JUDGMENT OF THE COURT
26 February 1991 *

In Case C-154/89,

Commission of the European Communities, represented by its Legal Adviser Étienne Lasnet, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Edwige Belliard, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent, and Gérard de Bergues, Principal Deputy Secretary in the same Ministry, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince-Henri,

defendant,

APPLICATION for a declaration that by making the provision of services by tourist guides accompanying groups of tourists from another Member State subject to possession of a licence which requires the acquisition of a specific qualification normally obtained by success in an examination the French Republic has failed to fulfil its obligations under Article 59 of the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida and Díez de Velasco (Presidents of Chambers), C. N. Kakouris, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: French.

having regard to the Report for the Hearing,

after hearing oral argument on behalf of the parties at the hearing on 8 November 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 5 December 1990,

gives the following

Judgment

1 By an application lodged at the Court Registry on 2 May 1989, the Commission brought an application under Article 169 of the EEC Treaty for a declaration that, by making the provision of services by tourist guides accompanying groups of tourists from another Member State subject to possession of a licence which requires the acquisition of a specific qualification normally obtained by success in an examination, where those services consist in guiding tourists in places in certain departments and municipalities other than museums or historical monuments which may be visited only with a specialized professional guide, the French Republic has failed to fulfil its obligations under Article 59 of the EEC Treaty.

2 The provisions in issue in this application are Articles 1(c) and 10 of Law No 75-627 of 11 July 1975 laying down the conditions for the carrying on of activities relating to the organization of travel and tours (Official Journal of the French Republic of 13 July 1975, p. 7230) and its implementing decree, Decree No 77-363 of 28 March 1977 (Official Journal of the French Republic of 3 April 1977, p. 1890), as amended by Decree No 83/912 of 13 October 1983 (Official Journal of the French Republic of 15 October 1983, p. 3110).

3 Under those provisions, tourist guides (referred to as 'guides-interprètes') are natural persons whose task is to guide French or foreign tourists and in particular to conduct guided tours in public thoroughfares, museums and historical monuments and on public transport.

4 On 21 November 1986, the Commission, pursuant to Article 169 of the EEC Treaty, addressed to the French Government a letter of formal notice. According to that letter France had not complied with the requirements of Community law, in particular Article 59 of the EEC Treaty, as regards the provision of services by tourist guides travelling with a group of tourists from another Member State, where that service is provided in certain departments or municipalities. By a letter dated 5 March 1987 the French authorities challenged the Commission's point of view. On 2 May 1988 the Commission issued a reasoned opinion in which it reiterated its point of view and requested the French Government to adopt the measures necessary to comply with it within a period of two months. Since it received no reply the Commission brought these proceedings.

5 Reference is made to the Report for the Hearing for a more detailed account of the facts of the case, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 As a preliminary matter it should be pointed out that the activities of a tourist guide from a Member State other than France who accompanies tourists on an organized tour from that other Member State to France may take two distinct legal forms. A tour company established in another Member State may itself employ guides. In that case it is the tour company that provides the service to tourists through its own guides. A tour company may also engage self-employed tourist guides established in that other Member State. In that case, the service is provided by the guide to the tour company.

7 The two cases described above thus relate to the provision of services by the tour company to tourists and by the self-employed tourist guide to the tour company respectively. Such services, which are of limited duration and are not governed by the provisions on the free movement of goods, capitals and persons, constitute activities carried on for remuneration within the meaning of Article 60 of the EEC Treaty.

8 It must be determined whether such activities fall within the scope of Article 59 of the Treaty.

9 Although Article 59 of the Treaty expressly contemplates only the situation of a person providing services who is established in a Member State other than that in which the recipient of the service is established, the purpose of that Article is nevertheless to abolish restrictions on the freedom to provide services by persons who are not established in the State in which the service is to be provided (see judgment in Case 76/81 *Transporoute* v *Minister of Public Works* [1982] ECR 417, at paragraph 14). It is only when all the relevant elements of the activity in question are confined within a single Member State that the provisions of the Treaty on freedom to provide services cannot apply (judgment in Case 52/79 *Procureur du Roi* v *Debauve* [1980] ECR 833, at paragraph 9).

10 Consequently, the provisions of Article 59 must apply in all cases where a person providing services offers those services in a Member State other than that in which he is established, wherever the recipients of those services may be established.

11 Since the present case and the two situations described in paragraph 7 of this judgment concern the provision of services in a Member State other than that in which the person providing them is established, Article 59 of the Treaty must apply.

12 It should further be pointed out that Articles 59 and 60 of the Treaty require not only the abolition of any discrimination against a person providing services on account of his nationality but also the abolition of any restriction on the freedom to provide services imposed on the ground that the person providing a service is established in a Member State other than the one in which the service is provided. In particular, the Member State cannot make the performance of the services in its territory subject to observance of all the conditions required for establishment; were it to do so the provisions securing freedom to provide services would be deprived of all practical effect.

13 The requirement imposed by the abovementioned provisions of French legislation amount to such a restriction. By making the provision of services by tourist guides accompanying a group of tourists from another Member State subject to

possession of a specific qualification, that legislation prevents both tour companies from providing that service with their own staff and self-employed tourist guides from offering their services to those companies for organized tours. It also prevents tourists taking part in such organized tours from availing themselves at will of the services in question.

14 However, in view of the specific requirements in relation to certain services, the fact that a Member State makes the provision thereof subject to conditions as to the qualifications of the person providing them, pursuant to rules governing such activities within its jurisdiction, cannot be considered incompatible with Articles 59 and 60 of the Treaty. Nevertheless, as one of the fundamental principles of the Treaty the freedom to provide services may be restricted only by rules which are justified in the general interest and are applied to all persons and undertakings operating in the territory of the State where the service is provided, in so far as that interest is not safeguarded by the rules to which the provider of such a service is subject in the Member State where he is established. In addition, such requirements must be objectively justified by the need to ensure that professional rules of conduct are complied with and that the interests which such rules are designed to safeguard are protected (see *inter alia* the judgment in Case 205/84 *Commission* v *Germany* [1986] ECR 3755, at paragraph 27).

15 Accordingly, those requirements can be regarded as compatible with Articles 59 and 60 of the Treaty only if it is established that with regard to the activity in question there are overriding reasons relating to the public interest which justify restrictions on the freedom to provide services, that the public interest is not already protected by the rules of the State of establishment and that the same result cannot be obtained by less restrictive rules.

16 The French Government contends that the French legislation in question seeks to ensure the protection of general interests relating to the proper appreciation of places and things of historical interest and the widest possible dissemination of knowledge of the artistic and cultural heritage of the country. According to the French Government, those interests are not adequately safeguarded by the rules to which the provider of the services, in this case the tour company, is subject in the Member State in which it is established. Several States require no occupational qualifications for tourist guides or demand no special knowledge of the historical and cultural heritage of other countries. In the absence of harmonization on that point the French legislation is not, therefore, incompatible with Article 59 of the EEC Treaty.

17 The general interest in the proper appreciation of places and things of historical interest and the widest possible dissemination of knowledge of the artistic and cultural heritage of a country can constitute an overriding reason justifying a restriction on the freedom to provide services. However, the requirement in question contained in the French legislation goes beyond what is necessary to ensure the safeguarding of that interest inasmuch as it makes the activities of a tourist guide accompanying groups of tourists from another Member State subject to possession of a licence.

18 The service of accompanying tourists is performed under quite specific conditions. The independent or employed tourist guide travels with the tourists and accompanies them in a closed group; in that group they move temporarily from the Member State of establishment to the Member State to be visited.

19 In those circumstances a licence requirement imposed by the Member State of destination has the effect of reducing the number of tourist guides qualified to accompany tourists in a closed group, which may lead a tour operator to have recourse instead to local guides employed or established in the Member State in which the service is to be performed. However, that consequence may have the drawback that tourists who are the recipients of the services in question do not have a guide who is familiar with their language, their interests and their specific expectations.

20 Moreover, the profitable operation of such group tours depends on the commercial reputation of the operator, who faces competitive pressure from other tour companies; the need to maintain that reputation and the competitive pressure themselves compel companies to be selective in employing tourist guides and exercise some control over the quality of their services. Depending on the specific expectations of the groups of tourists in question, that factor is likely to contribute to the proper appreciation of places and things of historical interest and to the widest possible dissemination of knowledge relating to the artistic and cultural heritage, in the case of conducted tours of places other than museums or historical monuments which may be visited only with a professional guide.

21 It follows that in view of the scale of the restrictions it imposes, the legislation in issue is disproportionate in relation to the objective pursued, namely to ensure the proper appreciation of places and things of historical interest and the widest dissemination of knowledge of the artistic and cultural heritage of the Member State in which the tour is conducted.

22 The French Government further submits that it is impossible to reconcile the Commission's point of view as expressed in its application with the action taken by it at the same time with a view to the adoption of the proposal for a directive on a second general system for the recognition of professional education and training (Official Journal 1989 C 263, p. 1), which complements Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (Official Journal 1989 L 19, p. 16).

23 It is true that in the case of occupations in respect of which the Community has laid down no minimum level of necessary qualifications, that proposal for a directive allows Member States themselves to determine that minimum level.

24 Nevertheless, it should be recalled that provisions of secondary legislation can only concern national measures which are compatible with the requirements of Article 59 of the Treaty, as defined in the case law of the Court.

25 It must consequently be held that by making the provision of services by tourist guides travelling with a group of tourists from another Member State, where those services consist in guiding such tourists in places in certain departments and municipalities other than museums and historical monuments which may be visited only with a specialized professional guide, subject to possession of a licence which requires the acquisition of a specific qualification normally obtained by success in an examination, the French Republic has failed to fulfil its obligations under Article 59 of the Treaty.

Costs

26 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has been unsuccessful it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by making the provision of services by tourist guides travelling with a group of tourists from another Member State, where those services consist in guiding such tourists in places in certain departments and municipalities other than museums or historical monuments which may be visited only with a specialized professional guide, subject to possession of a licence which requires the acquisition of a specific qualification normally obtained by success in an examination, the French Republic has failed to fulfil its obligations under Article 59 of the EEC Treaty;

(2) Orders the French Republic to pay the costs.

Due Mancini Moitinho de Almeida Díez de Velasco

Kakouris Schockweiler Grévisse Zuleeg Kapteyn

Delivered in open court in Luxembourg on 26 February 1991.

J.-G. Giraud
Registrar

O. Due
President.