OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 6 December 1988 *

Mr President,
Members of the Court,

A — Facts

1. The reference for a preliminary ruling with which I am concerned today, submitted by a board attached to the tribunal de grande instance, Paris, concerns the prohibition of discrimination with regard to the compensation of victims of crime. The case raises fundamental questions regarding the freedom to provide services and the concomitant rights of Community citizens.

2. On 11 June 1982, during a visit to Paris, the applicant in the main proceedings, a United Kingdom national, was assaulted, robbed and injured at the exit from a metro station. On 26 May 1983 he applied to the board for compensation for his injuries. His application is based on Article 706-3 of the code de procédure pénale (Code of Criminal Procedure), pursuant to which:

'Any person who suffers harm as a result of acts, intentional or not, which constitute the *actus reus* of an offence may obtain compensation from the State provided the following conditions are met:

(1) the acts caused physical injury resulting in death, permanent invalidity or total incapacity for work lasting for at least one month;

(2) the harm consists in serious interference with the enjoyment of life as a result of loss or reduction of income, increase in expenses, inability to carry on an occupation or physical or psychological harm;

(3) the injured person cannot obtain effective and adequate compensation from any other source.'

3. Article 706-15 of the code de procédure pénale confines the application of that provision to 'persons who are of French nationality or foreign nationals who prove that they are nationals of a State which has concluded a reciprocal agreement with France for the application of the said provisions and satisfy the conditions laid

* Original language: German.

down in the agreement or that they are holders of a residence permit'.

4. On the basis of the latter provision, the agent judiciaire du Trésor (legal representative of the Treasury) submitted that the applicant had no right to compensation. The applicant, on the other hand, argued that the rule in issue was incompatible with Community law, inasmuch as it constituted unlawful discrimination on grounds of nationality. The board hearing the matter therefore stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Are the provisions of Article 706-15 of the code de procédure pénale, which governs cases where a foreign national who is the victim of an offence in France may obtain compensation from the French State, compatible with the prohibition of discrimination contained *inter alia* in Article 7 of the EEC Treaty?'

5. For further details of the circumstances of the case and the submissions of the parties reference is made to the Report for the Hearing.

B — Opinion

6. The question referred by the board requires the determination of the scope and limits of the freedom to provide services. Unlike the free movement of goods and freedom of movement for persons the freedom to provide services has not yet given rise to such an abundant case-law that it is possible to speak of a complete system of freedom to provide services. As this case shows, there are still questions regarding its scope and the criteria defining its limits.

7. The board, attached to the tribunal de grande instance, which is seized of the main proceedings must be regarded as a 'court or tribunal' for the purposes of the second paragraph of Article 177 of the EEC Treaty. It is an independent judicial body responsible for adjudicating on claims for compensation by victims of crime. It is a court of compulsory jurisdiction, conceived as a permanent body on a legislative basis. The board arrives at its decisions by the application of legal rules, in particular the code de procédure pénale. It thus meets all the criteria laid down by the case-law of the Court of Justice for the identification of a 'court or tribunal' for the purposes of Article 177 of the EEC Treaty. [1]

8. In its reference for a preliminary ruling the board has expressly raised the question of the compatibility of a national provision with Community law. It is not the task of the Court of Justice to decide such a question. A judgment ruling a national legal provision inapplicable or invalid is a matter for the jurisdiction of the national courts. That does not, however, mean that the reference is inadmissible. The Court has consistently held that it is not bound by the wording of the question referred. [2] The

1 — Judgment of 21 February 1974 in Case 162/73 *Birra Dreher SpA* v *Amministrazione delle finanze dello Stato* [1974] ECR 201.

2 — For example, judgments of 29 November 1978 in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, and of 20 April 1988 in Case 204/87 *Bekaert* [1988] ECR 2029.

Court may, on the basis of the factual and legal background of the case, restate the question so as to address the issue of Community law. It may thus, in its ruling, provide the national court with criteria enabling it to decide the particular case before it.

9. The question in this case may be restated in the following manner:

'Can a difference in treatment, on the basis of nationality, of victims of crime who apply for State compensation constitute discrimination on grounds of nationality contrary to Community law?'

10. The first question which arises is whether a Community citizen such as the applicant in the main proceedings is covered by Community law in his capacity as a tourist and thus placed in a privileged position. I shall address the second aspect first, since it relates more closely to what we have been asked by the national court.

11. It is possible that a tourist — without it being necessary to define that term here — may derive rights from his position as a recipient of services. For that to be the case, a recipient of services must be capable of being an independent subject of Community rights and obligations.

12. No comprehensive framework for the freedom to provide services has yet been developed. It is clear from the legal definition contained in Article 60 of the EEC Treaty that 'services' for this purpose are services which 'are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons'. That wording suggests that the provision of services is something of a residual category. Inasmuch as the provisions on the objects and activities of the Community (Article 3 of the EEC Treaty) place the provision of services on the same footing as the movement of goods, persons and capital, its area of application cannot be restricted to a residual function. It plays an independent role as one of the fundamental freedoms.

13. A delimitation of its substantive scope must be oriented towards the model of a common market in which all economic activities within the Community are freed from all restrictions on grounds of nationality or residence. Between them, the free movement of goods and freedom of movement for persons, in respect of which a distinction is usually drawn between freedom of movement for workers and freedom of establishment,[3] already cover a large proportion of transnational economic activities. If it is desired to define the freedom to provide services not negatively, as a residual category, but positively, it is clear that it covers transnational 'trade' in products which are not 'goods'. Examples of this form of trade have already arisen in the

3 — Judgment of 31 January 1984 in Joined Cases 286/82 and 26/83 *Luisi and Carbone* v *Ministero del Tesoro* [1984] ECR 377, paragraph 9.

case-law of the Court of Justice, in the area of transnational broadcasting [4] and in the area of insurance. [5]

14. For the provision of services of this kind the movement of persons across frontiers is not absolutely necessary. There are, however, other conceivable forms of transnational trade in services. These are cases in which either the person providing services goes to another Member State or the recipient of services receives them in another Member State. These movements are not covered by freedom of movement for persons as it has usually been defined. There is, however, a need for Community law to govern that situation, if we do not wish the freedom to provide services to be reduced to trade in services which does not entail any movement of persons. It is clear from the EEC Treaty and from secondary Community legislation that that was never the intent of the Community legislature. The paradigm of the provision of services under Article 59 of the EEC Treaty is the person who in order to provide services goes temporarily to another Member State. That may, but is not necessarily, the place of residence of the recipient of the services. The person for whom the services are intended may very well receive them in another place. All that is necessary is that the person providing the services and their recipient should not be resident in the same place.

15. The idea that the freedom to provide services may be exercised by way of a temporary change of location by the person providing the services has also been reinforced by Community action and legal measures. Measures concerning the provision of services have frequently been adopted at the same time and in the same terms as provisions on freedom of establishment. The general programme for the abolition of restrictions on freedom to provide services [6] and the general programme for the abolition of restrictions on freedom of establishment [7] were adopted on the same day, were published together and are regularly cited together.

16. Council Directive 75/362/EEC of 16 June 1975 contains provisions concerning both matters, freedom of establishment and the provision of services. The directive concerns the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services. [8] Other examples are Directive 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services [9] and Directive 75/34/EEC on the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity. [10]

4 — Judgments of 18 March 1980 in Case 52/79 *Debauve* [1980] ECR 833; of 18 March 1980 in Case 62/79 *Coditel* v *Ciné Vog Films* [1980] ECR 881, of 6 October 1982 in Case 262/81 *Coditel* v *Ciné Vog Films* [1982] ECR 3381, and of 26 April 1988 in Case 352/85 *Bond van Adverteerders* v *Kingdom of the Netherlands* [1988] ECR 2085.

5 — Judgment of 4 December 1986 in Case 205/84 *Commission* v *Federal Republic of Germany* [1986] ECR 3755.

6 — OJ, English Special Edition, Second Series, Volume IX, p. 3.

7 — OJ, English Special Edition, Second Series, Volume IX, p. 7.

8 — OJ 1975, L 167, p. 1.

9 — OJ 1973, L 172, p. 14.

10 — OJ 1975, L 14, p. 10.

17. Although most attention has been focused on the person providing services, that cannot mean that the recipient of services plays no role from a legal point of view. As a necessary party to the transaction he too is a potential beneficiary of the freedom to provide services under Community law. It follows neither from Article 59 of the EEC Treaty nor from secondary legislation that he can receive the services only at his place of residence. If it is sufficient, therefore, for the provision of a service to be covered by Community law that the person providing the service and its recipient should be resident in different Member States, it must now be determined what consequences that has for the legal position of the recipient of the service.

18. In the general programme for the abolition of restrictions on freedom to provide services the recipient of services is already referred to as a person on whom certain restrictions are not to be placed. In Title III it is stated that the restrictions set out therein are to be eliminated 'whether they affect the person providing the services directly, or indirectly through the recipient of the service or through the service itself'.

19. The recipient of services has been referred to expressly as a subject of rights in several Community measures since the adoption of the general programme. The preamble to Council Directive 64/221/EEC [11] states *inter alia* that: 'coordination . . . should in the first place deal with the conditions for entry and residence of nationals of Member States moving within the Community either in order to pursue activities as employed or self-employed persons, or as *recipients of services*'. [12] That theme appears again in Article 1 of the directive, pursuant to which: 'The provisions of this directive shall apply to any national of a Member State who resides in or travels to another Member State of the Community, either in order to pursue an activity as an employed or self-employed person, or as a *recipient of* services'. [13] The directive governs the obligation of the Member States to issue a residence permit, and provides *inter alia* that the person concerned is to be allowed to remain temporarily in the territory of the Member State pending a decision either to grant or to refuse a residence permit (see Article 5 (2)). A more recent directive 'on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services' [14] requires the Member States to abolish restrictions on the movement and residence of nationals of Member States wishing to go to another Member State as *recipients of services* (Article 1 (1) (b)). Article 4 (2) provides that:

'The right of residence for persons providing and *receiving* [15] services shall be of equal duration with the period during which the services are provided.

Where such period exceeds three months, the Member State in the territory of which

11 — Directive of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, OJ, English Special Edition 1963-64, p 117, and Directive 75/35/EEC of 17 December 1974 extending the scope of Directive 64/221/EEC, OJ 1975, L 14, p 14

12 — My emphasis

13 — My emphasis

14 — Directive 73/148/EEC, OJ 1973, L 172, p 14

15 — My emphasis.

the services are performed shall issue a right of abode as proof of the right of residence.

Where the period does not exceed three months, the identity card or passport with which the person concerned entered the territory shall be sufficient to cover his stay. The Member State may, however, require the person concerned to report his presence in the territory.'

20. Since the implementation of that directive in national law a recipient of services has had a primary right to remain in a Member State of which he is not a national. In that respect he is a beneficiary of the principle of freedom of movement for persons contained in Article 3 (c) of the EEC Treaty. [16] That position under Community law may be restricted in an unlawful manner, in which case a restriction imposed by a national provision will be inapplicable as contrary to Community law.

21. The question which now arises is whether a tourist is to be regarded potentially or effectively as a recipient of services. In Joined Cases 286/82 and 26/83 [17] the Court held that 'tourists, persons receiving medical treatment and persons travelling for the purpose of education or business are to be regarded as recipients of services'. There is no reason to retreat from that statement of the law. However, it is not made clear who is to be regarded as a 'tourist' or to what extent a tourist is entitled to rely on the prohibition of discrimination under Community law.

22. We must therefore consider defining the term 'tourist' for the purposes of Community law. If it is borne in mind that tourists are only *one* category of recipients of services, it becomes apparent that such a definition is of dubious utility. In any event it is not important from a legal point of view to lay down strict definitions of the individual possible groups of potential recipients of services and distinguish them one from another. What is important is to give some substance to the notion of a recipient of services.

23. Even if it is desired to define the term 'tourist' in an abstract manner in Community law, there is no compelling reason to give decisive weight for the purposes of the definition to any one of the possible services received. Reference, for example, to an overnight stay in a hotel, as was suggested at the hearing, would certainly catch a significant proportion of travellers. There could be no doubt as to the receipt of a service in the form of accommodation. That would also constitute an element in common with other potential recipients of services, such as, according to the Court, persons travelling for the purpose of education or business. [18] It would, on the other hand, leave out of the scope of the definition a significant number of travellers who may very well make considerable use of tourist facilities and thus receive services.

16 — Judgment of 7 July 1976 in Case 118/75 *Watson and Belmann* [1976] ECR 1185, paragraph 16.

17 — supra, paragraph 16.

18 — Joined Cases 286/82 and 26/83, *supra*, paragraph 16.

24. According to an opinion poll published by the Commission,[19] after hotel guests (32%) the second largest group of persons who travel for purposes of tourism are those who stay with relatives or friends (21%). It cannot seriously be questioned that those persons too make use of tourist facilities such as the catering industry or cultural facilities.

25. At worst, a tourist could be defined as a person who receives — in whatever form — services from tourist facilities. Even so broad a definition is questionable at the outset, if it is borne in mind that many cultural facilities such as theatres, cinemas, museums, etc. provide their services equally to the local population.

26. International tourism is an important branch of the service sector, which falls under the corresponding provisions of the EEC Treaty.

27. Where it is necessary, in a specific legal context such as that of the present proceedings, to define the characteristics of a person as a recipient of services, there are two possible approaches:

28. (i) Reasoning *ex ante*, one might focus in a general manner on the services to be received in the course of a journey and thus determine the status of the recipient of services right at the beginning of the journey. That approach is supported by the measures on entry and the right to remain in a country, since the person can rely on his status as a recipient of services at the border, before he has entered the territory of another Member State and even before he has actually received a service.

29. (ii) A second possible way of defining a recipient of services would be an *ex post* approach focusing on the services actually received. That approach would effectively preclude any improper reliance on the status of a recipient of services.

30. Nevertheless the first of those two possibilities seems to me to be the better. It is consistent with the few measures which already exist concerning recipients of services and avoids unregulated areas which might give rise to confusion and disputes.

31. I have already referred to the problem that not only facilities specifically for tourists but also services which are provided equally to the local population may entitle the persons concerned to rely on the freedom to provide services. That is true both of cultural facilities and of certain means of transport. It is obvious that transport facilities play an important role in

19 — Survey carried out for the Commission in June 1986 by European Omnibus Survey, *European File*, No 9/87.

tourism. That point is equally applicable to taxi firms, bus tour operators, car rental firms and public transport.

32. Viewed in those terms the use of the metro can be regarded as a service for the purposes of Community law. The particular organizational form of the transport firm is irrelevant *in so far as it is a facility which may be used in return for payment*; that is also the decisive criterion in Community law for identifying it as a person providing services.

33. At first sight Article 61 of the EEC Treaty might be regarded as an obstacle to the treatment of national transport undertakings as providers of services to tourism. That article states that freedom to provide services in the field of transport is to be governed by the provisions of the Title relating to transport. That objection, however, can be rejected as superficial.

34. Article 61 of the EEC Treaty concerns above all the transnational provision of services as a primary subject-matter of the freedom to provide services. Furthermore, it also covers non-resident transport undertakings in their capacity as persons providing services. This view is confirmed by the judgment in Case 13/83,[20] in which the subject-matter of Article 61 (1) in conjunction with Article 75 (1) (a) and (b) of the EEC Treaty is described as 'international transport to or from the territory of a Member State or passing across the territory of one or more Member States' and 'the conditions under which non-resident carriers may operate transport services within a Member State'. There is thus no reason not to treat *transportation*, even where there is no *foreign element*, as a provision of services for a recipient resident in another Member State, since it must also be presumed that the service is provided for remuneration, in the sense that the payment constitutes the consideration for the use of the transport service.

35. We must now turn to the argument to the effect that compensation by the State can itself be regarded as a service covered by Community law. Such an approach is not supported by the examples set out in Article 60 in the definition of 'services' for the purposes of the Treaty. 'Services' for the purposes of the Treaty are services normally provided for remuneration, and include in particular activities of an industrial and commercial character and the activities of craftsmen and of the professions. Even if some argument could previously have been made, certainly after the clear statements in the judgment in Case 263/86[21] on the question whether State education can constitute a service for the purposes of the Treaty there is no basis for treating a social measure financed from public resources as a

20 — Judgment of 22 May 1985 in Case 13/83 *Parliament* v *Council* [1985] ECR 1513.

21 — Judgment of 27 September 1988 in Case 263/86 *Belgian State* v *Humbel* [1988] ECR 5365.

service. The decisive factors in the *Humbel* case are essentially comparable with the main features of this case.

36. In the view of the Court, an important characteristic of remuneration is that it constitutes the financial consideration for the service and is normally fixed by agreement between the person providing the service and its recipient.[22] Just as that element is lacking in the case of public education, there is no identifiable remuneration, within the meaning of the abovementioned definition, for State compensation of victims of crime.

37. The further remarks made in Case 263/86 are also applicable here. Where the State establishes and maintains a system for compensating victims of crime, it does not intend to engage in paid activities but is simply fulfilling its function towards the population in the social, cultural and educational sectors.[23] In general such benefits are financed from the State budget.

38. Social welfare benefits can be of relevance from the point of view of Community law in particular in the area of a common social policy or with regard to freedom of movement for workers, where the objective is complete integration of the group concerned. They are not the proper subject-matter of the freedom to provide services.

39. 'Social tourism', travel with the sole or main purpose of taking advantage of what may be more favourable social welfare benefits in the host country, is not an objective of the EEC Treaty. Indeed, that is made clear in connection with the freedom to provide services by the use of the words 'for remuneration'.

40. It follows from the foregoing considerations that the Treaty must be considered applicable[24] to the case of a traveller in the indicated circumstances both from an objective and from an individual point of view. From an objective point of view, because he falls within the scope of the freedom to provide services, and from an individual point of view, because a recipient of services is a protected person under the relevant provisions of Community law. There is nothing, as a matter of principle, to preclude reliance on the requirement of equal treatment under Community law.[25] In this specific case the principle falls to be applied as it is expressed in Articles 7 and 59 of the EEC Treaty. As a specific prohibition of discrimination, Article 59 of the EEC Treaty constitutes a particular manifestation of the general prohibition of discrimination under Article 7; it applies the latter in a concrete form but does not supersede it.

41. Conditions of entitlement for a scheme of compensation for victims of crime under which the benefit of the scheme is restricted to nationals of the Member State concerned, foreigners who possess a

22 — Case 263/86, *supra*, paragraph 17

23 — Case 263/86, *supra*, paragraph 18

24 — Judgment of 27 October 1982 in Joined Cases 35 and 36/82 *Morson and Jhanjan* v *Netherlands* [1982] ECR 3723

25 — On the applicable legal basis see the judgment of 14 July 1977 in Case 8/77 *Sagulo and Others* [1977] ECR 1495

residence permit and foreigners whose country of origin has concluded a reciprocal agreement may thus be contrary to Community law when they constitute a 'restriction' of the freedom provided for under Community law. Discrimination on grounds of nationality can constitute such a restriction.

42. In its judgment in Case 63/86[26] the Court of Justice described the content of Articles 52 and 59 of the Treaty as a manifestation of the principle of equal treatment under Article 7; it thus comprises a requirement of equal treatment for Community citizens who carry on activities as self-employed persons and a prohibition of discrimination on the basis of nationality which constitutes an obstacle to access to or the exercise of such activities.

43. On the issue of a restriction I should like to focus first of all on the second element, that of an obstacle to access to or the exercise of activities. Let me reiterate what I have already stated: what is protected is freedom of movement for persons for the purpose of receiving services. In my view the refusal of the host country to grant compensation does not affect access but does affect the exercise of the freedom. That is to say, a Community citizen who does not belong to a privileged category under Community law enjoys a reduced level of protection with regard to his most personal rights.

44. Compensation for victims of crime must be understood as an aspect of public security and public order. It is compensation for infringement of a right which it is the duty of the State to protect but which in the specific case it was not able to safeguard.

45. In opposition to that approach it cannot be argued that criminal law remains unrestricted as a complex matter within the jurisdiction of the national legislature. That principle should not be impaired.[27] However, for the assessment of a legal rule from the point of view of Community law what is important is not the area of the law in which it is found but its substantive content; secondly, what is in issue is only the application without discrimination of a measure which has been adopted.

46. A Community citizen who wishes to enjoy the same level of protection as a national of the State concerned is compelled by the compensation scheme in question to take out insurance to cover the relevant risk. The resources necessary for that purpose represent a reduction in the budget at his disposal. It can certainly be regarded as an impediment to the right of temporary residence.

47. The impediment to the right of temporary residence which lies in the failure to grant compensation to certain Community citizens who are victims of

26 — Judgment of 14 January 1988 in Case 63/86 *Commission* v *Italy* [1988] ECR 29, paragraphs 12 and 13.

27 — On the division of jurisdiction with regard to criminal law and procedure see the judgment of 11 November 1981 in Case 203/80 *Casati* [1981] ECR 2595.

crime is also discriminatory. Community citizens who do not hold French nationality, possess a residence permit or come from a State which has entered into a reciprocal agreement may be compared with French nationals who live outside French territory. The latter are, it is not disputed, entitled to compensation.

48. There can be said to be discrimination where there is no objective reason for the failure to treat comparable groups in the same manner. According to the judgment in Case 152/73,[28] the objective reasons for the different treatment must relate to the situation of the persons concerned. In my estimation there are no criteria present in this case which justify any distinction from that point of view.

49. The argument was raised in these proceedings that an objective reason for different treatment may lie in the fact that the funds for the compensation of victims of crime are derived from the State budget and that persons who have not contributed to collective funds should not be entitled to benefit from them. That argument must be rejected for a number of reasons.

50. First of all, it is virtually impossible to draw any hard and fast distinction between persons who have contributed to the total revenue of the national budget and those who have not. For example, a French national who does not work in French territory may pay income tax to the State in which he does work. Conversely, businessmen who are not permanently established in the territory of a Member State may for example be liable to pay corporation tax, property tax and so on to a Member State in which they are not resident. Even if we focus exclusively on recipients of services, it is apparent that by making use of services such persons not only stimulate economic activity but contribute by way, for example, of turnover taxes to the national budget.

51. Moreover, the Court of Justice has already held that persons who do not belong to the category of migrant workers and whose complete integration in the State where they work is thus not a Community objective have a right to social welfare benefits. The Italian State was held to have infringed the Treaty by reserving for its own nationals the right to buy or rent State-subsidized housing and to obtain housing loans on favourable terms.[29]

52. Finally, in my view compensation for victims of crime is not a social welfare benefit in the classical sense, that is to say a subsistence payment provided by the welfare administration. The simple fact that compensation for victims of crime is paid from public funds is not sufficient for it to constitute a social welfare benefit. It must be regarded as compensation for harm

28 — Judgment of 12 February 1974 in Case 152/73 *Sotgiu* v *Deutsche Bundespost* [1974] ECR 153

29 — Case 63/86, supra.

suffered, something with which we are quite familiar in civil and public law in the form of claims for damages or compensation. In claims for compensation against the State funds from the State budget are used, and such payments are not regarded as social welfare payments. The fact that the State did not cause the harm is no obstacle to this approach. In enacting legislation for the compensation of victims of crime it takes a position analogous to that of a guarantor with regard to compensation for harm which could not otherwise be redressed, harm arising from the infringement of rights which it was the State's duty to protect but which it was not able to guarantee.

53. To sum up, therefore, we must say this: a scheme which makes the payment of compensation for victims of crime subject, for nationals of another Member State, to possession of a residence permit or the existence of a reciprocal agreement with their country of origin, where no such requirement is made of nationals of the State in question who reside in other Member States, is contrary to Community law.

54. In conclusion, I must deal with the argument to the effect that the amendment of the original 1977 legislation, to the detriment of foreign victims of crime, was contrary to the standstill obligation contained in Article 62 of the EEC Treaty. As the Commission's representative correctly observed at the hearing, since the end of the transitional period Articles 59 and 60 of the EEC Treaty are directly applicable, so that any impediment to the freedom to provide services is contrary to Community law. Specific reliance on Article 62 is no longer necessary, since any new restriction constitutes an obstacle to which Article 59 applies.

55. It follows from the foregoing that a tourist, as a recipient of services, is protected from discrimination on grounds of nationality with regard to compensation for victims of crime. It is therefore unnecessary to reply to the question whether a national of a Member State (an EC national) is entitled to such protection irrespective of his capacity as a recipient of services.

56. The costs incurred by the French Government and the Commission are not recoverable. For the parties to the main proceedings the proceedings before the Court of Justice are in the nature of a step in the main action. A decision on costs is therefore a matter for the national court.

C — Conclusion

On the basis of the foregoing considerations I propose the following answer to the question referred by the national court:

'A difference in treatment of Community citizens, on the basis of nationality, under a compensation scheme for victims of crime can constitute a discriminatory obstacle, contrary to Community law, to a right of temporary residence extended under Community law. It must be borne in mind in that regard that a recipient of services also has a primary right of residence. A person's capacity as a recipient of services is to be assessed on the basis of the services of which he will avail himself during his period of residence.'