Case C-179/90

Merci convenzionali porto di Genova SpA
v
Siderurgica Gabrielli SpA

(Reference for a preliminary ruling
from the Tribunale di Genova)

(Dock-work undertakings — Statutory monopoly —
Competition rules — Prohibition of discrimination on grounds
of nationality — Free movement of goods)

Report for the Hearing .... I - 5891
Opinion of Mr Advocate General Van Gerven delivered on 19 September 1991 I - 5905
Judgment of the Court, 10 December 1991 .... I - 5923

Summary of the Judgment

1. *Free movement of persons — Workers — Concept — Existence of relationship of association between workers of the same undertaking — No effect*

   (EEC Treaty, Art. 48)

2. *Competition — Public undertakings and undertakings to which Member States grant special or exclusive rights — Monopoly of performance of dock work — Monopoly resulting in abuse of a dominant position — Not permissible*

   (EEC Treaty, Arts 86 and 90(1))

3. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National rules facilitating abuse of a dominant position resulting in obstacles to the importation of goods from other Member States*

   (EEC Treaty, Art. 30)

4. *Competition — Public undertakings and undertakings to which Member States grant special or exclusive rights — Rules of the Treaty — Direct effect*

   (EEC Treaty, Arts 30, 48, 86 and 90)

5. *Competition — Undertakings entrusted with the operation of services of general economic interest — Identification based on the specific nature of the activity — Subject to the rules of the Treaty — Derogation — Conditions*

   (EEC Treaty, Art. 90(2))

1. The concept of worker within the meaning of Article 48 of the Treaty pre-supposes that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration. That description is not affected by the fact that the worker, whilst being linked to the undertaking by a relationship of employment, is linked to other workers by a relationship of association.

2. Although the simple fact of creating a dominant position by granting exclusive rights within the meaning of Article 90(1) of the Treaty is not as such incompatible with Article 86 of the Treaty, a State is in breach of those two provisions if the undertaking in question, merely by exercising the exclusive rights granted to it, cannot avoid abusing its dominant position or when such rights are liable to create a situation such that it is induced to commit such abuses.

   Such is the case when an undertaking to which a monopoly to perform dock work has been granted is induced either to demand payment for services which have not been requested, to charge disproportionate prices, to refuse to have recourse to modern technology or to grant price reductions to certain consumers and at the same time to offset such reductions by an increase in the charges to other consumers.

3. A national measure which has the effect of facilitating the abuse of a dominant position capable of affecting trade between Member States is normally incompatible with Article 30 of the Treaty in so far as it has the effect of making more difficult and hence of impeding the importation of goods from other Member States.

4. Even within the framework of Article 90 of the Treaty, the provisions of Articles

30, 48 and 86 of the Treaty have direct effect and give rise for individuals to rights which the national courts must protect.

5. Dock work is not, in principle, a service of general economic interest exhibiting special characteristics, as compared with the general economic interest of other economic activities, which might bring it within the field of application of Article 90(2) of the Treaty. In any case, the fact that the public authorities have entrusted an undertaking with the operation of services of general economic interest does not, by virtue of the aforesaid provision, absolve it from compliance with the rules of the Treaty unless the application of those rules may obstruct the performance of the particular tasks assigned to it and unless the interests of the Community are not affected.

REPORT FOR THE HEARING
in Case C-179/90 *

I — Facts and procedure

1. The Port of Genoa, like all Italian seaports, is administered by a public body, in this case the Conzorzio Autonomo del Porto (hereinafter referred to as 'the CAP'), which, under Article 202 of the Regolamento per la Navigazione Marittima, (Decree No 328 of the President of the Republic of 15 February 1952, hereinafter referred to as 'the Regulation') is the authority appointed to regulate work within the port.

2. Under Article 110 of the Codice della Navigazione (Royal Decree No 327 of 30 March 1942, hereinafter referred to as 'the Code'), the workers employed for dock work are formed into companies or groups having their own legal personality and subject to supervision by the authority appointed to regulate work within the port.

3. The work of loading, unloading, transhipment, storage and general movement of goods or material of any kind within the port is reserved, by the same Article 110, to the said companies or groups.

Article 1172 of the Code grants exclusive rights to carry out dock work and prescribes penalties for any user infringing the rules on the employment of workers.

4. Under Article 150 of the Regulation the dock workers are enrolled in registers. Enrolment and the right to remain

* Language of the case: Italian.