

JUDGMENT OF THE COURT

5 October 1994 ^{*}

In Case C-381/93,

Commission of the European Communities, represented by Xavier Lewis, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Catherine de Salins, Deputy Director of Legal Affairs at the Ministry of Foreign Affairs, and by Hubert Renié, Principal Deputy Secretary in the Directorate of Legal Affairs in the same ministry, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard Prince Henri,

defendant,

APPLICATION for a declaration that, by maintaining in force a system for levying charges on the disembarkation and the embarkation of passengers in the case of

^{*} Language of the case: French.

vessels using port installations situated on its continental or island territory and arriving from ports situated in another Member State or travelling to them, whereas in the case of passenger transport between two ports situated on national territory those charges are levied only on embarkation for departure from the continental or island port, and by applying higher rates of charges when passengers arrive from or embark for ports situated in another Member State than when they travel to a port situated on national territory, the French Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Diez de Velasco and D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler (Rapporteur), G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 8 June 1994,

after hearing the Opinion of the Advocate General at the sitting on 12 July 1994,

gives the following

Judgment

By application lodged at the Court Registry on 3 August 1993, the Commission of the European Communities brought an action under Article 169 of the EEC-Treaty for a declaration that, by maintaining in force a system for levying charges on the disembarkation and embarkation of passengers in the case of vessels using port installations situated on its continental or island territory and arriving from ports situated in another Member State or travelling to them, whereas in the case of transport between two ports situated in national territory, those charges are levied only on embarkation for departure from the continental or island port, and by applying higher rates of charges when passengers arrive from or embark for ports situated in another Member State than when they travel to a port situated on national territory, the French Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1).

Under Article R.212-17 of the French Code governing maritime ports a charge is levied on each passenger disembarking, embarking or transshipping in the maritime ports of metropolitan France. That charge, which is borne by the shipowner, may be recovered from the passengers.

- 3 Article R.212-19 of that code, as contained in Decree No 92/1089 of 1 October 1992 altering the rates of tax on passengers of commercial vessels collected by way of port dues (Official Journal of the French Republic, 7 October 1992), provides as follows:

'In the maritime ports of continental France, charges at the following rate shall be imposed on passengers of commercial vessels by way of port dues for passengers travelling on a hovercraft or any other vessel:

1. Passengers bound for a continental French port or Corsica: FF 8.28 (with a 50% reduction for fourth class passengers). For the purpose of levying the charge, passengers of hovercrafts or single-class vessels shall be deemed to be second-class passengers;

2. Passengers arriving from or travelling to a port of the British Isles or the Channel Islands: FF 17.52;

3. Passengers arriving from or travelling to a port situated in Europe (with the exception of those mentioned at 1 and 2 above) or in any Mediterranean country: FF 21.01;

4. Passengers arriving from or travelling to all other ports: FF 74.81.

...'

Article R.212-20 goes on to provide:

'In the maritime ports of Corsica, the following rates of charge shall be imposed on passengers of commercial vessels by way of port duty where they travel on a hovercraft or any other vessel:

1. Passengers travelling to a port in Corsica, continental France or Sardinia: FF 8.28 (with a 50% reduction for fourth class passengers);

2. Passengers arriving from or travelling to a port situated in Europe (with the exception of those mentioned at 1 above) or in North Africa: FF 8.28;

3. Passengers arriving from or travelling to all other ports: FF 49.88.

...'

The Commission considers that this system of charges is discriminatory in two ways: on the one hand, the rate of tax is lower for the transport of passengers whose destination is a French port than for the transport of passengers whose destination is a port of another Member State (except for passengers travelling to Sardinia from Corsica); in addition, for transport between French ports the charge is

levied only on embarkation, whereas for transport between a French port and a port of another Member State (except for journeys between Corsica and Sardinia), the charge is levied on both embarkation and disembarkation.

- 6 The Commission considers that, even if the French rules do not discriminate on the basis of the nationality of the provider of the transport services in question, they constitute an impediment to the freedom to provide services contrary to Article 1 of Regulation No 4055/86 owing to the fact that they distinguish between transport services within France and those performed to or from another Member State, although the port services covered by the charge are the same in both cases.

- 7 In its defence the French Government maintains that Regulation No 4055/86 does not fully implement the freedom to provide services in maritime transport, inasmuch as it concerns only maritime transport between Member States and between Member States and third countries and not maritime transport within the Member States, namely maritime cabotage. In that connection it stresses that Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7), which entered into force on 1 January 1993 provides in Article 6(1) that the freedom to provide services in the case of regular passenger and ferry services in the Mediterranean and along the coast of France are to be applicable only from 1 January 1999.

- 8 Therefore, according to the French Government, the observance by France of the rules concerning the freedom to provide services must be assessed separately for each of these two types of services. In both cases France satisfies the requirements

of Community law, inasmuch as there is no discrimination as between French operators and operators from other Member States in intra-Community maritime transport from or to a French port; in the case of cabotage all operators from the other Member States are placed in the same situation with regard to the applicable French legislation.

In order to assess whether the Commission's allegation is well founded it should first be recalled that Article 1(1) of Regulation No 4055/86 provides that

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

As the Court held in its judgment in Case C-379/92 *Peralta* [1994] ECR I-3453 at paragraph 39, that provision defines the beneficiaries of the freedom to provide maritime transport services between Member States and between Member States and third countries in terms which are substantially the same as those used in Article 59 of the Treaty.

By providing, further, that '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', Article 8 of Regulation No 4055/86 transposes the principle laid down in the third paragraph of Article 60 of the Treaty to the sphere of maritime transport between Member States.

- 12 Finally, under Article 1(3) of Regulation No 4055/86, the provisions of Articles 55 to 58 and 62 of the Treaty are to apply to those types of maritime transport.
- 13 Paragraph 13 of Regulation No 4055/86 thus renders applicable to the sphere of maritime transport between Member States the totality of the Treaty rules governing the freedom to provide services.
- 14 In pursuance of those rules the freedom to provide services may be relied on not only by nationals of Member States established in a Member State other than that of the recipient of the services but also by an undertaking against the State in which it is established where the services are provided to recipients established in another Member State (see judgment in Case C-18/93 *Corsica Ferries Italia* [1994] ECR I-0000, paragraph 30, and more generally whenever a provider of services offers services in a Member State other than the one in which he is established (see judgment in Case C-154/89 *Commission v France* [1991] ECR I-659, paragraphs 9 and 10, and the abovementioned *Peralta* judgment, at paragraph 41).
- 15 Not only are intra-Community maritime transport services frequently supplied to recipients established in a different Member State from that of the provider of the services, but those services are also by definition offered at least in part on the territory of a Member State other than that in which the provider of the services is established.
- 16 Once the provision of services at issue in the present action is established as falling within Article 59 of the Treaty, under the Court's consistent case-law

Article 59 precludes the application of any national legislation which without objective justification impedes a provider of services from actually exercising that freedom (see judgment in Case C-288/89 *Collectieve Antennevoorziening Gouda* [1991] ECR I-4007).

17 In the perspective of a single market and in order to permit the realization of its objectives, that freedom likewise precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State.

18 Consequently, the provision of maritime transport services between Member States cannot be subject to stricter conditions than those to which analogous provisions of services at domestic level are subject.

19 In this connection the fact, invoked by the French Government, that under Regulation No 3577/92 the freedom to provide services applies to maritime transport within the Member States only progressively and within the time-limits laid down therein is without relevance. In fact, that regulation concerns only the access to maritime cabotage by providers of services from other Member States and does not lay down rules governing intra-Community maritime transport.

20 To accept that the Member States might on that ground be justified in charging intra-Community maritime transport more heavily than internal transport would be tantamount to rendering the extension of the freedom to provide services to

intra-Community maritime transport provided for in Regulation No 4055/86 to a substantial extent nugatory.

- 21 Where national legislation, though applicable without discrimination to all vessels whether used by national providers of services or by those from other Member States, operates a distinction according to whether those vessels are engaged in internal transport or in intra-Community transport, thus securing a special advantage for the domestic market and the internal transport services of the Member State in question, that legislation must be deemed to constitute a restriction on the freedom to provide maritime transport services contrary to Regulation No 4055/86.

- 22 The contested French legislation undeniably operates a scheme of charges which in the case of transport services between a French port and a port in another Member State is less favourable than that applicable to transport services provided between French ports.

- 23 Under those circumstances the Commission's application for a declaration of a failure to fulfil obligations must be granted in the terms sought.

Costs

- 24 Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the French Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that, by maintaining in force a system for levying charges on the disembarkation and embarkation of passengers in the case of vessels using port installations situated on its continental or island territory and arriving from ports situated in another Member State or travelling to them, whereas in the case of passenger transport between two ports situated on national territory those charges are levied only on embarkation for departure from the continental or island port, and by applying higher rates of charges when passengers arrive from or embark for ports situated in another Member State than when they travel to a port situated on national territory, the French Republic has failed to fulfil its obligations under 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;
2. Orders the French Republic to pay the costs.

Due

Mancini

Moitinho de Almeida

Diez de Velasco

Edward

Kakouris

Joliet

Schockweiler

Rodríguez Iglesias

Grévisse

Zuleeg

Kapteyn

Murray

Delivered in open court in Luxembourg on 5 October 1994.

R. Grass

O. Due

Registrar

President