



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

6 February 2014*

(Reference for a preliminary ruling — Article 52 and Article 56 TFEU — Freedom to provide services — Grant of a recreational boating licence — Condition of residency in the issuing country — Restriction for non-residents — Maintaining maritime safety — Public policy)

In Case C-509/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Central Administrativo Norte (Portugal), made by decision of 5 July 2012, received at the Court on 9 November 2012, in the proceedings

Instituto Portuário e dos Transportes Marítimos (IPTM)

v

Navileme – Consultadoria Náutica, Lda,

Nautizende – Consultadoria Náutica, Lda,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Portuguese Government, by L. Inez Fernandes, P. Portugal, M. Moreno and E. Gonçalves, acting as Agents,

— the European Commission, by H. Tserepa-Lacombe and P. Guerra e Andrade, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Portuguese.

Judgment

- 1 This request for a preliminary ruling concerns, in essence, the interpretation of Article 52 and Article 56 TFEU.
- 2 The request has been made in proceedings between the Instituto Português e dos Transportes Marítimos (IPTM), on the one hand, and the Navileme – Consultadoria Náutica, Lda ('Navileme') and Nautizende – Consultadoria Náutica, Lda ('Nautizende') schools, on the other, concerning IPTM's refusal to admit European Union citizens not resident in Portugal to the examination for the award of a recreational boating licence ('boating licence').

Portuguese law

- 3 Article 29(1) of the Recreational Boating Regulation of 25 May 2004 (*Diário da República* I, Series A, No 122, of 25 May 2004) ('the RNR'), approved by Decree-Law No 124/2004 (Regulamento da Náutica de Recreio, aprovado pelo Decreto-Lei 124/2004), provides:

'Without prejudice to the provisions of the following article, [boating licences] are issued by the IPTM to any person resident within national territory who produces a document evidencing successful participation in a course followed for that purpose, in the manner provided for in Article 35. ...'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 4 It is apparent from the order for reference that Navileme and Nautizende brought administrative proceedings before the Tribunal Administrativo e Fiscal do Porto (Fiscal and Administrative Court, Porto) against the IPTM which is responsible, in Portugal, for holding examinations and issuing boating licences. These two nautical training schools are registered in Portugal and their company objects include the compulsory nautical training of candidates seeking admission to the examination for the award of a boating licence. These schools claim that, since December 2004, the IPTM has been refusing to admit their pupils not resident in Portugal to the examination because they failed to satisfy the conditions set out in Article 29(1) of the RNR. It is not disputed that, before the entry into force of the RNR, non-residents could be admitted to that examination.
- 5 Navileme and Nautizende submitted that the condition of residency set out in Article 29(1) of the RNR is compatible with neither European Union law nor the case-law of the Court of Justice which prohibit restrictions on the freedom to provide services on grounds of nationality and residency. That condition imposes a restriction on the freedom of the students to travel to Member States other than their Member State of residence, in the present case Portugal, for nautical training in preparation for the boat licence examination. They claim that that restriction reduces the number of pupils registering for their services. Navileme and Nautizende claim that such a restriction is not justified in the light of the FEU Treaty.
- 6 On that basis, Navileme and Nautizende brought proceedings before the Tribunal Administrativo e Fiscal do Porto seeking an order that (i) the IPTM pay them damages and (ii) the IPTM be compelled to admit European Union citizens not resident in Portugal to the examination for the award of a boating licence and, in the event of success in that examination, to authorise them to operate the craft corresponding to the boating licence obtained. The Tribunal Administrativo e Fiscal do Porto upheld the action.
- 7 The IPTM brought an appeal against that judgment before the referring court.

- 8 In those circumstances, the Tribunal Central Administrativo Norte decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must the law of the European Union, having regard to the principle of prohibition of discrimination between nationals of one Member State and nationals of another Member State (Article 18 TFEU ...), having regard to the free movement of persons in the EU and exceptions thereto (Article 45(3) TFEU ...) and having regard to the freedom to provide services and possible restrictions thereof ([Articles 52 and 62 TFEU]), be interpreted as precluding a provision of national law that imposes a condition of residence in national territory in order for a recreational boating licence to be issued?’

The question referred for a preliminary ruling

- 9 By its question, the referring court asks, in essence, whether Article 52 and Article 56 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which imposes a condition of residence for European Union citizens seeking to obtain a boating licence in that Member State.
- 10 It should be observed at the outset that, first, the right freely to provide services may 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 and, second, that right includes the freedom for recipients of services to go to another Member State in order to receive a service there, without being obstructed by restrictions (see, *inter alia*, Case C-224/97 *Ciola* [1999] ECR I-2517, paragraph 11 and the case-law cited).
- 11 Likewise, persons established in a Member State who travel to another Member State as tourists or on a study trip must be regarded as recipients of services (see Case C-211/08 *Commission v Spain* [2010] ECR I-5267, paragraph 51 and the case-law cited).
- 12 Consequently, in a case such as that at issue in the main proceedings, the provisions on the freedom to provide services set out in Article 56 and Article 62 TFEU apply, on the one hand, to the provision of nautical training services for the purpose of obtaining a boating licence offered by nautical training schools such as Navileme and Nautizende to students from other Member States not resident in Portugal seeking to obtain their boating licence in Portugal and, on the other, to the receipt of such services by those students.
- 13 It must be held that a provision of national law, such as that at issue in the main proceedings, which limits the issuing of boating licences solely to residents of the Member State in question, fails to have regard to the prohibition of restrictions on the freedom to provide services, laid down in Article 56(1) TFEU.
- 14 While such a provision of Portuguese law applies without distinction to nationals and non-nationals and is not, therefore, based on the nationality of the candidates seeking to obtain a boating licence, it does, however, use as the distinguishing criterion their place of residence. It is settled case-law that a provision of national law under which a distinction is drawn on the basis of residence is liable to operate mainly to the detriment of nationals of other Member States, as non-residents are in the majority of cases foreign nationals (see, to that effect, Case C-350/96 *Clean Car Autoservice* [1998] ECR I-2521, paragraph 29; *Ciola*, paragraph 14; and Case C-382/08 *Neukirchinger* [2011] ECR I-139, paragraph 34).
- 15 The legislation at issue in the main proceedings is thus liable to affect certain recipients of the services in question, namely, students not resident in Portugal who have undergone nautical training with Navileme or Nautizende and, following that training, wish to obtain a boating licence in Portugal.

- 16 Likewise, that legislation creates an obstacle to the freedom to provide nautical training services offered by schools such as Navileme or Nautizende, in so far as students not resident in Portugal are less likely to register for their training courses if they cannot thereafter obtain a boating licence.
- 17 It follows that such national legislation, which, first, discourages European Union nationals not resident in Portugal from travelling to that Member State for nautical training for the purpose of obtaining a boating licence issued by that Member State and, second, makes the services offered by nautical training schools less attractive to students not resident in Portugal because they cannot sit the examination for the award of a boating licence in that Member State or be issued such a licence, constitutes a restriction of the freedom to provide services within the meaning of Article 56(1) TFEU.
- 18 It is next necessary to consider to what extent the restriction at issue in the main proceedings may be allowed as a derogation expressly provided for by Article 52 TFEU, applicable in this area by virtue of Article 62 TFEU, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest (see Case C-176/11 *HIT and HIT LARIX* [2012] ECR, paragraph 20). However, application of that measure would still have to be such as to ensure achievement of the objective in question and not go beyond what is necessary for that purpose (Case C-379/11 *Caves Krier Frères* [2012] ECR, paragraph 48 and the case-law cited).
- 19 In that regard, the Portuguese Government claims that the restriction at issue in the main proceedings is necessary on grounds of public policy, in the present case, the necessity for that Member State to ensure a high level of safety at sea, for which effective control of the holders of boating licences is required. The residence condition under national legislation is essential for this purpose. It observes, moreover, that the secondary legislation of the European Union accepts the principle of imposing a condition of residency and refers, in that regard, to Article 7(1)(b) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1).
- 20 It is true that the objective of security and public policy, expressly provided for in Article 52 TFEU, to which the Portuguese Government refers, constitutes a legitimate objective that could, in principle, warrant a restriction of the freedom to provide services. Nevertheless, contrary to what that Government claims, the condition of residency at issue in the main proceedings cannot be justified by that objective. Recourse to such justification presupposes the existence of a genuine, sufficiently serious threat affecting one of the fundamental interests of society (Case C-546/07 *Commission v Germany* [2010] ECR I-439, paragraph 49 and the case-law cited). The Portuguese Government does not, however, claim that such circumstances have been established in the present case.
- 21 In addition, the Court finds that a condition, such as the condition of residence at issue in the main proceedings, which bears no relation to the training followed or the ability to sail, is not in itself appropriate for attaining the objective in question, that is, to ensure safety of navigation at sea.
- 22 Moreover, and contrary to what the Portuguese Government claims, it is irrelevant that Article 7(1)(b) of Directive 91/439 (now Article 7(1)(e) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18)) authorises the issuing of European driving licences only to those applicants who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months. Unlike the situation in the main proceedings, the condition of residency set out in those directives establishes, in a harmonised area of European Union law, the powers of each Member State to issue European driving licences.
- 23 In any event, the objective of ensuring a better level of maritime safety may be satisfied by means less restrictive of the freedom to provide services such as, inter alia, by setting the requirements of the examination for the award of boating licences at a high level.

- 24 Consequently, the answer to the question referred is that Article 52 and Article 56 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which imposes a condition of residence within the national territory for European Union citizens seeking to obtain a boating licence in that Member State.

Costs

- 25 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Articles 52 and 56 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which imposes a condition of residence within the national territory for European Union citizens seeking to obtain a recreational boating licence in that Member State.

[Signatures]