JUDGMENT OF THE COURT (Fifth Chamber)
7 December 1995 *

In Case C-17/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the investigating magistrate of the Tribunal de Grande Instance, Bergerac (France), for a preliminary ruling in the criminal proceedings before that court against

Denis Gervais,

Jean-Louis Nougaillon,

Christian Carrard,

Bernard Horgue,

on the interpretation of Articles 37, 52 and 59 of the EC Treaty and Council Directives 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species (OJ 1977 L 206, p. 8), 78/1026/EEC of 18 December 1978 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 (OJ 1978 L 362, p. 1), 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 (OJ 1978 L 362, p. 7) and 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species (OJ 1987 L 167, p. 54),

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, P. Jann and L. Sevón, Judges,

Advocate General: M. B. Elmer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Gervais and Others, by Philippe Dandine, of the Bergerac Bar, and Philippe Lafarge, Bâtonnier of the Paris Bar,

— the Coopérative Périgorde Agenaise d'Élevage et d'Insémination Artificielle, by Claude Paulmier, of the Paris Bar,

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

— the Commission of the European Communities, by Marie-José Jonczy and José Luis Iglesias Buhigues, Legal Advisers, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Gervais and Others, the Coopérative Périgorde Agenaise d'Élevage et d'Insémination Artificielle, the French Government and the Commission of the European Communities at the hearing on 11 May 1995,

after hearing the Opinion of the Advocate General at the sitting on 13 July 1995,

gives the following

Judgment

1 By order of 14 January 1994, received at the Court on 17 January 1994, the investigating magistrate of the Tribunal de Grande Instance, Bergerac (France), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty five questions on the interpretation of Articles 37, 52 and 59 of the EC Treaty and Council Directives 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species (OJ 1977 L 206, p. 8), 78/1026/EEC of 18 December 1978 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 (OJ 1978 L 362, p. 1), 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 (OJ 1978 L 362, p. 7) and 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species (OJ 1987 L 167, p. 54).

2 Those questions were raised in criminal proceedings brought against Mr Gervais, Mr Nougaillon, Mr Carrard and Mr Horgue (hereinafter 'the accused').

3 In March 1992 the Coopérative Périgorde Agenaise d'Élevage et d'Insémination Artificielle, which was joined as a party claiming damages on 18 March 1993, lodged a complaint with the Public Prosecutor's Office, Bergerac, against the accused alleging that they were illegally practising artificial insemination in its exclusive zone.

4 Mr Gervais and Mr Nougaillon were alleged to have infringed the fourth paragraph of Article 5 of Law No 66-1005 of 28 December 1966 on breeding (JORF of 29 December 1966, p. 11619; hereinafter 'the Law') from 1989 to 1992 by practising insemination without having been assigned an area, an offence punishable under Article 9 of that law. Mr Carrard and Mr Horgue were alleged to have operated an unauthorized insemination centre during the same period in breach of the first paragraph of Article 5, an offence punishable under Article 9, of the Law.

National law

5 In France, artificial insemination of animals is governed by, *inter alia*, Law No 66-1005. The first and second paragraphs of Article 5 of the Law provide that the operation of an insemination centre is subject to authorization by the Minister for Agriculture. That provision distinguishes between centres responsible for the production of semen and those which carry out actual insemination, but does not preclude a single centre from carrying out both types of activity at the same time.

6 Insemination centres may be authorized to maintain stocks of approved breeding animals supplied by production centres, in which case they themselves collect, treat and store the semen of those animals.

7 The fourth paragraph of Article 5 of the Law provides that each insemination centre serves an area within which only that centre may operate. Article 9 of the Law provides that any infringement of the first and fourth paragraphs of Article 5 is punishable with a fine of between FF 6 000 and FF 20 000.

8 Article 4 of the Law provides that semen may be collected and treated only by, or under the supervision of, holders of a licence as head of an insemination centre.

Insemination may be carried out only by holders of a licence either as head of an insemination centre or as an inseminator.

9 Article 1 of Decree No 69-258 of 22 March 1969 on artificial insemination (JORF of 23 March 1969, p. 2948) provides that artificial insemination using breeding stock at public stud must be carried out under the direction or supervision of authorized artificial-insemination centres and by, or under the supervision of, holders of a licence either as head of an insemination centre or as an inseminator.

10 Article 14 of the Order of 17 April 1969 on permits to operate artificial-insemination centres (JORF of 30 April 1969, p. 4349) provides that insemination is to be carried out by holders of an inseminator's licence, operating under the head of the centre responsible for holding the stock from which the inseminators obtain supplies.

11 Article 9 of Decree No 69-258 provides that licences either as head of an insemination centre or as an inseminator are to be issued by the Minister for Agriculture. Under Article 2 of the Order of 21 November 1991 on the training of inseminators and heads of insemination centres and the grant of the relevant licences (JORF of 6 December 1991, p. 15936), those licences may be issued on presentation of a certificate of proficiency in respect of the species in question and an attestation signed by the director of an insemination centre.

Community law

12 With regard to freedom of movement for veterinary surgeons and freedom to provide veterinary services, Article 2 of Directive 78/1026 provides:

'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 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.'

13 Article 1 of Directive 78/1027 provides that Member States are to make the taking up and pursuit of the profession of veterinary surgeon conditional upon the holding of a diploma, certificate or other evidence of formal qualifications in veterinary medicine in accordance with the requirements of the directive.

14 With regard to the harmonization of zootechnical standards, Member States are required by Article 2 of Directive 77/504 to ensure that intra-Community trade in *inter alia* pure-bred breeding animals of the bovine species or their sperm is not prohibited, restricted or impeded on zootechnical grounds.

15 Article 2 of Directive 87/328, adopted in implementation of Article 3 of Directive 77/504, provides that a Member State may not prohibit, restrict or impede *inter alia* the acceptance for artificial insemination within its territory of pure-bred bulls

or the use of their semen when those bulls have been accepted for artificial insemination in a Member State on the basis of tests carried out in accordance with Commission Decision 86/130/EEC of 11 March 1986 laying down performance monitoring methods and methods for assessing cattle's genetic value for pure-bred breeding animals of the bovine species (OJ 1986 L 101, p. 37).

16 Article 4 of Directive 87/328 requires Member States to ensure that, for intra-Community trade, the semen of pure-bred bulls is collected, treated and stored in an officially approved artificial-insemination centre.

The questions referred

17 The investigating magistrate of the Tribunal de Grande Instance, Bergerac, considering that the outcome of the criminal proceedings depended on the interpretation of Articles 37, 52 and 59 of the Treaty and Directives 77/504, 78/1026, 78/1027 and 87/328, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do Article 59 of the EEC Treaty and Council Directives 78/1026/EEC and 78/1027/EEC of 18 December 1978, adopted for its implementation in the sphere of the activities of veterinary surgeons, preclude the application of domestic legislation which, for the artificial insemination of animals of the bovine species, makes the issue of an insemination licence to veterinary surgeons conditional on the production of a certificate from the director of the authorized artificial-insemination centre certifying that the applicant is placed under his authority as regards carrying out insemination, thus depriving veterinary surgeons of the freedom to provide services under threat of prosecution, thereby significantly restricting their activity, by means of recognition of a territorial monopoly of that activity for the benefit of persons grouped in so-called artificial-insemination "centres" and not necessarily holders of the qualification of veterinary surgeon?

(2) Do Article 52 of the EEC Treaty and Council Directives 78/1026/EEC and 78/1027/EEC of 18 December 1978, adopted for its implementation in the sphere of the activities of veterinary surgeons, preclude the application of domestic legislation which, for the artificial insemination of animals of the bovine species, in certain circumstances grants an inseminator's licence to veterinary surgeons, but prohibits them, under threat of prosecution, from exercising that activity, and thereby eliminates their freedom of establishment, unless they are established under the mandatory authority of a so-called artificial-insemination centre, which is made up of persons who do not necessarily hold the qualification of veterinary surgeon and on whom is conferred a territorial monopoly for the exercise of that activity, with the effect that in the whole of France the freedom of establishment of veterinary surgeons cannot properly be exercised other than in connection with a centre?

(3) Should Council Directives 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species and 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species, which were adopted on grounds of health policy and state that they seek to preserve freedom in intra-Community trade, be interpreted as enabling national legislation to institute a territorial monopoly in the exercise of artificial insemination which is of a clearly economic nature for the benefit of "centres" which are staffed by persons who do not necessarily hold the qualification of veterinary surgeon?

(4) Is national legislation which makes access to the activity of carrying out insemination conditional on the issue of a licence for artificial insemination of animals of the bovine species and which makes the issue of the licence conditional on the production of a certificate from the director of the authorized artificial-insemination centre, certifying that the applicant is placed under his authority as regards carrying out insemination, thus prohibiting or restricting the exercise of that activity by veterinary surgeons on the ground that they must be placed under the authority of the director of a so-called artificial-insemination centre on whom is conferred a territorial monopoly compatible with the relevant provisions of Council Directives 77/504/EEC and 87/328/EEC which do not provide for any restriction on the establishment and activities of veterinary surgeons?

(5) Is a monopoly in the provision of services such as that brought about by the Law of 28 December 1966 on breeding and its implementing provisions compatible with Articles 37 and 59 of the EEC Treaty in so far as it prohibits insemination by persons, even those duly qualified and with the relevant capacity, other than the staff of artificial-insemination centres which enjoy the monopoly?'

Admissibility

18 The Commission and the French Government submit as a preliminary point that the request for a ruling is inadmissible since the referring court has simply replicated the questions sent to it by counsel for the accused and forwarded them to the Court without first explaining the factual and legal context of the proceedings.

19 The Court has consistently held that information provided in the order for reference not only enables the Court to give helpful answers but also makes it possible for the governments of the Member States and other interested parties to submit observations (see in particular the order of 23 March 1995 in Case C-458/93 *Saddik* [1995] ECR I-511, paragraph 13).

20 In view of the need to arrive at an interpretation of Community law which will assist the national court, it is necessary for that court to define the factual and legislative context of the questions it is asking or, at the very least, explain the factual premisses on which those questions are based (see most recently the order of 7 April 1995 in Case C-167/94 *Grau Gomis and Others* [1995] ECR I-1023, paragraph 8).

21 In the present case, however, the necessary information is to be found in the order for reference and in the papers forwarded to the Court by the national court, supplemented by the replies to the questions which the Court has put to the accused as to their nationality, their qualifications and the place where they are professionally established.

22 It follows that the questions are admissible.

The first and second questions

23 In its first and second questions the referring court asks whether Articles 52 and 59 of the Treaty and Directives 78/1026 and 78/1027 preclude a Member State from making the right to carry out the activity of artificial insemination subject to conditions such as those laid down in the French legislation.

24 It is settled case-law that the provisions of the Treaty on freedom of establishment and freedom to provide services do not apply to purely internal situations in a Member State (see most recently the judgment of 16 November 1995 in Case C-152/94 *Openbaar Ministerie* v *Van Buynder* [1995] ECR I-3981, paragraph 10).

25 In this case, it is common ground that the criminal proceedings concern French nationals who obtained in France the diplomas and certificates necessary to

practise as veterinary surgeons. They are established in France as veterinary surgeons, being duly inscribed in the national order, and exclusively practise their profession there.

26 Such situations have nothing to do with any of the situations envisaged by Community law, so that the rules on freedom of establishment and freedom to provide services are not applicable.

27 Directives 78/1026 and 78/1027 concern the training of veterinary surgeons and the recognition of diplomas. They do not therefore apply to a situation in which the holder of a diploma issued by the Member State of which he is a national seeks to rely on that diploma with a view to practising as a veterinary surgeon in that Member State.

28 Consequently the reply to the first and second questions must be that Articles 52 and 59 of the Treaty and Directives 78/1026 and 78/1027 do not apply to situations which are purely internal to a Member State such as those of nationals of a Member State wishing to carry out the activity of artificial insemination within that State without having previously trained for or carried out that activity in another Member State.

The third and fourth questions

29 In its third and fourth questions the referring court asks whether Directives 77/504 and 87/328 preclude national legislation which gives insemination centres a territorial monopoly to practise artificial insemination while making practice as an

inseminator conditional upon the issue of a licence as head of an insemination centre or as an inseminator and the issue of such a licence conditional upon the production of a certificate from a director of an authorized artificial-insemination centre.

30 The accused submit that Directives 77/504 and 87/328 preclude the French legislation which confers on certain undertakings or certain persons the exclusive right to practise insemination and which by requiring prior authorization restricts the right to practise insemination.

31 That argument cannot be accepted.

32 It is clear from the content and the objective of Directives 77/504 and 87/328 that those directives seek to harmonize the conditions of the acceptance for breeding purposes of pure-bred breeding animals of the bovine species and of their semen with a view to eliminating zootechnical impediments to the free movement of bovine semen. Those directives do not govern the conditions regarding actual insemination or the training of inseminators; nor do they cover the issue of certificates or licences authorizing the holders to carry out the regulated functions of inseminators.

33 The answer to the third and fourth questions must therefore be that Directives 77/504 and 87/328 do not preclude national legislation which gives insemination centres a territorial monopoly to practise artificial insemination while making

practice as an inseminator conditional upon the issue of a licence as head of an insemination centre or as an inseminator and the issue of such a licence conditional upon the production of a certificate from a director of an authorized artificial-insemination centre.

The fifth question

34 In its fifth question the referring court asks whether a monopoly in the provision of services such as that brought about by the French legislation is compatible with Articles 37 and 59 of the Treaty in so far as it prohibits insemination by persons, even those duly qualified and with the relevant capacity, other than the staff of the artificial-insemination centres which enjoy the monopoly.

35 As regards Article 37 of the Treaty, the Court has already held in Case 155/73 *Sacchi* [1974] ECR 409 that it refers to trade in goods and cannot relate to a monopoly in the provision of services.

36 However, it is possible that a monopoly in the provision of services may have an indirect effect on trade in goods between the Member States. The Court held in Case 271/81 *Société Coopérative d'Amélioration de l'Élevage et d'Insémination Artificielle du Béarn* v *Mialocq and Others* [1983] ECR 2057, where the legislation in question in this case was examined, that Article 37 of the Treaty does not apply to a monopoly over the provision of services, even if such a monopoly enables the

Member State concerned to direct a branch of the national economy, provided that it does not contravene the principle of the free movement of goods by discriminating against imported products to the advantage of products of domestic origin.

37 In paragraphs 11 and 12 of *Mialocq*, concerning the same legislation as that at issue in the main proceedings in this case, the Court found that the circumstances referred to in the judgment making the reference and those which had come to light in the course of the proceedings before it were not sufficient to support the view that such legislation indirectly established a monopoly hindering the free movement of goods, since any individual breeder was free to request the insemination centre for his area to supply him with semen from a production centre of his choice, in France or abroad.

38 It must however be added that the question whether the operation of approved centres does in practice lead to discrimination against imported bovine semen should be assessed in the light of Article 30 of the EC Treaty. It is for the referring court to determine the relevant facts (see Case C-323/93 *Centre d'Insémination de la Crespelle* v *Coopérative de la Mayenne* [1994] ECR I-5077, paragraph 39).

39 As regards Article 59 of the Treaty, given the answer to the first question there is no need to reply to that aspect of the fifth question.

40 The answer to the fifth question must therefore be that Article 37 of the Treaty does not apply to a monopoly in the provision of services, even if such a monopoly prohibits insemination by persons, even those duly qualified and with the relevant capacity, other than the staff of the artificial-insemination centres which enjoy the monopoly, provided that it does not contravene the principle of the free movement of goods by discriminating against imported products to the advantage of products of domestic origin.

Costs

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

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Tribunal de Grande Instance, Bergerac, by order of 14 January 1994, hereby rules:

1. **Articles 52 and 59 of the EC Treaty, Council Directive 78/1026/EEC of 18 December 1978 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 Council Directive 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 do not apply to situations which are purely internal to a Member State such as those of nationals of a Member State wishing to carry out the activity of artificial insemination within that State without having previously trained for or carried out that activity in another Member State.**

2. **Council Directive 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species and Council Directive 87/328/EEC of 18 June**

1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species do not preclude national legislation which gives insemination centres a territorial monopoly to practise artificial insemination while making practice as an inseminator conditional upon the issue of a licence as head of an insemination centre or as an inseminator and the issue of such a licence conditional upon the production of a certificate from a director of an authorized artificial-insemination centre.

3. Article 37 of the EC Treaty does not apply to a monopoly in the provision of services, even if such a monopoly prohibits insemination by persons, even those duly qualified and with the relevant capacity, other than the staff of the artificial-insemination centres which enjoy the monopoly, provided that it does not contravene the principle of the free movement of goods by discriminating against imported products to the advantage of products of domestic origin.

Edward Moitinho de Almeida Gulmann

Jann Sevón

Delivered in open court in Luxembourg on 7 December 1995.

R. Grass D. A. O. Edward

Registrar President of the Fifth Chamber