

INFORMATION

INTERNAL MARKET

Van Binsbergen Ruling

81/75

On December 3, 1974 the Court of Justice in Luxembourg made an important ruling concerning the interpretation of Articles 59 and 60 of the Treaty dealing with the removal of restriction on the freedom to provide services.

The Court ruled that Articles 59 section 1 and 60 section 3 are to be interpreted in such a way that requirement in national legislation of domicile in the country where the service is provided, cannot make it impossible for a person established in another member State to provide the service when the providing of the service is not subject to any special conditions according to the national law.

The Court also ruled that Articles 59, § 1 and 60, § 3 are directly applicable provisions and may be invoked before the national courts at least to eliminate any discrimination against the person offering the service on grounds of his nationality or his domicile in another member State than the one where the service is offered.

In ordinary language this means that an EC citizen wishing to provide a service - for instance an auditor's record or an architect's plans - in a country other than the one where he is domiciled may no longer be refused by the authorities in the "receiving country" just because he is not domiciled there or because of his nationality. Any contrary provision in the national legislation may no longer be applied to that EC citizen. On the other hand if in any particular field national conditions are required for the exercise of a given activity - such as provisions dealing with professional qualifications - any EC citizen supplying services in the member States must comply with such conditions as are applied to persons established in this member State.

It also means that in cases where this right is not recognized the individual may now complain to the higher national authorities or to the national courts invoking directly Article 59. This direct access to the national authorities constitutes an effective guarantee, but there is also reason to hope that it will help turn Community Law from a rather abstract matter into a part of daily life in the nine member States.

Finally the above-mentioned consequences apply to all economic activities with the exception of certain activities connected with the exercise of official authority mentioned in Article 55, and despite the absence of directives prescribed by Article 63.

The importance of this "global effect" of the judgement must be seen in the light of the previous work carried out on the basis of Articles 59 - 66. Since 1961 when the General Programme concerning services was adopted by the Council of Ministers, the Council and the other Community institutions have advanced step by step adopting directives concerning groups of activities. This work has not been without success. A number of sectors such as commerce, industry and crafts have been liberalized. But in a number of other fields no agreements have been reached. Now, regardless of whether or not directives have been passed the providing of services concerning all activities covered by Article 59 has been liberalized with the reservation mentioned above regarding national requirements applying to everybody.

The facts of the Van Binsbergen case are the following :

In July 1972 Mr. Van Binsbergen, a Dutch citizen living in the Netherlands authorized Mr. Kortman, a Dutch legal advisor who was at that time also domiciled in the Netherlands to represent him in a suit concerning unemployment insurance.

Before the case was actually examined by the highest Court for social affairs in the Netherlands Mr. Kortman moved to Belgium where he took up his new domicile.

In November 1973 however the Court informed him that pursuant to Dutch law persons representing plaintiffs in Court are required to be domiciled in the Netherlands and that he could not therefore be admitted to the Court. Mr. Kortman objected that this requirement was contrary to Articles 59 and 60 of the Treaty and in April 1974 the Appeal Court referred the matter to the Court of Justice.

For Mr. Kortman the practical result of the judgement as mentioned above will be that the Dutch Court in question can no longer refuse to hear him on grounds of his Belgian domicile.

The judgement discussed above has not yet been examined by the Commission. Nevertheless, after a preliminary examination by the Services of the Commission the main consequences as mentioned above seem indisputable.

This means that a major step has been taken towards the free movement of people and services within the Community, though it can not be denied that there are still obstacles to be overcome before total mobility will be attained. National education and national diplomas are still required in some areas - above all in the liberal professions - and these requirements are not contrary to the Court's ruling as they are not discriminatory i.e. apply to every person established in the country.

Thus there is still, in certain fields, a need for the mutual recognition of diplomas and pending achievement of this transitional measures need to be adopted - based on the idea that the actual pursuit of a profession or trade in the country of origin for a reasonable period gives a sufficient proof that the person possesses the professional or technical knowledge equivalent to that required in the host state.

In spite of these reservations, however, the historical evolution towards the free movement of persons and services is clear. The attainment of these freedoms - one of the main concepts of the Treaty - implies development in three different fields, namely, 1) the freedom of movement for workers,

- 2) the right of establishment and
- 3) the freedom to provide services.

As regard workers, the right to move within the Community, the principle of equal treatment with nationals and the right to remain in the host state after having been employed there were secured by provisions adopted from 1968 onwards.

As regards the self-employed, freedom of establishment has been attained for a number of activities such as industry and crafts by Council Directives adopted since 1961 while the remaining fields were covered by the Court's decision in the Reyners' case in June 1974 guaranteeing all EC nationals wishing to establish

themselves in a member State national treatment i.e. freedom from discrimination on grounds of nationality.

The latest decision by the Court in the case Van Binsbergen is a new landmark towards complete achievement of the freedoms prescribed by the Treaty for the self-employed.