REPORT FOR THE HEARING
in Case C-154/89 *

I — Facts and procedure

1. *Legal Background*

French legislation defines tourist guides as natural persons whose task is to guide French or foreign tourists and, in particular, to conduct guided tours in public thoroughfares, in museums and historical monuments and on public transport (Article 63 of Decree No 77-363 of 28 March 1977, Official Journal of the French Republic, p. 1890).

In carrying on their occupation in the departments and municipalities included in the list drawn up by decree of the Minister responsible for tourism, tourist guides must be in possession of an occupational licence. That licence is proof of the acquisition of a specific qualification, generally obtained by success in an examination (Article 10 of Law No 75-627 of 11 July 1975, Official Journal of the French Republic, p. 7230; Article 69 of Decree No 77-363).

Article 3 of Decree No 83-912 of 13 October 1983 (Official Journal of the French Republic, p. 3110), imposes a penalty on persons who carry on such activities without a licence in circumstances where its possession is mandatory.

In some Member States the activities of tourist guides are also subject to professional rules; in others there are no such rules.

The fourteenth recital in the preamble to Council Directive 75/368/EEC of 16 June 1975 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of various activities (ex ISIC Division 01 to 85) and, in particular, transitional measures in respect of those activities (Official Journal 1975 L 167, p. 22) states as follows:

'Whereas the activities of tourist guides are pursued in certain Member States within fixed territorial limits and are subject to detailed rules; whereas they should therefore be excluded from this Directive with the exception of the activities of couriers and interpreter-guides.'

Article 2(5) of that directive provides that it is not to apply to the activities of tourist guides, with the exception of the activities of couriers and interpreter-guides.

The Commission has published a proposal for a Council Directive on a second general

* Language of the case: French.

system for the recognition of professional education and training, which complements Directive 89/48/EEC (Official Journal 1989 C 263, p. 1). The second recital in the preamble to the proposal states that:

'Whereas, for those occupations for the pursuit of which the Community has not laid down the necessary minimum level of qualification, Member States reserve the option of fixing such a level with a view to guaranteeing the quality of services provided in their territory; whereas, however, they may not, without infringing their obligations laid down in Arts 5, 48, 52 and 59 of the Treaty, require a national of a Member State to obtain those qualifications which in general they determine only by reference to diplomas issued under their own national education systems, where the person concerned has already acquired all or part of those qualifications in another Member State; whereas, as a result, any host Member State in which an occupation is regulated is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires.'

Article 5 of the proposal provides, *inter alia*, as follows:

'Where, in the host Member State, the taking up or pursuit of a regulated profession is subject to possession of a certificate, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals;

(a) If the applicant holds the diploma, as defined in this directive, or the Directive 89/48/EEC, or the certificate required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma or certificate having being awarded in a Member State;

or

(b) If the applicant has pursued the profession in question full-time for two years during the previous ten years in another Member State which does not regulate that profession, within the meaning of Article 1(d) and the first sub-paragraph of Article 1(e), and possesses evidence of one or more formal qualifications . . . '

2. *Background to the dispute*

The incompatibility of certain effects of the French legislation with Article 59 of the EEC Treaty formed the subject matter of a letter from the Commission to the French government of 21 November 1986. In that letter the Commission, in accordance with the procedure provided for in Article 169 of the EEC Treaty, requested the French government to submit its observations within a period of two months from the date of receipt of that letter. By a letter dated 5 March 1987 the French authorities disputed the Commission's views. The Commission issued a reasoned opinion on 2 May 1988. Since comparable legislation to that in issue is in force in Italy, Spain, Portugal and Greece, the French authorities suggested in a letter of 29 September 1988 to the Commission that a meeting should be arranged with those Member States. That meeting was held on 25 November 1988.

Following that meeting the French authorities, in a letter of 7 December 1988, proposed a compromise to the Commission. By a letter of 2 February 1989 the Commission replied that it did not consider 'the compromise put forward by the French authorities to be such as to alter its position as stated in the reasoned opinion of 2 May 1988' That reply was followed by a letter to the Commission from the French Minister for Tourism expressing the desire to continue negotiations with the other Member States concerned and the Commission The Commission replied to the Minister on 12 May 1989, that is to say after these proceedings were brought.

3. *Procedure*

The Commission's application was received at the Court Registry on 2 May 1989. The written procedure followed the normal course

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 enquiry.

II — Forms of order sought by the parties

The Commission, the *applicant*, claims that the Court should:

(i) declare that by requiring tourist guides travelling with a group of tourists from a Member State other than France to hold a licence (*carte professionnelle*), dependent on the acquisition of a specific qualification generally obtained by success in an examination, in order to provide services in French departments or municipalities appearing on a list drawn up by order of the Minister for Tourism, where those services involve guiding such tourists in places 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;

(ii) order the French Republic to pay the costs.

The French Republic, the *defendant* contends that the Court should:

(i) declare the application unfounded;

(ii) order the applicant to pay the costs.

III — Pleas in law and arguments of the parties

The *Commission* considers that certain effects of the French legislation concerning the activities of tourist guides are incompatible with Article 59 of the EEC Treaty. In the present application it is not challenging the specific rules applicable to guided tours of certain museums or cultural and historic sites open to the public, which require guides to have special qualifications. The general interest in ensuring proper appreciation of the historical and cultural heritage may justify the requirement of such occupational qualifications.

The present proceedings concern the specific case of the activities of salaried tourist guides who work for a tour operator established in another Member State which from its operating centre organizes group travel to France for tourists (for example by coach). On behalf of the tour operator the guide accompanies the group throughout the whole journey, travels abroad with the group and provides commentary on the cultural, historical and artistic features of the country. That undertaking, acting solely through the intermediary of its guides, is therefore the provider of the services. According to the Commission, the Court has held that type of work to constitute the provision of services (judgment of the Court in Joined Cases 62/81 and 63/81 *Seco* v *EVI* [1982] ECR 223).

The qualification requirement contained in the relevant French legislation in issue prevents a tour operator established in a Member State where the occupation of tourist guide is not regulated from using its own guides who usually accompany groups of tourists. Those guides have no licence *(carte professionnelle).* Consequently, the undertaking is obliged to engage a local guide who has a licence or, failing that, the guides accompanying the group must have obtained the requisite French qualification. The legislation thus impedes the undertaking's freedom to provide services to tourists and the guide's freedom to provide services to the tour operator and to the tourists, who would prefer their usual guide. The Commission emphasizes that Article 59 of the EEC Treaty envisages the abolition of restrictions on freedom to provide services, even those applicable without discrimination, where such restrictions are not justified by the general interest.

In the first place, the legislation in question is not supported by the general interest in the protection of consumers. The situation is one of a closed circuit: the tourist guide, representing the tour operator, and the tourists (the consumers) travel together from the Member State in which the tour operator is established in order respectively to provide and to receive the service in question in another Member State. In such a situation, the commercial reputation of the tour operator, having regard to the degree of competition in the market, affords a sufficient degree of protection to the interests of consumers.

Nor, owing to its ineffectiveness, is the contested legislation justified by the general interest in the proper appreciation of the historical and cultural heritage. Cultural and historical information is already disseminated to a large extent, in many different ways, by the media. Freedom of the press and of expression means that such information is free of any real control. Consequently, such information has at least as great an impact on the appreciation of tourist and cultural assets as the information given by tourist guides.

Moreover, the Commission considers the examination requirement to be disproportionate. The requirement of fluency in the French language is superfluous for a tourist guide accompanying a closed group of tourists and composed exclusively of people from another Member State, whose language will usually be a language other than French.

The *French Government* argues that the French legislation in question seeks to protect 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 the country.

Those interests are not, in its view, adequately safeguarded by the rules to which the provider of services (the tour company) is subject in the Member State in which it is established. Several States require no qualifications in order to act as a tourist guide, or, where they do, require no knowledge of the historical and cultural heritage of other countries. In the absence of harmonization on this point, the French legislation is not incompatible with Article 59 of the EEC Treaty.

As to the ineffectiveness of the French legislation alleged by the Commission, the French Government maintains that the effect of a guided tour on the appreciation of the historical and cultural heritage is greater than that of a television or radio programme or a brochure. As a general rule contact with a tourist guide leaves behind more lasting impressions than the media.

The French Government goes on to point out that the tourist guide examination is open to any Community citizen who prepares himself for it correctly. In 1987, out of 76 candidates who sat the exam 44 were nationals of another Member State; in 1988, out of 43 candidates 21 were nationals of another Member State.

In no way does the examination constitute a disproportionate requirement in relation to the objective pursued. The examination consists of a 30-minute oral test on knowledge of France, one half of it in the candidate's mother tongue and the other half in French, and also tests the candidate's aptitude for conducting guided tours.

In its rejoinder the French Government states that the Commission's point of view appears to it to conflict with the proposal for a Council Directive on a second general system for the recognition of professional education and training, which complements Directive 89/48/EEC and covers *inter alia* the training in France of tourist guides. The second recital in the preamble to the proposal refers solely to the obligation on Member States to take account of qualifications acquired in a Member State other than the State in which the services are provided. That obligation in no way entails an obligation for the Member States to take account of the lack of vocational training in certain Member States. Under Article 5 of the proposal, a Member State is empowered to refuse authorization to a national of a Member State who does not have adequate prior training. Thus, in the French Government's view, the Commission's proposal lays down more stringent conditions for the exercise of an activity regulated in a Member State than those which the Commission is seeking to challenge in these proceedings.

P. J. G. Kapteyn
Judge-Rapporteur