JUDGMENT OF THE COURT (Sixth Chamber)

14 November 2002 *

In Case C-435/00,

REFERENCE to the Court under Article 234 EC by the Diikitiko Protodikio Rodou (Greece) for a preliminary ruling in the proceedings pending before that court between

Geha Naftiliaki EPE,

Total Scope NE,

Stavros Georgiou,

Afoi Charalambis Bros OE,

Anastasios Charalambis,

Nikolaos Sarlis,

Dimitrios Kattidenios,

Antonios Charalambis,

Vassilios Dimitracopoulos

and

NPDD Limeniko Tamio Dodekanisou,

Elliniko Dimosio,

* Language of the case: Greek.

on the interpretation of Article 1 of Council Regulation (EEC) 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 (OJ 1986 L 378, p. 1),

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, C. Gulmann, F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Geha Naftiliaki EPE, Total Scope NE, Mr Georgiou, Charalambis Bros OE, Mr Anastasios Charalambis and Mr Sarlis, by E. Bakaloumas, dikigoros,

— NPDD Limeniko Tamio Dodekanisou, by I. Stamoulis, dikigoros,

— the Commission of the European Communities, by M. Patakia and B. Mongin, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 9 July 2002,

gives the following

Judgment

1 By order of 10 July 2000, received at the Court on 27 November 2000, the Diikitiko Protodikio Rodou (Administrative Court of First Instance, Rhodes) referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Article 1 of Council Regulation (EEC) 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 (OJ 1986 L 378, p. 1).

2 Those questions were referred in proceedings brought by Geha Naftiliaki EPE, Total Scope NE, Mr Georgiou, Charalambis Bros OE, Mr Anastasios Charalambis, Mr Sarlis, Mr Kattidenios, Mr Antonios Charalambis and Mr Dimitrakopoulos against NPDD Limeniko Tamio Dodekanisou (hereinafter 'the Dodecanese Harbour Fund') and Elliniko Dimosio (the Greek State). They relate to the setting, under Greek legislation, of higher harbour dues for passengers travelling to third countries.

Legal background

Community legislation

3 Regulation No 4055/86 provides as follows:

'*Article 1*

1. Freedom to provide maritime transport services between Member States and between Member States and third countries shall apply in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

2. The provisions of this Regulation shall also apply to nationals of the Member States established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation.

...

4. For the purpose of this Regulation, the following shall be considered "maritime transport services between Member States and between Member States and third countries" where they are normally provided for remuneration:

(a) *intra-Community shipping services*:

the carriage of passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State;

(b) *third-country traffic*:

the carriage of passengers or goods by sea between the ports of a Member State and ports or off-shore installations of a third country.

...

Article 6

1. If a Member State's nationals or shipping companies, as defined in Article 1, paragraphs 1 and 2, are experiencing, or are threatened by, a situation where they do not have an effective opportunity to ply for trade to and from a particular

third country, the Member State concerned shall inform the other Member States and the Commission as soon as possible.

...

Article 7

The Council, acting in accordance with the conditions laid down in the Treaty, may extend the provisions of this Regulation to nationals of a third country who provide maritime transport services and are established in the Community.

...

Article 9

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of Article 1(1) and (2).

...

Article 12

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.'

National legislation

4 Article 6 of Law No 2399/1996 (FEK, A 90), in the version in force when the measures contested in the main proceedings were adopted (hereinafter 'Law No 2399/1996'), provides as follows:

'1. Every passenger who boards a means of marine transport for a destination within Greece or abroad shall be charged special dues in favour of the public body administering and operating the port of embarkation, for the modernisation and improvement of harbour works and facilities, for the use of the port and for other connected objectives relating to improvement of the service to the travelling public.

2. The dues shall consist of a percentage increase in the price of the ticket or a fixed sum in drachmas, depending on the passenger's port of destination, the kind of journey in accordance with the class of vessel and so forth, and shall be determined as follows:

A. For passengers of every kind of passenger vessel, passenger/car vessel and hydrofoil on domestic routes, 5% on the price of tickets.

B. For passengers of passenger and passenger/car vessels flying the Greek or a foreign flag on international routes:

(a) fixed dues of GRD 5 000 for each passenger with a destination of any port of a foreign country, with the exception of the countries of the European Union, Cyprus, Albania, Russia, Ukraine, Moldova and Georgia on the Black Sea;

...

(e) 30% of the revenue from the fixed dues which are provided for in the preceding subparagraphs of this paragraph shall be paid by the harbour funds concerned to the Merchant Seamen's Fund in accordance with the procedures laid down in the relevant provisions applicable to that fund.

C. For passengers who partake in tourist trips (cruises) on tourist passenger vessels (cruise ships) flying the Greek or a foreign flag:

(a) fixed dues of GRD 50 for each passenger who partakes in a day trip between Greek ports, for every port at which the vessel calls. If the day trip also extends to a port abroad, the fixed dues provided for in paragraph B(a), (b) and (c) above shall, as the case may be, be paid at the last port.

...

...

4. The dues shall be indicated on the tickets and their collection shall be the responsibility of the persons who issue the tickets, that is to say shipping agencies, tourist bureaux and similar undertakings. The sum collected in respect of each calendar month must be deposited by the persons responsible for collection, within the first 10 days of the following month, in the special account for the public body administering and operating the port entitled to that sum, which bears the sole reference "Execution of works serving the travelling public" and is held at the Bank of Greece, together with a return indicating the number of tickets issued for each class and the sum of money due. Those sums shall be allocated exclusively to works serving passengers.

5. The undertakings responsible for collection shall be jointly and severally liable with the passengers for payment of the dues in full....

6. Sums owing by way of harbour dues shall be assessed by act of the board of the public body administering and operating the port....'

The main proceedings and the questions referred for a preliminary ruling

5 Geha Naftiliaki EPE and Total Scope NE are the respective owners of the hydrofoils *Fl. Marianna* and *Fl. Zeus*. Messrs Anastasios Charalambis, Sarlis,

Kattidenios, Antonios Charalambis and Dimitrakopoulos are co-owners of the hydrofoil *Iviskos*, the shipping agent for which is Charalambis Bros OE.

6 These three vessels are used for day excursions from the port of Rhodes to Turkey and back. In June 1996, they carried 4 067 day-trippers and 3 703 transit passengers.

7 By assessment of 1 August 1996, the Dodecanese Harbour Fund found that there was a shortfall in the harbour dues payable by, amongst others, Mr Georgiou, representing Geha Naftiliaki EPE and Total Scope NE, and Charalambis Bros OE. That finding was approved on 5 August 1996 by the regional director for the Dodecanese.

8 By the action brought before the national court, the applicants in the main proceedings request that the decisions referred to in the foregoing paragraph be annulled and that certain sums paid in harbour dues be refunded.

9 In support of their action, they submit that the amounts of the harbour dues at issue in the main proceedings were calculated unlawfully. They take the view that the harbour dues should have been calculated on the basis of Article 6(2)(A) of Law No 2399/1996, that is to say at 5% on the price of the ticket, and not on the basis of Article 6(2)(B)(a) of that Law, that is to say at GRD 5 000 for each passenger, since the vessels were chartered under a full charter by tourist agencies for the purpose of day excursions from Rhodes to Turkey and back, and the final destination of those vessels was Rhodes, a domestic port, and not Turkey.

10 The applicants in the main proceedings also contend that hydrofoils are not subject to the dues provided for in Article 6(2)(B)(a) of Law No 2399/1996, because they are not specifically referred to in that provision, but to the dues provided for in Article 6(2)(A) of that Law.

11 They claim that calculating harbour dues by reference to the vessel's destination gives rise to discrimination not only against them but also against passengers. In their submission that discrimination is prohibited by Greece's international obligations. It is, above all, incompatible with Article 59 of the EC Treaty (now, after amendment, Article 49 EC), Article 62 of the EC Treaty (repealed by the Treaty of Amsterdam) and Article 84 of the EC Treaty (now, after amendment, Article 80 EC), and with Regulation No 4055/86.

12 The national court takes the view that the amount of harbour dues found owing under the assessment of 1 August 1996 by the Dodecanese Harbour Fund was lawfully calculated in accordance with Article 6(2)(B)(a) of Law No 2399/1996 because Article 6(2)(C)(a) of that Law is applicable in the main proceedings inasmuch as they relate to day trips.

13 The national court considers that it was correct to apply the dues provided for in Article 6(2)(B)(a) of Law No 2399/1996 to passengers transported by the hydrofoils *Fl. Marianna*, *Fl. Zeus* and *Iviskos*.

14 It furthermore points out that the harbour dues in question in the main proceedings are collected for the use of ports and for the modernisation and

improvement of harbour facilities. The dues are levied in return for a specific service provided to vessels which call at the ports and to their passengers on the occasion of the use of those facilities, and they are paid to the public body administering and operating the port.

15 The national court observes that Regulation No 4055/86 applies the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, with effect from 1 January 1987.

16 Taking the view that application of that regulation to the main proceedings gives rise to difficulties, the Diikitiko Protodikio Rodou has referred the following questions to the Court for a preliminary ruling:

'(1) Is Article 1 of Council Regulation (EEC) No 4055/86 to be interpreted as prohibiting national legislation of a Member State from imposing restrictions in respect of the provision of maritime transport services between Member States and third countries generally, even if those restrictions are imposed without distinction on all vessels, whether they are used by its own nationals providing services or by nationals of other Member States, and on all passengers irrespective of nationality, or is it to be interpreted as prohibiting national legislation of a Member State from introducing restrictions only in respect of the provision of services between another Member State and a third country, reserving in that way more favourable treatment to domestic carriers who provide maritime transport to third countries compared with carriers who are nationals of the other Member States?

(2) May a Member State impose different (higher) harbour dues for the passengers of vessels which call at, or have as their final destination, a port of a third (non-European Union) country than the dues which are imposed on passengers whose destinations are domestic ports or ports in the other Member States of the European Union, even if those dues in both the above cases are imposed on all passengers irrespective of their nationality or that of the vessels, or does a provision of that kind constitute a restriction on the freedom to transport passengers to third countries because the higher dues might have an effect on the choice of routes, so that that provision is inconsistent with Article 1 of Regulation No 4055/86?

(3) If the answer is in the negative, is it possible for the harbour dues which are imposed on passengers whose destinations are ports of third countries to be differentiated still further, according to the third country, on the basis of the criterion of the distance of the ports or their geographical location, or is a national legislative provision of that kind also contrary to the abovementioned regulation, because it constitutes discrimination as regards maritime transport to a particular third country (or particular third countries) and therefore a restriction on maritime transport provided to that country (or those countries)?'

The first question

17 By its first question, the national court is essentially asking whether Article 1 of Regulation No 4055/86 precludes a Member State from imposing, by virtue of national law, any restriction on the supply of services in the area of maritime transport between Member States and third countries, or whether that provision

prohibits only restrictions that discriminate between domestic carriers and carriers who are nationals of other Member States engaging in maritime transport to third countries.

18 The Dodecanese Harbour Fund states that the harbour dues at issue in the main proceedings are payable not by maritime transport companies but by the passengers whom they carry and that they therefore do not fall within the scope of Regulation No 4055/86. It claims that the harbour dues are intended to cover construction and maintenance expenses of harbour facilities and the provision of harbour services in general. Accordingly, they constitute fees that are compatible with Article 81 of the EC Treaty (now Article 77 EC), and their validity cannot be called into question by a provision of secondary Community law such as Article 1 of Regulation No 4055/86.

19 However, as the Commission points out, increasing harbour dues affects the price of the journey in a direct and mechanical way, so that a difference in the fees borne by passengers automatically affects the costs of the journey. The Court has held that the application of harbour charges which differ according to whether a journey is undertaken within one Member State or between Member States constitutes an infringement of the principle of the freedom to provide services, which is prohibited under Regulation No 4055/86 (see Case C-381/93 *Commission* v *France* [1994] ECR I-5145, paragraph 21, and, in regard to airport taxes, Case C-70/99 *Commission* v *Portugal* [2001] ECR I-4845).

20 Since Regulation No 4055/86 has rendered applicable to the sphere of maritime transport between Member States the totality of the Treaty rules governing the freedom to provide services (see *Commission* v *France*, cited above, paragraph 13), it precludes the application of any national legislation whose effect is to make the provision of services between Member States more difficult than that of purely domestic services within a Member State, unless that legislation is justified

by compelling reasons of public interest and the measures enacted thereby are necessary and proportionate (see *Commission* v *Portugal*, cited above, paragraph 28).

21 Since Article 1(1) of Regulation No 4055/86 has extended the principle of the freedom to provide services as regards intra-Community traffic to traffic between a Member State and a third country, the rules established in relation to the former must be applied to the latter.

22 Consequently, the provision of maritime transport services between the port of Rhodes and a Turkish port cannot, in the absence of objective justification (see *Commission* v *France*, cited above, paragraph 16), be subject to more onerous conditions than those to which the provision of comparable services between the port of Rhodes and ports in Greece or other Member States are subject.

23 With regard to Article 81 EC, on which the Dodecanese Harbour Fund has relied, that provision in no way precludes the application of Regulation No 4055/86. Article 81 permits the collection by the carrier, when frontiers are crossed, of charges or dues taking into account 'the costs actually incurred thereby'. The Harbour Fund has not demonstrated that those costs differ according to destination in the same proportions as the harbour dues at issue in the main proceedings.

24 The reply to the first question must therefore be that Article 1 of Regulation No 4055/86 precludes the application in a Member State of different harbour dues for domestic or intra-Community traffic and traffic between a Member State and a third country if that difference is not objectively justified.

The second question

25 By its second question the national court is essentially asking whether, in the light of Article 1 of Regulation No 4055/86, a Member State may impose on passengers of vessels that call at or whose final destination is a port in a third country harbour dues different from those imposed on passengers of vessels whose destination is domestic or in another Member State, where those dues apply irrespective of the nationality of the passengers or of the flag flown by the vessels.

26 Having regard to the considerations set out at paragraphs 19 to 24 of this judgment, the reply to this question must be that the imposition on passengers of vessels that call at or whose final destination is a port in a third country of different harbour dues from those imposed on passengers of vessels whose destination is domestic or in another Member State, without there being any correlation between that difference and the cost of the harbour services enjoyed by those categories of passengers, amounts to a restriction on the freedom to provide services contrary to Article 1 of Regulation No 4055/86.

The third question

27 By its third question, the national court is essentially asking whether Article 1 of Regulation No 4055/86 permits the imposition, for journeys to ports in third countries, of harbour dues that vary according to criteria relating to the distance of those ports or their geographical location.

28 A criterion based on the distance or geographical location of the port of destination cannot in itself justify the imposition of different harbour dues. Such a difference may be justified only where there are objective differences in the services provided to passengers by the carriers (see to that effect *Commission* v *France*, cited above, paragraph 16, and *Commission* v *Portugal*, cited above, paragraph 36).

29 The reply to the third question must therefore be that Article 1 of Regulation No 4055/86 does not permit the imposition, for journeys to ports in third countries, of harbour dues that vary according to criteria relating to the distance of those ports or their geographical location if the difference in the dues is not objectively justified by differences in the way passengers are treated on account of their destination or the place from which they have come.

Costs

30 The costs incurred by the Commission, which has 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 (Sixth Chamber),

in answer to the questions referred to it by the Diikitiko Protodikio Rodou by order of 10 July 2000, hereby rules:

1. **Article 1 of Council Regulation (EEC) 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 precludes the application in a Member State of different harbour dues for domestic or intra-Community traffic and traffic between a Member State and a third country if that difference is not objectively justified.**

2. **The imposition on passengers of vessels that call at or whose final destination is a port in a third country of different harbour dues from those imposed on passengers of vessels whose destination is domestic or in another Member State, without there being any correlation between that difference and the cost of the harbour services enjoyed by those categories of passengers, amounts to a restriction on the freedom to provide services contrary to Article 1 of Regulation No 4055/86.**

3. Article 1 of Regulation No 4055/86 does not permit the imposition, for journeys to ports in third countries, of harbour dues that vary according to criteria relating to the distance of those ports or their geographical location if the difference in the dues is not objectively justified by differences in the way passengers are treated on account of their destination or the place from which they have come.

Puissochet Gulmann Macken

Colneric Cunha Rodrigues

Delivered in open court in Luxembourg on 14 November 2002.

R. Grass

Registrar

J.-P. Puissochet

President of the Sixth Chamber