JUDGMENT OF THE COURT (Fourth Chamber)
16 February 1995 *

In Joined Cases C-29/94, C-30/94, C-31/94, C-32/94, C-33/94, C-34/94 and C-35/94,

REFERENCES to the Court under Article 177 of the EC Treaty by the Tribunal de Grande Instance de Charleville-Mézières (France) for a preliminary ruling in the criminal proceedings before that court against

Jean-Louis Aubertin,

Bernard Collignon,

Guy Creusot,

Isabelle Diblanc,

Gilles Josse,

Jacqueline Martin,

Claudie Normand,

* Language of the case: French.

on the interpretation of Council Directive 82/489/EEC of 19 July 1982 laying down measures to facilitate the effective exercise of the right of establishment and freedom to provide services in hairdressing (OJ 1982 L 218, p. 24),

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, C. N. Kakouris (Rapporteur) and J. L. Murray, Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the French Government, by C. de Salins, Sub-Director in the Directorate for Legal Affairs of the Ministry of Foreign Affairs, and P. Martinet, Secretary for Foreign Affairs in the same directorate, acting as Agents,

— the Commission of the European Communities, by M.-J. Jonczy, Legal Adviser, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 15 December 1994,

gives the following

Judgment

1 By seven judgments of 4 October 1993, received at the Court on 26 January 1994, the Tribunal de Grande Instance (Regional Court), Charleville-Mézières (France), exercising its criminal jurisdiction, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Council Directive 82/489/EEC of 19 July 1982 laying down measures to facilitate the effective exercise of the right of establishment and freedom to provide services in hairdressing (OJ 1982 L 218, p. 24).

2 That question was raised in criminal proceedings instituted by the Public Prosecutor's Office under Article 5 of Law No 46-1173 of 23 May 1946 regulating the conditions of access to the trade of hairdresser (*Journal Officiel de la République Française — JORF* of 24 May 1946, p. 4539) against the accused persons, Mr Aubertin, Mr Collignon, Mr Creusot, Ms Diblanc, Mr Josse, Ms Martin and Mr Normand, of French nationality and resident in France, for operating hairdressing salons in France without holding a hairdressing diploma (brevet professionnel de coiffure) or a master's diploma (brevet de maîtrise) and without a qualified manager being present, as required by Article 3 of that law, which provides that 'the operation of a hairdressing salon requires a qualified manager with a registered contract where the owner of that salon does not hold a hairdressing diploma or master's diploma'.

3 In order to transpose Directive 82/489, Law No 46-1173 was amended by Law No 87-343 of 22 May 1987 supplementing Law No 46-1173 with regard to nationals of the Member States of the European Economic Community (JORF of 23 May 1987, p. 5650).

4 Law No 87-343 inserted Article 3-1 after Article 3 of Law 46-1173. Article 3-1 is worded as follows:

'Nationals of the Member States of the European Economic Community who have worked as hairdressers in a Member State of the Community other than France are exempt from the requirement of holding a diploma under Article 3, if that activity fulfils the following conditions:

(1) The pursuit of that activity must have been genuine and lawful under the provisions governing the activity of hairdresser in the State where the activity was pursued.

(2) Furthermore, it must have been pursued independently or as a manager of a business during a continuous period of six years. That period shall be reduced to three years if the person concerned proves to the competent French authorities:

— either that he has had previous training of at least three years for which he has received a diploma recognized by the State or a competent trade organization in accordance with the provisions governing access to the trade in the State where the activity was performed;

— or he has pursued the trade as an employed person for at least five years.

[...]'

5 Circular No 88010 of 27 July 1988 on the application of Law No 87-343 of 22 May 1987 states that 'the provisions of the Law of 22 May 1987 are also appli-

cable to hairdressers of French nationality where they have fulfilled the conditions in a Member State of the EEC other than France'.

6 The accused persons argued before the national court that Article 3 of Law No 46-1173, under which they were charged, is contrary to Articles 52 and 59 of the Treaty. It discriminates against French nationals, since Article 3-1 of Law No 87-343 permits hairdressers who are nationals of other Member States of the Community to operate a hairdressing salon without holding the diploma required of French nationals and without being obliged to employ a manager who holds such a diploma.

7 Since the Tribunal de Grande Instance de Charleville-Mézières considered that the outcome of the criminal proceedings depended on the interpretation of Directive 82/489, it decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do Articles 3 and 3-1 of Law No 46-1173 of 23 May 1946 constitute discrimination between nationals of the EEC and French nationals having regard to Law No 87-343 of 22 May 1987 adopted in implementation of Council Directive 82/489/EEC of 19 July 1982?'

8 That question must be understood as meaning that the national court is asking whether Community law, in particular Directive 82/489, must be interpreted as precluding national rules which require nationals of that Member State to hold a diploma in order to operate a hairdressing salon, while permitting hairdressers who are nationals of other Member States to operate a hairdressing salon without holding such a diploma and without being obliged to entrust its operation to a manager who holds that diploma.

9 It is settled case-law that the Treaty provisions on the freedom of movement for persons cannot be applied to activities which are confined in all respects within a single Member State (see, for example, Joined Cases C-330/90 and C-331/90 *López Brea and Hidalgo Palacios* [1992] ECR I-323, paragraph 7).

10 It is clear from the judgments of the national court that the criminal proceedings before it concern French nationals working as hairdressers in France who do not claim to have obtained in another Member State the occupational qualifications required to pursue those activities.

11 There is thus no connecting factor between such situations and any of those contemplated by Community law, so that the Treaty rules on freedom of establishment are inapplicable.

12 It is evident from the fourth and fifth recitals in the preamble to Directive 82/489 that the directive does not aim to harmonize the conditions laid down by national rules for access to the occupation of hairdresser and the pursuit of that occupation.

13 Accordingly, the reply to be given to the national court is that Community law, in particular Directive 82/489, must be interpreted as not precluding national rules which require that nationals of that Member State hold a diploma in order to operate a hairdressing salon, while permitting hairdressers who are nationals of other Member States to operate a hairdressing salon without holding such a diploma and without being obliged to entrust its operation to a manager holding that diploma.

Costs

14 The costs incurred by the Commission of the European Communities and the French Government, 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 (Fourth Chamber),

in answer to the questions referred to it by the Tribunal de Grande Instance, Charleville-Mézières, by judgments of 4 October 1993, hereby rules:

Community law, in particular Council Directive 82/489/EEC of 19 July 1982 laying down measures to facilitate the effective exercise of the right of establishment and freedom to provide services in hairdressing, must be interpreted as not precluding national rules which require that nationals of that Member State hold a diploma in order to operate a hairdressing salon, while permitting hairdressers who are nationals of other Member States to operate a hairdressing salon without holding such a diploma and without being obliged to entrust its operation to a manager holding that diploma.

Kapteyn Kakouris Murray

Delivered in open court in Luxembourg on 16 February 1995.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Fourth Chamber