

C-55/94 Gebhard [1995] ECR I-4165

Facts: The applicant, a German national authorized to practice law in Germany, resided in Italy with his wife, who was an Italian national. He decided to open his own chambers in Milan where he described himself as an “avvocato” without having registered with the Milan Bar as required. Following complaints from a number of practitioners, he was suspended by the Milan Bar for failing to register. The Court was asked to consider whether the Italian legislation requiring registration with the Milan Bar was an obstacle to the freedom of establishment and consequently a breach of Art. 49 TFEU. The answer would also depend on the nature of the applicant's practice in Italy, as the Milan Bar argued that he had not 'established' himself and so could not be protected under EU law.

Held: Firstly, the applicant was considered to be established under Art. 49 TFEU: while membership of a professional body could be a condition of taking up and pursuing particular activities, it was not in itself constitutive of establishment. On the facts, the applicant was established as he was pursuing a professional activity on a stable and continuous basis in another Member State where he held himself out from an established professional base to, amongst others, nationals of that State.

Secondly, the Court held that, following its previous case law, national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it. On the facts, the measure was disproportionate – not only did it ignore the applicant's knowledge obtained in another Member State, but it also ignored the fact that he never intended to practice Italian law in Italy.