JUDGMENT OF THE COURT (Second Chamber)
13 December 1989 *

In Case C-49/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour de cassation (Court of Cassation) of the French Republic for a preliminary ruling in the action pending before that court between

Corsica Ferries (France), a company incorporated under French law whose registered office is in Bastia,

and

Direction générale des douanes françaises (Directorate-General of French Customs),

on the interpretation of Articles 59, 62 and 84 of the EEC Treaty,

THE COURT (Second Chamber)

composed of: F. A. Schockweiler, President of Chamber, G. F. Mancini and T. F. O'Higgins, Judges

Advocate General: C. O. Lenz
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of

Corsica Ferries (France), by Mr Thouvenin, of the Paris Bar, and Mr Scapel, of the Marseille Bar,

the Government of the French Republic, by Claude Chavance, attaché principal d'administration centrale in the Directorate for Legal Affairs of the Ministry of Foreign Affairs,

* Language of the case: French

the Commission of the European Communities, by its Legal Adviser Jean Amphoux,

having regard to the Report for the Hearing and further to the hearing on 12 October 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 November 1989,

gives the following

Judgment

1 By judgment of 17 January 1989, which was received at the Court on 23 February 1989, the Cour de cassation of the French Republic referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the EEC Treaty, in particular Articles 59, 62 and 84.

2 Those questions arose in proceedings between Corsica Ferries (France), hereinafter referred to as 'Corsica Ferries', and the Direction générale des douanes in regard to charges levied on the shipowner in 1981 and 1982 in respect of passengers embarked, disembarked or transferred in Corsican ports.

3 In regard to those ports, Article R.212-20 of the French code des ports maritimes, as amended by the Decree of 12 May 1981, levies a charge on all passengers travelling to Corsica from mainland France or Sardinia and a charge at an identical rate on all passengers travelling to or from a port situated in Europe or North Africa.

4 According to Corsica Ferries, that provision is contrary to Article 59 *et seq.* of the EEC Treaty inasmuch as it discriminates between ships plying between Corsica and ports in mainland France, who are not required to pay tax in respect of passengers who embark at a Corsican port, and ships, such as those of Corsica Ferries, plying between Corsica and ports in another State, which are subject to tax both on arrival in and departure from the Corsican port.

5 Since it considered that an interpretation of certain provisions of the EEC Treaty was necessary, the Cour de cassation stayed the proceedings until the Court of Justice had given a preliminary ruling on the following question:

'Must the EEC Treaty, in particular Articles 59, 62 and 84, be interpreted as meaning that a Member State is authorized, in connection with the use by a ship of harbour installations situated in its island territory, to levy charges on the embarkation and disembarkation of passengers when travelling to or arriving from a port situated in another Member State, whilst in the case of travel between two ports situated within national territory those charges are levied only on embarkation at the island port?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 In order to answer the question referred to the Court by the Cour de cassation, it must first be pointed out that the French legislation at issue in the main proceedings may constitute a restriction on freedom to provide services within the Community within the meaning of the first paragraph of Article 59 of the EEC Treaty in so far as it discriminates between persons providing transport services between a port situated in national territory and a port situated in another Member State of the Community and persons providing transport services between two ports situated in national territory.

8 As the Court has decided on various occasions, the articles of the EEC Treaty concerning the free movement of goods, persons, services and capital are fundamental Community provisions and any restriction, even minor, of that freedom is prohibited.

9 In the area of freedom to provide services such a restriction may, as the Court pointed out in the judgment of 6 July 1988 in Case 127/86 *Ministère public* v *Ledoux* [1988] ECR 3741, result from national tax measures which affect the trader's exercise of that right.

10 Although Article 59, guaranteeing freedom to provide services within the Community, has been directly and unconditionally applicable since the expiry of the transitional period provided for in Article 8 of the Treaty, under Article 61(1) of the Treaty freedom to provide services in the field of transport is to be governed by the provisions of the title relating to transport (see the judgments of 30 April 1986 in Joined Cases 209 to 213/84 *Ministère public* v *Asjes* [1986] ECR 1457 and of 13 July 1989 in Case 4/88 *Lambregts Transportbedrijf* v *Belgian State* [1989] ECR 2583, paragraphs 8 and 9).

11 It follows, as the Court pointed out in the judgment of 30 April 1986 (cited above, paragraph 37), that in the transport sector the objective laid down in Article 59 of the Treaty of abolishing during the transitional period restrictions on freedom to provide services should have been attained in the framework of the common policy provided for in Articles 74 and 75.

12 With regard in particular to maritime transport, Article 84(2) of the Treaty provides that the Council may decide whether, to what extent and by what procedure appropriate provisions may be laid down for that kind of transport.

13 It was only in Regulation No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (Official Journal 1986, L 378, p. 1),

which entered into force on 1 January 1987, that the Council adopted, on the basis of Article 84(2) of the Treaty, the measures necessary to achieve freedom to provide services in maritime transport between Member States.

14 It must therefore be concluded that in 1981 and 1982, the period at issue in the main proceedings, freedom to provide services in maritime transport had not yet been implemented and that consequently the Member States were entitled to apply provisions such as those at issue in the main proceedings.

15 That conclusion is not weakened by the fact that those rules were reintroduced into the French code des ports maritimes in 1981 after having been repealed in 1969. In the light of the existence of Article 61(1) of the Treaty, Article 62, which prohibits the Member States from introducing any new restrictions on the freedom to provide services which had in fact been attained at the date of the entry into force of the Treaty, does not apply.

16 The answer to the question referred to the Court by the Cour de cassation of the French Republic should therefore be that the EEC Treaty, in particular Articles 59, 61, 62 and 84, did not, before the entry into force of Council Regulation No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, prevent a Member State from levying, in connection with the use by a ship of harbour installations situated within its island territory, charges on the embarkation and disembarkation of passengers arriving from or going to a port situated in another Member State, whilst in the case of travel between two ports situated within national territory those charges were levied only on embarkation at the island port.

Costs

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

On those grounds,

THE COURT (Second Chamber),

in answer to the question submitted to it by the Cour de cassation of the French Republic, by judgment of 17 January 1989, hereby rules:

The EEC Treaty, in particular Articles 59, 61, 62 and 84, did not, before the entry into force of Council Regulation No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, prevent a Member State from levying, in connection with the use by a ship of harbour installations situated in its island territory, charges on the embarkation and disembarkation of passengers arriving from or going to a port situated in another Member State, whilst in the case of travel between two ports situated within national territory those charges were levied only on embarkation at the island port.

Schockweiler Mancini O'Higgins

Delivered in open court in Luxembourg on 13 December 1989.

J.-G. Giraud
Registrar

F. A. Schockweiler
President of the Second Chamber