

JUDGMENT OF THE COURT (Fifth Chamber)
12 December 1996 ^{*}

In Case C-3/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Landgericht Dortmund, Germany, for a preliminary ruling in the proceedings pending before that court between

Reisebüro Broede

and

Gerd Sandker

on the interpretation of the provisions of the EC Treaty relating to freedom to provide services, in particular Article 59,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón, D. A. O. Edward (Rapporteur), P. Jann and M. Wathelet, Judges,

Advocate General: N. Fennelly,
Registrar: H. A. Rühl, Principal Administrator,

^{*} Language of the case: German.

after considering the written observations submitted on behalf of:

- Reisebüro Broede, by Margarita Ramthun, managing director of INC Consulting SARL,
- Mr Sandker, by Dirk Hinne, Rechtsanwalt, Dortmund,
- the German Government, by Alfred Dittrich, Regierungsdirektor in the Federal Ministry of Justice, and Gereon Thiele, Assessor in the Federal Ministry of Economic Affairs, acting as Agents, and Achim von Winterfeld, Rechtsanwalt, Karlsruhe,
- the Commission of the European Communities, by Jürgen Grunwald, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the parties at the hearing on 2 May 1996,

after hearing the Opinion of the Advocate General at the sitting on 27 June 1996,

gives the following

Judgment

- 1 By order of 27 December 1994, received at the Court on 11 January 1995, the Landgericht (Regional Court) Dortmund referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of the provisions of the EC Treaty relating to freedom to provide services, in particular Article 59.

Those questions were raised in judicial debt-collection proceedings brought on behalf of Reisebüro Broede against Mr Sandker. The dispute concerns the judicial recovery of debts by debt-collecting undertakings wishing to undertake the recovery in Germany of debts owed to other persons.

Under Paragraph 828 of the Zivilprozeßordnung (Code of Civil Procedure) of 30 January 1877, in the version of 12 September 1950 (BGBl. I, p. 455, hereinafter 'the ZPO'), jurisdiction to grant orders for the enforcement of debts is vested in the Amtsgericht (Local Court).

Paragraph 78 of the ZPO provides that representation by a lawyer is compulsory only before a Landgericht or any higher court. It follows that representation by a lawyer is not, in principle, compulsory before an Amtsgericht.

Paragraph 79 of the ZPO provides in that regard:

'In all cases where representation by a lawyer is not compulsory, the parties may conduct the proceedings themselves or through the intermediary of any person having capacity to conduct legal proceedings, acting as agent.'

However, Article 1(1) of the Rechtsberatungsgesetz (Law on Legal Advice) of 17 December 1935 (RGBl. I, p. 1478, hereinafter 'the RBerG') provides:

'Only persons who have been given the corresponding authorization by the competent authority may, in the course of business — whether as their principal

activity or as an ancillary activity, and whether for remuneration or without charge — engage in the conduct of legal matters on behalf of others, including the provision of legal advice and the collection of debts owed to others or debts assigned for the purposes of collection. Each authorization shall be granted for one field of activity:

...

(5) to debt-collecting undertakings, for the extra-judicial recovery of debts (debt-collection agencies),

...

It may be exercised only under the occupational designation corresponding to the authorization.⁷

⁷ Reisebüro Broede, the creditor in the main proceedings, is a travel agency established in Cologne, Germany. On 29 December 1992 it obtained from the Amtsgericht Hagen an enforceable decision against Mr Sandker, who resides in Dortmund, also in Germany.

⁸ On 8 May 1994 Reisebüro Broede gave INC Consulting SARL ('INC') authority *inter alia* to take all recovery measures necessary in order to secure full settlement of the debt. INC is a company registered with the Tribunal de Commerce (Commercial Court), Senlis, France, under No B 391 100 021 (93B185) and is engaged in the provision of debt-collection and corporate consultancy services.

On 19 May 1994 INC in turn conferred a power of attorney on its managing director, Ms Ramthun, who resides in Overath, Germany, authorizing her to enforce the decision of the Amtsgericht Hagen on behalf of Reisebüro Broede and to take all related legal measures.

Accordingly, Ms Ramthun applied to the Amtsgericht Dortmund on 6 June 1994 for the issue of an attachment order against Mr Sandker.

By order of 23 August 1994, the Amtsgericht Dortmund dismissed that application on the ground that Ms Ramthun lacked the requisite capacity to act, since, under German law, debt-collection undertakings are prohibited from representing their creditor clients in legal proceedings. According to that court, the prohibition in question also applies to foreign debt-collection undertakings, notwithstanding Articles 59 and 60 of the EC Treaty, on which Reisebüro Broede relied. Ms Ramthun lodged an appeal against that decision by document dated 31 August 1994.

The Landgericht Dortmund considered that the dispute raised questions as to the interpretation of Community law; it therefore decided to stay proceedings and to refer the following questions to the Court:

- ‘(1) Does Article 59 of the EEC Treaty preclude a national rule which prohibits an undertaking established in another Member State from securing judicial recovery of debts of others on the ground that this activity is reserved under the national rule for persons to whom a special official licence has been issued for that purpose?’

- (2) If the answer is in the affirmative: is this also the case where national law alone is to be applied in the recovery proceedings on the ground that the parties to the enforcement proceedings are resident within the State and the enforceable decision was also obtained within the State?’

Admissibility

- 13 Without raising any formal objection of inadmissibility, the German Government and the Commission express doubts as to the existence of a genuine Community element in the main proceedings. They question whether Ms Ramthun, a German national resident in Germany, is not in fact representing Reisebüro Broede, a travel agency established in Germany, as one of her own clients and not as a client of INC.
- 14 It has consistently been held that the provisions of the Treaty on freedom to provide services cannot apply to activities all of whose relevant elements are confined within a single Member State. Whether that is so in a particular case depends on findings of fact which are for the national court to make (Case C-23/93 *TV10 v Commissariaat voor de Media* [1994] ECR I-4795, paragraph 14).
- 15 In the present case, it is apparent from the order for reference and the information provided at the hearing that Reisebüro Broede gave a power of attorney to INC,

which has its seat in France, and which itself gave its managing director, Ms Ramthun, power to act on behalf of the creditor company.

In those circumstances, the information before the Court leaves no room for doubt as to the cross-border nature of the case in the main proceedings.

The first question

By its first question, the national court seeks in essence to know whether Article 59 of the Treaty precludes a national rule which prohibits an undertaking established in another Member State from securing judicial recovery of debts owed to others.

As a preliminary point, the German Government and the Commission question whether the issues raised by the reference do not in fact concern freedom of establishment rather than freedom to provide services. If it proved to be the case that INC was able, as a result of Ms Ramthun's residence in Germany, to establish a permanent presence in that country or that its activities were wholly or mainly concentrated on German territory, the provisions on freedom of establishment would apply.

It should be recalled that the provisions of the chapter on services are subordinate to those of the chapter on freedom of establishment (Case C-55/94 *Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* [1995] ECR I-4165, paragraph 22).

The concept of establishment within the meaning of Articles 52 to 58 of the Treaty is a very broad one, allowing a Community national to participate, on a stable and

continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom, so contributing to economic and social interpenetration within the Community in the sphere of activities as self-employed persons (judgment in *Gebhard*, cited above, paragraph 25).

- 21 By contrast, the provisions of the chapter on services, in particular the third paragraph of Article 60, envisage that the provider of services is to pursue his activity in another Member State on a temporary basis, although the fact that the provision of services is temporary does not mean that the provider of services may not equip himself with some form of infrastructure, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of performing the services in question (judgment in *Gebhard*, paragraphs 26 and 27).
- 22 It is for the national court to determine, having regard to the duration, regularity, periodicity and continuity of INC's activities, whether the activity which it pursues in Germany is of a temporary nature for the purposes of the Treaty.
- 23 In this respect, it should be noted that Ms Ramthun stated, in response to written questions put by the Court, that INC undertook debt-collection work in Germany on behalf of Reisebüro Broede on six occasions between February and May 1994. At the hearing, Ms Ramthun further confirmed that INC had undertaken debt-collection work in France and in Germany for French clients and a number of foreign clients.
- 24 In those circumstances, it must be assumed, for the purposes of answering the questions referred, that the situation with which the main proceedings are concerned falls within Article 59 of the Treaty.

25 It has consistently been held that Article 59 requires not only the elimination of all discrimination on grounds of nationality against providers of services who are established in another Member State 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, which is liable to prohibit, impede or render less advantageous the activities of a provider of services established in another Member State where he lawfully provides similar services (Case C-272/94 *Guiot* [1996] ECR I-1905).

26 In the present case, it is apparent from the documents before the Court and the observations made at the hearing by the German Government that in Germany an undertaking may carry out judicial debt-collection work for others only through the intermediary of a lawyer. The administrative authorization provided for by Article 1(1) of the RBerG, to which the national court refers, applies only to the extra-judicial recovery of debts and is therefore not relevant to the determination of the present case.

27 In prohibiting debt-collection undertakings from carrying out judicial debt-collection work themselves, without the involvement of a lawyer, Article 1(1) of the RBerG constitutes a restriction on freedom to provide services within the meaning of Article 59 of the Treaty, albeit it applies without distinction to national providers of services and to those of other Member States, since it makes it impossible to provide those services in Germany, even where the activities of the provider of the services in that State are of a purely occasional nature.

28 Consequently, in accordance with settled case-law, if it is to fall outside the prohibition laid down by Article 59, the restriction imposed by the RBerG must fulfil four conditions: it must be applied in a non-discriminatory manner; it must be justified by imperative requirements in the general interest; it must be suitable for securing the attainment of the objective which it pursues; and it must not go beyond what is necessary in order to attain it (see *Gebhard*, paragraph 37). The

Court has also stated in that connection that freedom to provide services may be restricted only by rules which are justified by overriding reasons in the general interest, in so far as that interest is not safeguarded by the rules to which the provider of the service is subject in the Member State where he is established (see, to that effect, Case C-180/89 *Commission v Italy* [1991] ECR I-709, paragraph 17, Case C-198/89 *Commission v Greece* [1991] ECR I-727, paragraph 18, and Case C-43/93 *Vander Elst v Office des Migrations Internationales* [1994] ECR I-3803, paragraph 16).

- 29 It is necessary, therefore, to consider whether those four conditions are fulfilled in circumstances such as those of the main proceedings.
- 30 As regards the first condition, it follows from what has already been said that the rule prohibiting a debt-collection agency from itself undertaking, in the course of business, the judicial recovery of debts, without representation by a lawyer, is not discriminatory and applies without distinction to national providers of services and to those of other Member States.
- 31 As to the second condition, the German Government maintains, without being contradicted in that regard, that Article 1(1) of the RBerG is intended, first, to protect the recipients of the services in question against the harm which they could suffer as a result of legal advice given to them by persons who did not possess the necessary professional or personal qualifications and, second, to safeguard the proper administration of justice (Case C-76/90 *Säger v Dennemeyer* [1991] ECR I-4221, paragraph 16, and Case 33/74 *Van Binsbergen v Bedrijfsvereniging Metaalnijverheid* [1974] ECR 1299).
- 32 As regards the third and fourth conditions, however, the Commission and Reisebüro Broede maintain that the rule prohibiting a debt-collection agency from itself undertaking the judicial recovery of debts goes beyond what is necessary in order to attain the objectives pursued by the RBerG.

- 33 In that regard, Reisebüro Broede submits, in particular, that those objectives could equally well be attained by less restrictive measures. The German authorities could accept a certificate of integrity or solvency issued by the competent authorities of the Member State where the provider of the services is established, or could require it to elect domicile in the host Member State for the purposes of receiving official legal correspondence there.
- 34 The Commission maintains that the restrictions in issue are not concerned with the protection either of creditors or of officials responsible for the administration of justice, since, under Paragraph 79 of the ZPO, creditors can apply to an Amtsgericht for an attachment order either personally or through the intermediary of non-professional advisers instructed by them, and such applications are not subject to the requirement that they be represented by a lawyer.
- 35 It should be noted, first, that the main proceedings concern the representation of litigants by third parties who are legal persons acting in the course of business. The German Government has explained that, in allowing creditors engaged in legal proceedings to act in person or through the intermediary of another person, Paragraph 79 of the ZPO seeks to limit the costs of proceedings before courts lower than a Landgericht. The possibility of acting through an intermediary is afforded only to natural persons. Such persons may, where appropriate, obtain, within the premises of the courts themselves, the advice of persons experienced in such matters. The position is different in the case of litigation services provided on a professional basis. That activity is reserved, according to the relevant provisions of the RBerG, to lawyers who are answerable personally to the courts.
- 36 Consequently, the fact, pointed out by the Commission, that a creditor or a non-professional adviser acting on his behalf can lodge an application for an attachment order does not preclude legislative provisions such as those at issue in the main proceedings from being regarded as justified in the general interest on the ground that they protect creditors or safeguard the sound administration of justice in relation to the provision of litigation services on a professional basis.

- 37 Second, it has consistently been held that, in the absence of specific Community rules in the matter, each Member State is free to regulate the exercise of the legal profession in its territory (Case 107/83 *Ordre des Avocats au Barreau de Paris v Klopp* [1984] ECR 2971, paragraph 17).
- 38 As the Court has repeatedly observed, the application of professional rules to lawyers, in particular those relating to organization, qualifications, professional ethics, supervision and liability, ensures that the ultimate consumers of legal services and the sound administration of justice are provided with the necessary guarantees in relation to integrity and experience (see to that effect, the judgments in Case 292/86 *Gullung v Conseils de l'Ordre des Avocats du Barreau de Colmar et de Saverne* [1988] ECR 111 and *Van Binsbergen*, cited above).
- 39 According to the German Government, the rule that only lawyers may, in a professional capacity, represent individuals in legal proceedings, in a field involving complex legal issues and governed by numerous specific rules, ensures the protection of those to whom the services are provided and the sound administration of justice against the risks arising from incompetence or inexperience on the part of debt-collection agencies in that field.
- 40 Those guarantees, it submits, are all the more necessary in circumstances such as those of the main proceedings, where the object of the proceedings is the execution of an enforceable decision against an individual by means of an attachment order, and, consequently, the procedural rules ensuring the protection of individuals must be complied with.
- 41 As Community law presently stands, it is for the Member States to assess whether it is necessary to place restrictions on the professional recovery of debts by way of judicial proceedings. Although, in some Member States, that activity is not reserved to lawyers, the Federal Republic of Germany is entitled to consider that the objectives pursued by the RBerG cannot be attained, as regards that activity, by less restrictive means.

42 Whilst it is true that debt-collection agencies are not subject to legal regulation in France, the fact that one Member State imposes less strict rules than another Member State does not mean that the latter's rules are disproportionate and hence incompatible with Community law (Case C-348/93 *Alpine Investments v Minister van Financiën* [1995] ECR I-1141, paragraph 51).

43 The answer to the national court's first question must therefore be that Article 59 of the Treaty does not preclude a national rule which prohibits an undertaking established in another Member State from securing judicial recovery of debts owed to others on the ground that the exercise of that activity in a professional capacity is reserved to the legal profession.

The second question

44 In view of the answer given to the first question, there is no need to give a ruling on the second question.

Costs

45 The costs incurred by the German Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Landgericht Dortmund, by order of 27 December 1994, hereby rules:

Article 59 of the EC Treaty does not preclude a national rule which prohibits an undertaking established in another Member State from securing judicial recovery of debts owed to others on the ground that the exercise of that activity in a professional capacity is reserved to the legal profession.

Moitinho de Almeida

Sevón

Edward

Jann

Wathelet

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass

J. C. Moitinho de Almeida

Registrar

President of the Fifth Chamber