifications and did not extend to granting rights of access to employment itself. However the Commission at the hearing, no doubt influenced by the Swedish Government's intervention, indicated that the French regime of ENSP entrance examinations infringed the Directive as it did not take account of qualifications held by nationals for other Member States. [48] As to the argument that the infringement was justified by an overriding reason in the general interest, the Commission now considered that the French requirements were disproportionate.

The Court considered the dual nature of the French requirement. The examination stood as a recruitment technique and an entry test to training for those seeking access to the public service. The Court confirmed that the Directive could not be relied upon as the basis of a right to be recruited, as it only requires 'the recognition of qualifications obtained in one Member State in order to allow their holder to apply for a job in another Member State'.[49] Recognition of the equivalence of Ms Burbaud's diploma means that she should be exempted from ENSP training and final examinations, but that she should not be exempt from the initial examination which plays a vital role in selecting and recruiting for the hospital public service.[50]

The Court then analysed the Treaty provisions relating to free movement of workers and ruled that the requirement of passing an examination as a mode of access to employment in the public service could be considered an obstacle to free movement of persons within the meaning of a case law.[51] The Court pointed out that the ENSP entrance examination did not allow account to be taken of 'specific qualifications in the field of hospital management' since candidates for that examination are not yet supposed to have such qualifications.[52] The Court then ruled that nationals from Member States who were already qualified in hospital management from another Member State should not be forced to take an examination where their specific qualifications in the field could not be taken into account. Such an examination process was liable to dissuade them from exercising their rights of free movement.[53]

In assessing the French justifications for the regime, the Court considered that the general interest could justify such an obstacle only if it was proportionate and did not go beyond what is necessary to achieve the objective pursued.[54] The French rule had the effect of 'downgrading' applicants who were already qualified, as the entrance examination gave access to training which they had already completed.[55] The Court

[48] Ibid, paras 71–8.

[49] Ibid, para 91.

[50] Ibid, para 92.

[51] Ibid, para 96. The Court relied upon the oft-cited case of *Kraus* (Case C-19/92 [1993] ECR I-1663) which indicated that 'any national measure which although applicable without discrimination on grounds of nationality, is liable to hamper or render less attractive the exercise by a national of a Member State the freedom of movement of workers, is an obstacle to that fundamental freedom guaranteed by the Treaty'.

[52] Ibid, para 99.

[53] Ibid, para 100.

[54] See Case C-294/00 *Gräbner* [2002] ECR I-6515 para 39.

[55] The French legislation moreover did provide an alternative route for public servants to be exempted from the ENSP entrance exam on grounds of experience in the public service. These candidates for public service must only complete a *stage* of one year following certain courses of

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then ruled that requiring the candidate to take the ENSP entrance examination must be regarded as going beyond what was necessary in order to achieve the objective of selecting best candidates in the most objective conditions possible and therefore could not be justified in the light of EC Treaty provisions.[56] Whatever regime the French come up with will have to ensure that foreign candidates are placed and ranked appropriately in the list which entitles individuals selected to choose their posting and which the ENSP draws up on the basis of their final examination results. France was thus precluded from requiring EU nationals to pass examinations such as the ENSP entrance examination.[57]

The clear implication of the case is that the death knell has rung for single mode of access examinations for regulated sectors as they fail to take account of potential migrant applicants' qualifications. This will cause some upheaval in continental Europe where access to the public service is often predicated on competitive entry examinations.

All in all most developments for the period under review have come from litigation rather than legislation.

JULIAN LONBAY*

III. INTELLECTUAL PROPERTY

A. Introduction

EC intellectual property law has now reached a significant level of harmonization, and the Community can take pride in its achievements in this respect. The need to report a wealth of new matters leaves little space for introduction. However, two issues may be highlighted here briefly. The first is that in May 2004 ten new Member States will join the EU. Although enlargement offers immense opportunities, it also presents a considerable practical challenge. The second is the Commission's plan for a directive to harmonize procedure and remedies for intellectual property infringement throughout the EU.[1] It seeks to go further than the ground rules on enforcement already laid down by TRIPs, and to lay down specific procedural codes for intellectual property infringement of all types—not merely piracy and counterfeiting. This enthusiasm for intervention in the procedural aspects of national law has raised serious concerns in some quarters.

the ENSP. Admittedly the scheme would not apply to Community nationals without adjustments and it also presupposes that candidates had sat an earlier competition for public service which would not be the case with a Community national. According to the Court, the alternative regime showed that alternative modes of recruitment were possible which were less restrictive than the ENSP exam and which would allow qualified candidates to have their specific qualifications taken into account. Ibid, at §§106–9.

[56] Ibid, para 110.

[57] Ibid, para 111.

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[1] Proposal for a Directive of the European Parliament and of the Council on Measures and Procedures to Ensure the Enforcement of Intellectual Property Rights: COM (2003) 46 final, 30 Jan 2003.

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