

OPINION OF ADVOCATE GENERAL
ALBER

delivered on 9 July 2002¹

I — Introduction

1. By the present reference for a preliminary ruling, the Trimeles Diikitiko Protodikio Rodou (Administrative Court of First Instance, Rhodes) has submitted to the Court three questions concerning the interpretation 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 countries² (hereinafter 'Regulation No 4055/86'). In light of the principles of the freedom to provide services, it has doubts as to the lawfulness of national legislation relating to harbour dues which lays down different rates for passenger transport within Greece, on the one hand, and between Greece and a third country, on the other. The legislation does not, however, differentiate on the basis of the nationality of the passengers or the ship's flag.

II — Legal framework

A — Community legislation

2. In accordance with Article 51(1) EC, freedom to provide services in the field of transport is to be governed by the provisions of Title V of the EC Treaty relating to transport, that is to say Articles 70 EC to 80 EC. According to Article 80(1) EC, those provisions expressly apply *inter alia* to transport on inland waterways, and therefore not to sea transport. However, Article 80(2) EC authorises the Council to lay down provisions for sea transport.

3. The Council adopted Regulation No 4055/86 under this Article. It contains *inter alia* the following provisions:

'Article 1

1. Freedom to provide maritime transport services between Member States and

¹ — Original language: German.

² — OJ 1986 L 378, p. 1, as amended by Council Regulation (EEC) No 3573/90 of 4 December 1990 (OJ 1990 L 353, p. 16).

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.

(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.

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.

...

3. The provisions of Articles 55 to 58 and 62 of the Treaty shall apply to the matters covered by this Regulation.

Article 8

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:

Without prejudice to the provisions of the Treaty relating to right of establishment, a person providing a maritime transport service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

(a) *intra-Community shipping services:*

Article 9

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;

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restric-

tions without distinction on grounds of nationality or residence to all persons providing services within the meaning of Article 1(1) and (2).’

journey in accordance with the class of vessel and so forth, and shall be determined as follows:

B — *Greek legislation*

4. Article 6 of Law No 2399/1996 (FEK (Official Gazette), A 90), in the version in force when the contested decisions were adopted, provides:

‘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

(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;

(b) fixed dues of GRD 500 for each passenger with a final destination in a country of the European Union or Cyprus;

(c) fixed dues of GRD 1 000 for each passenger with a final destination of any port in Albania, Russia, Moldova, Ukraine or Georgia on the Black Sea;

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.

(d) fixed dues of GRD 2 000 for each passenger with a final destination of any overseas port (America, Australia, and so forth);

...

(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.

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.

(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

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

III — The facts

5. The shipping companies GEHA Naftiliaki EPE and Total Scope NE (the first and second plaintiffs in the main proceedings) are the respective owners of the hydrofoils *Fl. Marianna* and *Fl. Zeus*. The shipping consortium comprising Nikolaos Sarlis, Anastasios Charalambis, Antonios Charalambis, Dimitrios Kattidenios and Vasilios Dimitrakopoulos (the third plaintiff) owns the hydrofoil *Iviskos*. The shipping agent for the consortium is the fourth plaintiff, the commercial partnership Charalambis Bros O.E. The plaintiffs are established in Rhodes.

6. During the 1996 tourist season they made their vessels available, at a daily charter rate of GRD 250 000 to 300 000, to tour operators from other Member States who used them for day trips from Rhodes to Marmaris in Turkey for their foreign clients. The plaintiffs did not pay the full amount of harbour dues for June 1996 in respect of the transport of daytrippers and transit passengers on the vessels mentioned and on other vessels.

7. Thereupon, the Limeniko Tamio Dodekanisou, one of the defendants in the main proceedings (hereinafter 'the harbour fund'), issued a notice of assessment specifying the amount of the outstanding har-

bour dues. The dues were GRD 60 for each transit passenger and GRD 5 000 for each daytripper. After making an unsuccessful objection, the plaintiffs issued proceedings. They pleaded, *inter alia*, breaches of Regulation No 4055/86 and Article 49 EC.

IV — The reference for a preliminary ruling

8. The Administrative Court of First Instance, Rhodes, before which proceedings were brought, has referred the following questions to the Court:

'(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?

(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 of 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)?'

V — Submissions of the parties

(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?

9. The plaintiffs in the main proceedings submitted joint written observations to the Court. The harbour fund and the Commission also submitted written observations. No hearing took place.

A — *The plaintiffs*

10. As regards the national court's first question, the plaintiffs refer to the judgment of the Court in Case C-381/93 *Com-*

mission v France.³ There the Court established that levying higher harbour dues in respect of routes between Member States than in respect of routes within a Member State infringed Regulation No 4055/86.

No 4055/86 since it constitutes a restriction on the freedom to provide services to the disadvantage of operators providing cruises to ports in third countries.

11. As regards the second question, the plaintiffs submit that the principle of freedom to provide services has been introduced in the field of maritime transport by Regulation No 4055/86.

B — *The harbour fund*

12. As to the third question, the plaintiffs contend that determining the amount of dues by reference to the port of destination infringes the prohibition of discrimination deriving from Article 49 EC and the prohibition of restrictions on the freedom to provide services.⁴ Laying down different rates for the dues discriminates against passengers travelling to destinations in third countries as compared with those travelling to domestic ports.

14. The harbour fund submits that the provision setting the dues does not discriminate on the ground of the nationality of the persons for whom the services are intended, the flag flown by the vessel or the seat of the shipping company. Since the dues are payable by passengers and not by the shipping companies who supply the services, the conditions for application of Article 49 EC and Regulation No 4055/86 are not satisfied.

13. The national legislation also infringes Articles 49 EC and 80 EC and Regulation

15. The mere fact that the harbour dues constitute consideration for the use of harbour facilities and are correlated to the costs means that they do not restrict freedom to provide services. The different rates for domestic and foreign destinations are justified by the different costs of inspection and security measures. Article 77 EC presupposes that it is lawful to charge reasonable dues. That has to be taken into

3 — [1994] ECR I-5145, paragraphs 13 to 18.

4 — On this point, the plaintiffs refer generally to Case C-49/89 *Corsica Ferries France* [1989] ECR 4441.

account also when interpreting Regulation No 4055/86. The national court has not referred to Article 77 EC, but the Court is none the less entitled to consider this provision to the extent necessary for giving a helpful answer to the questions referred.

C — *The Commission*

19. The Commission suggests combining the questions referred as follows:

16. The answer to be given to the first question is that Regulation No 4055/86 does not prohibit the levying of dues on passengers provided that the requirements of Article 77 EC are observed.

Are provisions of national law which set harbour dues that apply to all vessels irrespective of their flag and to all passengers irrespective of their nationality compatible with Article 1 of Regulation No 4055/86 in so far as those dues are higher when a vessel's port of destination is in a third country than when it is within the Community?

17. As regards the second question, the harbour fund submits that dues levied in accordance with Article 77 EC must bear a reasonable relationship to the costs incurred by the national harbour authorities in providing services for the benefit of passengers.

20. It explains that, according to the case-law, undertakings can rely on Regulation No 4055/86 also as against the State in which they are established if the services are provided to persons established in another Member State.⁵ It also follows from the case-law that Article 1 of Regulation No 4055/86 prohibits not only discrimination but also other restrictions on the freedom to provide maritime transport services; treating domestic maritime routes

18. The harbour fund proposes that the answer to the third question should be that levying different amounts of harbour dues depending on the port of destination and the service supplied is justified, given that the dues are in the nature of consideration.

⁵ — The Commission refers in this regard to Case C-18/93 *Corsica Ferries Italia* [1994] ECR I-1783, paragraph 30.

and routes to other Member States differently is an unlawful restriction.⁶

VI — Legal analysis

A — Introductory remarks on the interpretation of the national legislation and on the subject-matter of the reference for a preliminary ruling

21. The personal scope of Regulation No 4055/86, which encompasses transport to third countries too, covers the present case, since the persons providing the services are established in a Member State. It follows that, as regards transport to a third country too, any restriction on the freedom to provide services is prohibited, even if it does not constitute discrimination, to the extent that it is not justified by overriding reasons in the general interest.

23. The reference for a preliminary ruling is concerned principally with the dues contested before the national court levied under Article 6(2)(C)(a), in conjunction with Article 6(2)(B)(a), of Law No 2399/1996 when tourists are cleared for trips between Rhodes and Turkey.

22. The structure of the dues in the present case constitutes a restriction on the freedom to provide services, to the disadvantage of shipping companies who sail to Turkey. The dues increase the price of those journeys without any justification. Moreover, this affects the passengers too, as the persons for whom the services are intended. Finally, the shipping companies are affected as recipients of the services provided by the port of Rhodes which do not differ according to whether vessels are going to ports in Turkey or ports in Greece.

24. For the purpose of the following analysis, the complicated national dues provisions applicable in the present case are understood as follows. Article 6(2)(A) applies to routes between two Greek ports, and Article 6(2)(B) to routes from Greece to foreign ports. Article 6(2)(C) makes special provision for tourist trips which begin and end at a Greek port. If a tourist trip calls at Greek ports only, then in derogation from Article 6(2)(A), GRD 50 are payable for every domestic port of call. If one of the ports of call is a foreign port, the provision refers to the rates of dues under Article 6(2)(B)(a) to (d) applicable to routes to foreign ports. Since Turkey is not in one of the groups of privileged countries of destination under Article 6(2)(B)(b) to (d), the rate of GRD 5 000 applicable under Article 6(2)(B)(a) to third countries generally applies.

⁶ — The Commission cites Case C-381/93 *Commission v France* (cited above, footnote 3), paragraphs 17 and 18.

25. These dues are to be paid in the 'last' port of call. It is unclear whether this means the last Greek port from which the ship leaves for the journey to the third country, or the last port on the tourist trip. However, it appears that this uncertainty does not matter in the present case because all the trips were from Rhodes directly to Marmaris and back, without any intermediate stops.

26. Since the main proceedings essentially concern tourist trips between Greece and Turkey, only the dues in respect of such trips will be discussed below. The other dues, whose compatibility with Community law is also subject to significant doubt, will not be analysed. As an aside, it may be noted that in the case of domestic destinations the dues payable are 5% of the price of tickets, whereas for all other destinations, including those within the Community, the dues are a fixed amount. This difference between rate structures alone could lead to unjustified differences between the amounts of dues.

27. As regards the legal framework of the order for reference, it is to be observed that the questions refer exclusively to the interpretation of Regulation No 4055/86. In the absence of corresponding questions and the necessary additional factual information, it

is not possible to assess the national legislation in the light of Articles 81 EC and 86 EC, a step which would be natural given the structure of the dues.

B — *The first question*

28. The first question concerns the field of application and the breadth of Article 1 of Regulation No 4055/86 generally. The national court would like to know in particular to what extent it covers transport from within the Community to third countries and whether it also prohibits restrictions which do not discriminate on the ground of the nationality of the person who provides the services or the person for whom the services are intended.

29. Under Article 51(1) EC, freedom to provide services in the field of transport is to be governed by the provisions of the Title relating to transport.⁷ Therefore, application of the principles of the freedom to provide services must be achieved by measures taken within the framework of common transport policy.⁸ Even on the

7 — See Case 13/83 *Parliament v Council* [1985] ECR 1513, paragraph 62, and *Corsica Ferries Italia* (cited above, footnote 5), paragraph 23.

8 — *Corsica Ferries Italia* (cited above, footnote 5), paragraph 24.

expiry of the transitional period, Articles 49 EC and 50 EC are not of direct application in the transport sector.⁹

carried from Greece to a third country (Turkey) and back again.

30. Under Article 80(1) EC the Treaty provisions relating to transport policy apply only to transport by rail, road and inland waterway. Article 80(2) EC provides that any extension of common transport policy to maritime transport requires specific legal measures of the Council. The Council adopted Regulation No 4055/86 on the basis of that provision. By virtue of Articles 1(3) and 8 of Regulation No 4055/86, the whole of the Treaty rules governing the freedom to provide services are applicable to maritime transport.¹⁰

32. Under Article 1(1) of Regulation No 4055/86, nationals of Member States who are established in a Member State other than that of the person for whom the services are intended may rely on the freedom to provide services. Under Article 1(3), in conjunction with Article 48 EC, companies or firms are to be treated in the same way as natural persons who are nationals of Member States. This is subject to the precondition that the company or firm must be formed in accordance with the law of a Member State and have its registered office, central administration or principal place of business within the Community.

31. As Article 1(1) of Regulation No 4055/86 clearly states, the latter's scope *ratione materiae* covers maritime transport between Member States and between Member States and third countries.¹¹ Thus, the rules relating to the freedom to provide services also apply in a case such as the present one in which passengers are

33. The plaintiffs in the main proceedings, who provide maritime transport services, are natural and legal persons resident in Greece. Moreover, it appears that the legal persons were formed in accordance with Greek law.

34. One could regard either the passengers who partook in tourist trips on the plaintiffs' vessels or the tour operators who arranged for the trips as the persons for whom the services were intended. It is to be inferred from the order for reference that in each case the persons are resident in a Member State other than Greece, the country in which the seat of the person providing the services is situated.

9 — *Parliament v Council* (cited above, footnote 7), paragraph 63.

10 — Case C-381/93 *Commission v France* (cited above, footnote 3), paragraph 13, and Joined Cases C-430/99 and C-431/99 *Sea-Land Service and Nedlloyd Lijnen* [2002] ECR 5235, paragraph 31.

11 — See *Sea-Land Service* (cited above, footnote 10), paragraph 25.

35. It follows that the present case falls within the scope *ratione materiae* and *ratione personae* of Regulation No 4055/86.

36. The principle of freedom to provide services, as guaranteed by Regulation No 4055/86, prohibits any discrimination on the ground of nationality against a person providing services. Thus, Article 8 of Regulation No 4055/86 requires the Member States to treat nationals of other Member States and their own nationals equally. Article 9 of Regulation No 4055/86 provides that any restrictions on the freedom to provide services are to be applied without distinction on grounds of the residence or nationality of the person providing services.

37. The national legislation differentiates according to the destinations of the ships to be cleared. On the other hand, it does not appear that there is any direct discrimination on the ground of the nationality of the persons providing the services or of the persons for whom they are intended.

38. It is necessary to consider at most whether there is any indirect discrimination. That would be conceivable if passengers whose destinations were foreign countries within Article 6(2)(B)(a) of Law No 2399/1996 were predominantly

nationals of other Member States whereas passengers travelling to destinations for which lower dues applied were predominantly Greek nationals, and there were no justification for giving Greek nationals that *de facto* advantage.

39. In the main proceedings, it indeed appears that it is predominantly tourists from other Member States who have to pay the fixed dues of GRD 5 000. However, the order for reference does not contain any information which would in general justify the assumption that groups of passengers having a particular nationality are affected by particular rates of dues. It follows that indirect discrimination against nationals of other Member States is also not discernible. It is for the national court to determine whether the actual composition of the various groups of persons liable to pay the dues permits a finding of indirect discrimination. However, given the following analysis relating to the prohibition on restrictions, the assessment of the national legislation concerning dues does not turn on whether or not there is indirect discrimination.

40. As has already been established, by virtue of Regulation No 4055/86 the whole of the Treaty rules governing the freedom to provide services apply to maritime trans-

port between the Member States.¹² Thus, all the principles which the Court has developed in interpreting Article 49 EC are to be called upon if Regulation No 4055/86 is to be applied in conformity with the Treaty.¹³

41. As the Court has consistently held, Article 49 EC requires not only the elimination of all discrimination against a person providing services on the ground of his nationality but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when that restriction is liable to prohibit, impede or render less attractive the activities of a provider of services established in another Member State where he lawfully provides similar services.¹⁴ This general prohibition on restrictions is decisive for the assessment of the legislation concerning dues.

42. Pursuant to that rule, freedom to provide services may also be relied on by an undertaking as against the State in which it

is established, if the services are provided for persons established in another Member State.¹⁵

43. However, the freedom to provide services may be restricted by national rules in so far as the restriction is justified by overriding reasons in the general interest, is applicable to all persons or undertakings pursuing an activity in the territory of the host Member State, and is suitable for attaining the objective which it pursues and necessary and proportionate in the light of that objective.¹⁶

44. Therefore, the first question is to be answered as follows:

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 national legislation which is liable to prohibit, impede or render less attractive the provision of services within the scope of that regulation even if the national legislation applies without distinction on the

12 — Case C-381/93 *Commission v France* (cited above, footnote 3), paragraph 13.

13 — See the Opinion of Advocate General Van Gerven in *Corsica Ferries Italia* (cited above, footnote 3), point 23.

14 — Case C-76/90 *Säger* [1991] ECR I-4221, paragraph 12, Case C-266/96 *Corsica Ferries France* [1998] ECR I-3949, paragraph 56, and *Sea-Land Service* (cited above, footnote 10), paragraph 32.

15 — Case C-381/93 *Commission v France* (cited above, footnote 3), paragraph 14, Case C-224/97 *Ciola* [1999] ECR I-2517, paragraph 11, and *Sea-Land Service* (cited above, footnote 10), paragraph 32.

16 — See in particular *Sea-Land Service* (cited above, footnote 10), paragraph 39.

ground of the nationality of the persons providing the services or of the persons for whom they are intended and applies to the provision of transport services between a Member State and a third country, to the extent that the restriction is not justified by overriding reasons in the general interest, suitable for attaining the objective which it pursues and necessary and proportionate in the light of that objective.

47. It is true that the dues are to be paid both by domestic shipping companies and passengers and by nationals of other Member States, and it thus appears that there is no discrimination on the ground of nationality. However, dues which are up to 100 times higher are liable to dissuade travellers from partaking in a trip to Turkey and thus to render the provision of that service less attractive than comparable services provided only within Greece. Thus, demanding higher dues when ports in a third country are called at than in respect of tourist trips entirely within national territory constitutes a restriction on the freedom to provide services.

C — The second question

45. By its second question, the national court wishes specifically to ascertain whether legislation which lays down different harbour dues for passengers with domestic destinations and passengers with destinations in a third country constitutes an unlawful restriction on the freedom to provide services.

48. It is irrelevant whether the shipping company or tour operator, on the one hand, or the passenger himself, on the other, is liable to pay the dues. In both cases, the dues constitute a factor which makes provision of the service more expensive, since even if the shipping company pays the dues, it will ultimately pass the cost on to passengers by increasing the price of its tickets. The increase in prices may result in a reduction in demand, to the disadvantage of the shipping company and the tour operator. Thus, both the persons who provide the services and the passengers as the persons for whom they are intended are affected by the restriction.

46. According to Article 6(2)(C)(a) of Law No 2399/1996, passengers who are cleared for tourist trips to domestic ports must pay GRD 50 for each port of call, whereas under Article 6(2)(C)(a), in conjunction with Article 6(2)(B)(a), GRD 5 000 become due if a vessel berths in a Turkish port during its journey.

49. It must be examined whether the restriction is justified by overriding reasons in the general interest. It is in the general

interest, and in the interest of passengers themselves, that the services necessary for the use of a port are provided. Nor is there anything to prevent the costs of those services from being charged to those who use the port. As the Court held in *Sea-Land Service*, the levying of dues may be justified in particular if it finances the costs of providing services essential to the maintenance of public security.¹⁷

53. It may already be questioned to what extent these costs are in any way related to harbour services which benefit passengers. In particular, the Merchant Seamen's Fund cannot be financed by dues which passengers are required to pay for using harbour services.

50. As regards the principle of proportionality which must be observed in this connection, the Court stated in the same judgment that there must in fact be a correlation between the costs of the services from which the user benefits and the amount of the dues he has to pay.¹⁸

54. Above all, however, there is no apparent reason for rates to differ so much depending on the journey's destination. It is true that the harbour fund has submitted that the services provided cannot be compared, since journeys to third countries require more security measures and more inspections than journeys within Greece.

51. The structure of the dues in the present case does not reveal such a connection.

55. However, it is not apparent what type of security measures, inspections or other services financed by the dues are particularly needed when clearing passengers travelling to other countries and justify such a stark difference in the amount of the dues compared with clearance for domestic tourist trips.

52. According to the national court's findings, the dues are imposed to meet the financial burdens involved in modernising and improving harbour facilities, for the use of the port and for other connected objectives relating to improving services to passengers. Also, it appears from Article 6(2)(B)(e) of Law No 2399/1996 that 30% of the revenue from the fixed dues is paid to the Merchant Seamen's Fund.

56. The very fact that the national legislation lays down widely different rates of dues for various groups of foreign countries without there appearing to be any objective reason for the differentiation also suggests

17 — *Sea-Land Service* (cited above, footnote 10), paragraphs 41 and 42.

18 — *Sea-Land Service* (cited above, footnote 10), paragraph 43.

that there is no connection between the amount of the dues and the costs incurred.

59. Therefore, the second question is to be answered as follows:

57. Nor is the structure of the dues justified by Article 77 EC, upon which the harbour fund relies. The first paragraph of Article 77 requires *carriers* not to impose charges in respect of the crossing of frontiers which bear no relation to costs. However, since the dues in the present case are based on a national provision relating to dues, it is not the first paragraph of Article 77 but, if anything, its second paragraph, which is addressed to the Member States, that is relevant. According to this provision, the Member States must 'endeavour to reduce these costs progressively'.

National legislation which prescribes higher harbour dues for passengers whose destination is in a third country than for passengers with a domestic destination, without there being a correlation between the costs of the harbour services enjoyed by the passengers in each case and the amount of the dues payable by them, constitutes a restriction on the freedom to provide services which is not compatible with Article 1(1) of Regulation No 4055/86.

D — *The third question*

58. This formulation does not lay down any specific criterion for the structure of State dues. It should be considered at most whether the requirements of the first paragraph of Article 77 EC should, interpreting the legislation as a body, be applied *mutatis mutandis* to State dues. If that were done, the provisions relating to the freedom to provide services would, however, have to be taken into account in so far as they are applicable to the transport sector. As has already been established, the contested harbour dues are not compatible with that freedom, since there does not appear to be any correlation between the amount of the dues and the costs of the consideration provided in return.

60. The third question is asked only if the second question is answered in the negative. However, the second question consists of two alternatives, namely whether a Member State may lay down different dues depending on whether the destination is domestic or in a third country, or whether that constitutes a restriction on the freedom to provide services. It is accordingly not clear what the national court would consider to be a negative answer to the second question.

61. However, the third question is directed at whether it is lawful to charge different dues depending on the third country by reference to the criterion of distance or geographical location.

freedom to provide services, different dues are lawful only if the difference correlates to the costs incurred in providing the services financed by the respective dues. On the other hand, the criteria of distance to the port of destination or its geographical location cannot in themselves justify differences between harbour dues. Thus, it is not necessary to give a separate answer to the third question.

62. It is already clear from the answer to the second question that, in light of the

freedom to provide services, different dues are lawful only if the difference correlates to the costs incurred in providing the services financed by the respective dues. On the other hand, the criteria of distance to the port of destination or its geographical location cannot in themselves justify differences between harbour dues. Thus, it is not necessary to give a separate answer to the third question.

VII — Conclusion

63. In the light of the foregoing considerations, it is submitted that the first and second questions be answered as follows:

- (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 national legislation which is liable to prohibit, impede or render less attractive the provision of services within the scope of that regulation even if the national legislation applies without distinction on the ground of the nationality of the persons providing the services or of the persons for whom

they are intended and applies to the provision of transport services between a Member State and a third country, to the extent that the restriction is not justified by overriding reasons in the general interest, suitable for attaining the objective which it pursues and necessary and proportionate in the light of that objective.

- (2) National legislation which prescribes higher harbour dues for passengers whose destination is in a third country than for passengers with a domestic destination, without there being a correlation between the costs of the harbour services enjoyed by the passengers in each case and the amount of the dues payable by them, constitutes a restriction on the freedom to provide services which is not compatible with Article 1(1) of Regulation No 4055/86.