

Judgment of the Court of 17 December 1981

Judgment of the Court of 17 December 1981. - Criminal proceedings against Alfred John Webb. - Reference for a preliminary ruling: Hoge Raad - Netherlands. - Freedom to provide services - Provision of manpower. - Case 279/80.

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Keywords

1 . FREEDOM TO PROVIDE SERVICES - SERVICES - CONCEPT - PROVISION OF MANPOWER

(EEC TREATY , ART . 60 , FIRST PARAGRAPH)

2 . FREEDOM TO PROVIDE SERVICES - RESTRICTIONS - PROHIBITION - DIRECT EFFECT

(EEC TREATY , ARTS 59 AND 60)

3 . FREEDOM TO PROVIDE SERVICES - RESTRICTIONS JUSTIFIED BY GENERAL GOOD - PERMISSIBILITY - CONDITIONS

(EEC TREATY , ARTS 59 AND 60)

4 . FREEDOM TO PROVIDE SERVICES - UNDERTAKINGS PROVIDING MANPOWER - PURSUIT OF ACTIVITY - LICENSING SYSTEM - LAWFULNESS - CONDITIONS

(EEC TREATY , ARTS 59 AND 60)

Summary

1 . WHERE AN UNDERTAKING HIRES OUT , FOR REMUNERATION , STAFF WHO REMAIN IN THE EMPLOY OF THAT UNDERTAKING , NO CONTRACT OF EMPLOYMENT BEING ENTERED INTO WITH THE USER , ITS ACTIVITIES CONSTITUTE AN OCCUPATION WHICH SATISFIES THE CONDITIONS LAID DOWN IN THE FIRST PARAGRAPH OF ARTICLE 60 OF THE EEC TREATY . ACCORDINGLY THEY MUST BE CONSIDERED A ' ' SERVICE ' ' WITHIN THE MEANING OF THAT PROVISION .

2 . THE ESSENTIAL REQUIREMENTS OF ARTICLE 59 OF THE TREATY BECAME DIRECTLY AND UNCONDITIONALLY APPLICABLE ON THE EXPIRY OF THE TRANSITIONAL PERIOD . THOSE ESSENTIAL REQUIREMENTS ABOLISH ALL DISCRIMINATION AGAINST THE PERSON PROVIDING THE SERVICE BY REASON OF HIS NATIONALITY OR THE FACT THAT HE IS ESTABLISHED IN A MEMBER STATE OTHER THAN THAT IN WHICH THE SERVICE IS TO BE PROVIDED .

3 . THE FREEDOM TO PROVIDE SERVICES IS ONE OF THE FUNDAMENTAL PRINCIPLES OF THE TREATY AND MAY BE RESTRICTED ONLY BY PROVISIONS WHICH ARE JUSTIFIED BY THE GENERAL GOOD AND WHICH ARE IMPOSED ON ALL PERSONS OR UNDERTAKINGS OPERATING IN THE MEMBER STATE IN WHICH THE SERVICE IS TO BE PROVIDED IN SO FAR AS THAT INTEREST IS NOT SAFEGUARDED BY THE PROVISIONS TO WHICH THE PROVIDER OF THE SERVICE IS SUBJECT IN THE MEMBER STATE OF HIS ESTABLISHMENT .

4 . ARTICLE 59 OF THE TREATY DOES NOT PRECLUDE A MEMBER STATE WHICH REQUIRES AGENCIES FOR THE PROVISION OF MANPOWER TO HOLD A LICENCE FROM REQUIRING A PROVIDER OF SERVICES ESTABLISHED IN ANOTHER MEMBER STATE AND PURSUING SUCH ACTIVITIES ON THE TERRITORY OF THE FIRST MEMBER STATE TO COMPLY WITH THAT CONDITION EVEN IF HE HOLDS A LICENCE ISSUED BY THE STATE IN WHICH HE IS ESTABLISHED , PROVIDED , HOWEVER , THAT IN THE FIRST PLACE WHEN CONSIDERING APPLICATIONS FOR LICENCES AND IN GRANTING THEM THE MEMBER STATE IN WHICH THE SERVICE IS PROVIDED MAKES NO DISTINCTION BASED ON THE NATIONALITY OF THE PROVIDER OF THE SERVICES OR HIS PLACE OF ESTABLISHMENT , AND IN THE SECOND PLACE THAT IT TAKES INTO ACCOUNT THE EVIDENCE AND GUARANTEES ALREADY PRODUCED BY THE PROVIDER OF THE SERVICES FOR THE PURSUIT OF HIS ACTIVITIES IN THE MEMBER STATE IN WHICH HE IS ESTABLISHED .

Parties

IN CASE 279/80 ,

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) FOR A PRELIMINARY RULING IN THE CRIMINAL PROCEEDINGS PENDING BEFORE THAT COURT AGAINST

ALFRED JOHN WEBB

Subject of the case

ON THE INTERPRETATION OF ARTICLES 59 AND 60 OF THE EEC TREATY ,

Grounds

1 BY A JUDGMENT OF 9 DECEMBER 1980 WHICH WAS RECEIVED AT THE COURT ON 30 DECEMBER 1980 THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY THREE QUESTIONS CONCERNING THE INTERPRETATION OF ARTICLES 59 AND 60 OF THE TREATY IN CONNECTION WITH THE NETHERLANDS LEGISLATION GOVERNING THE PROVISION OF MANPOWER .

2 THE QUESTIONS AROSE IN THE COURSE OF CRIMINAL PROCEEDINGS FOR OFFENCES AGAINST ARTICLE 1 OF THE KONINKLIJK BESLUIT (ROYAL DECREE) OF 10 SEPTEMBER 1970 (STAATSBLAD 410). THAT ARTICLE PROHIBITS THE PROVISION OF MANPOWER WITHOUT AUTHORIZATION FROM THE MINISTER FOR SOCIAL AFFAIRS .

3 THE ABOVE-MENTIONED ROYAL DECREE WAS ADOPTED PURSUANT TO THE OPENING WORDS OF ARTICLE 2 (1) AND SUBPARAGRAPH (A) THEREOF OF THE WET OP HET TER BESCHIKKINGSTELLEN VAN ARBEIDSKRACHTEN (LAW ON THE PROVISION OF MANPOWER) OF 31 JULY 1965 (STAATSBLAD 379), AS AMENDED BY THE LAW OF 30 JUNE 1967 (STAATSBLAD 377). THAT ARTICLE PROVIDES THAT THE PROVISION OF

MANPOWER WITHOUT AUTHORIZATION MAY BE PROHIBITED BY MEANS OF A ROYAL DECREE IF REQUIRED IN THE INTERESTS OF GOOD RELATIONS ON THE LABOUR MARKET OR OF THE LABOUR FORCE AFFECTED . ARTICLE 6 (1) OF THE LAW PROVIDES , HOWEVER , THAT THE AUTHORIZATION MAY BE REFUSED ONLY WHEN THERE IS REASONABLE CAUSE TO FEAR THAT THE PROVISION OF MANPOWER BY THE APPLICANT MIGHT HARM GOOD RELATIONS ON THE LABOUR MARKET OR IF THE INTERESTS OF THE LABOUR FORCE IN QUESTION ARE INADEQUATELY SAFEGUARDED .

4 ARTICLE 1 (1) (B) OF THE ABOVE-MENTIONED LAW DEFINES THE ACTIVITY IN QUESTION AS THE PROVISION OF MANPOWER FOR ANOTHER PERSON FOR HIRE OR REWARD AND OTHERWISE THAN IN PURSUANCE OF A CONTRACT OF EMPLOYMENT WITH THAT OTHER PERSON , FOR THE PERFORMANCE OF WORK USUALLY CARRIED ON IN HIS UNDERTAKING .

5 THE ACCUSED IN THE MAIN ACTION , ALFRED JOHN WEBB , WHO IS THE MANAGER OF A COMPANY INCORPORATED UNDER ENGLISH LAW AND ESTABLISHED IN THE UNITED KINGDOM , HOLDS A LICENCE UNDER UNITED KINGDOM LAW FOR THE PROVISION OF MANPOWER . THE COMPANY PROVIDES TECHNICAL STAFF FOR THE NETHERLANDS IN PARTICULAR . THE STAFF ARE RECRUITED BY THE COMPANY AND MADE AVAILABLE , TEMPORARILY AND FOR CONSIDERATION , TO UNDERTAKINGS LOCATED IN THE NETHERLANDS , NO CONTRACT OF EMPLOYMENT BEING ENTERED INTO AS BETWEEN SUCH STAFF AND THE UNDERTAKINGS . IN THE CASE AT ISSUE IT WAS ESTABLISHED BY THE COURT CONSIDERING THE FACTS THAT IN FEBRUARY 1978 THE COMPANY HAD ON THREE OCCASIONS , NOT BEING IN POSSESSION OF A LICENCE ISSUED BY THE NETHERLANDS MINISTER FOR SOCIAL AFFAIRS , SUPPLIED WORKERS FOR UNDERTAKINGS IN THE NETHERLANDS , FOR CONSIDERATION AND OTHERWISE THAN IN PURSUANCE OF A CONTRACT OF EMPLOYMENT CONCLUDED WITH THE LATTER , FOR THE PERFORMANCE OF WORK USUALLY CARRIED ON IN THOSE UNDERTAKINGS .

6 CONSIDERING THAT A DECISION IN THE CASE DEPENDED ON WHETHER THE NETHERLANDS LEGISLATION WAS COMPATIBLE WITH THE RULES OF COMMUNITY LAW GOVERNING THE FREEDOM TO SUPPLY SERVICES AND , IN PARTICULAR , WITH ARTICLES 59 AND 60 OF THE EEC TREATY , THE HOGE RAAD , HEARING THE APPEAL IN CASSATION , REFERRED THE FOLLOWING QUESTIONS TO THE COURT OF JUSTICE :

' ' 1 . DOES THE EXPRESSION ' SERVICES ' IN ARTICLE 60 OF THE EEC TREATY INCLUDE THE SERVICE OF PROVIDING MANPOWER WITHIN THE MEANING OF THE OPENING WORDS OF THE FIRST PARAGRAPH OF ARTICLE 1 AND SUBPARAGRAPH (B) OF THE SAME PARAGRAPH OF THE WET OP HET TER BESCHIKKINGSTELLEN VAN ARBEIDSKRACHTEN (LAW ON PROVISION OF MANPOWER)?

2. IF QUESTION 1 IS ANSWERED IN THE AFFIRMATIVE , DOES ARTICLE 59 OF THE TREATY ALWAYS OR ONLY UNDER CERTAIN CONDITIONS PRECLUDE A MEMBER STATE IN WHICH THE PROVISION OF THAT SERVICE IS MADE DEPENDENT ON THE POSSESSION OF A LICENCE - THAT REQUIREMENT BEING IMPOSED IN ORDER THAT SUCH A LICENCE MAY BE REFUSED IF THERE IS REASONABLE CAUSE TO FEAR THAT THE PROVISION OF MANPOWER BY THE APPLICANT MIGHT HARM GOOD RELATIONS IN THE LABOUR MARKET OR THAT THE INTERESTS OF THE WORKFORCE AFFECTED ARE INSUFFICIENTLY SAFEGUARDED - FROM COMPELLING A PERSON PROVIDING THE SERVICES WHO IS ESTABLISHED IN ANOTHER MEMBER STATE TO FULFIL THOSE CONDITIONS?

3. TO WHAT EXTENT IS THE ANSWER TO QUESTION 2 AFFECTED IF A FOREIGNER PROVIDING THE SERVICE POSSESSES A LICENCE TO PROVIDE THAT SERVICE IN THE STATE IN WHICH HE IS ESTABLISHED?

' '

FIRST QUESTION

7 THE SUBSTANCE OF THE FIRST QUESTION RAISED BY THE NATIONAL COURT IS WHETHER THE CONCEPT OF ' ' SERVICES ' ' CONTAINED IN ARTICLE 60 OF THE TREATY EXTENDS TO THE SUPPLY OF MANPOWER WITHIN THE MEANING OF THE NETHERLANDS LEGISLATION CITED ABOVE .

8 ACCORDING TO THE WORDING OF THE FIRST PARAGRAPH OF ARTICLE 60 OF THE TREATY THE EXPRESSION ' ' SERVICES ' ' MEANS SERVICES WHICH ARE NORMALLY PROVIDED FOR REMUNERATION , IN SO FAR AS THEY ARE NOT GOVERNED BY THE PROVISIONS RELATING TO FREEDOM OF MOVEMENT FOR GOODS , CAPITAL AND PERSONS . IN THE SECOND PARAGRAPH OF THE ARTICLE EXAMPLES OF ACTIVITIES COVERED BY THE EXPRESSION ' ' SERVICES ' ' ARE LISTED .

9 WHERE AN UNDERTAKING HIRES OUT , FOR REMUNERATION , STAFF WHO REMAIN IN THE EMPLOY OF THAT UNDERTAKING , NO CONTRACT OF EMPLOYMENT BEING ENTERED INTO WITH THE USER , ITS ACTIVITIES CONSTITUTE AN OCCUPATION WHICH SATISFIES THE CONDITIONS LAID DOWN IN THE FIRST PARAGRAPH OF ARTICLE 60 . ACCORDINGLY THEY MUST BE CONSIDERED A ' ' SERVICE ' ' WITHIN THE MEANING OF THAT PROVISION .

10 THE FRENCH GOVERNMENT HAS SOUGHT TO EMPHASIZE IN THIS CONNECTION THE SPECIAL NATURE OF THE ACTIVITY IN QUESTION , WHICH ALTHOUGH COVERED BY THE EXPRESSION ' ' SERVICES ' ' IN ARTICLE 60 OF THE TREATY OUGHT TO RECEIVE SPECIAL CONSIDERATION INASMUCH AS IT MAY BE COVERED AS WELL BOTH BY PROVISIONS CONCERNING SOCIAL POLICY AND BY THOSE CONCERNING THE FREE MOVEMENT OF PERSONS . WHILST EMPLOYEES OF AGENCIES FOR THE SUPPLY OF MANPOWER MAY IN CERTAIN CIRCUMSTANCES BE COVERED BY THE PROVISIONS OF ARTICLES 48 TO 51 OF THE TREATY AND THE COMMUNITY REGULATIONS ADOPTED IN IMPLEMENTATION THEREOF , THAT DOES NOT PREVENT UNDERTAKINGS OF THAT NATURE WHICH EMPLOY SUCH WORKERS FROM BEING UNDERTAKINGS ENGAGED IN THE PROVISION OF SERVICES , WHICH THEREFORE COME WITHIN THE SCOPE OF THE PROVISIONS OF ARTICLE 59 ET SEQ . OF THE TREATY . AS THE COURT HAS ALREADY DECLARED , IN PARTICULAR IN ITS JUDGMENT OF 3 DECEMBER 1974 (CASE 33/74 VAN BINSBERGEN (1974) ECR 1299) , THE SPECIAL NATURE OF CERTAIN SERVICES DOES NOT REMOVE THEM FROM THE AMBIT OF THE RULES ON THE FREEDOM TO SUPPLY SERVICES .

11 THE REPLY TO THE FIRST QUESTION MUST THEREFORE BE THAT THE EXPRESSION ' ' SERVICES ' ' IN ARTICLE 60 OF THE TREATY INCLUDES THE PROVISION OF MANPOWER WITHIN THE MEANING OF THE WET OP HET TER BESCHIKKINGSTELLEN VAN ARBEIDSKRACHTEN .

SECOND AND THIRD QUESTIONS

12 THE SECOND AND THIRD QUESTIONS ASK IN SUBSTANCE WHETHER ARTICLE 59 OF THE TREATY PRECLUDES A MEMBER STATE FROM MAKING THE PROVISION OF MANPOWER WITHIN ITS TERRITORY SUBJECT TO POSSESSION OF A LICENCE IN THE CASE OF AN UNDERTAKING ESTABLISHED IN ANOTHER MEMBER STATE , IN PARTICULAR WHEN THAT UNDERTAKING HOLDS A LICENCE ISSUED BY THE LATTER STATE .

13 THE FIRST PARAGRAPH OF ARTICLE 59 OF THE TREATY REQUIRES RESTRICTIONS ON FREEDOM TO PROVIDE SERVICES WITHIN THE COMMUNITY TO BE PROGRESSIVELY ABOLISHED DURING THE TRANSITIONAL PERIOD IN RESPECT OF NATIONALS OF MEMBER STATES OF THE COMMUNITY . AS STATED BY THE COURT IN ITS JUDGMENT OF 18 JANUARY 1979 (JOINED CASES 110 AND 111/78 VAN WESEMAEL (1979) ECR 35) THAT PROVISION , INTERPRETED IN THE LIGHT OF ARTICLE 8 (7) OF THE TREATY , IMPOSES AN OBLIGATION TO OBTAIN A PRECISE RESULT , THE FULFILMENT OF WHICH

HAD TO BE MADE EASIER BY , BUT NOT MADE DEPENDENT ON , THE IMPLEMENTATION OF A PROGRAMME OF PROGRESSIVE MEASURES . IT FOLLOWS THAT THE ESSENTIAL REQUIREMENTS OF ARTICLE 59 OF THE TREATY BECAME DIRECTLY AND UNCONDITIONALLY APPLICABLE ON THE EXPIRY OF THAT PERIOD .

14 THOSE ESSENTIAL REQUIREMENTS ABOLISH ALL DISCRIMINATION AGAINST THE PERSON PROVIDING THE SERVICE BY REASON OF HIS NATIONALITY OR THE FACT HE IS ESTABLISHED IN A MEMBER STATE OTHER THAN THAT IN WHICH THE SERVICE IS TO BE PROVIDED .

15 THE FEDERAL GERMAN GOVERNMENT AND THE DANISH GOVERNMENT MAINTAIN THAT THE LEGISLATION OF THE STATE IN WHICH THE SERVICE IS PROVIDED MUST , AS A GENERAL RULE , BE APPLIED IN TOTO TO ANY PERSON PROVIDING SUCH SERVICES WHETHER OR NOT HE IS ESTABLISHED IN THAT STATE BY VIRTUE OF THE PRINCIPLE OF EQUALITY AND , IN PARTICULAR , THE THIRD PARAGRAPH OF ARTICLE 60 OF THE TREATY , ACCORDING TO WHICH THE PERSON PROVIDING A SERVICE MAY , IN ORDER TO DO SO , 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 .

16 THE PRINCIPAL AIM OF THE THIRD PARAGRAPH IN ARTICLE 60 IS TO ENABLE THE PROVIDER OF THE SERVICE TO PURSUE HIS ACTIVITIES IN THE MEMBER STATE WHERE THE SERVICE IS GIVEN WITHOUT SUFFERING DISCRIMINATION IN FAVOUR OF THE NATIONALS OF THAT STATE . HOWEVER , IT DOES NOT MEAN THAT ALL NATIONAL LEGISLATION APPLICABLE TO NATIONALS OF THAT STATE AND USUALLY APPLIED TO THE PERMANENT ACTIVITIES OF UNDERTAKINGS ESTABLISHED THEREIN MAY BE SIMILARLY APPLIED IN ITS ENTIRETY TO THE TEMPORARY ACTIVITIES OF UNDERTAKINGS WHICH ARE ESTABLISHED IN OTHER MEMBER STATES .

17 IN THE ABOVE-MENTIONED JUDGMENT OF 18 JANUARY 1979 THE COURT HELD THAT , REGARD BEING HAD TO THE PARTICULAR NATURE OF CERTAIN SERVICES , SPECIFIC REQUIREMENTS IMPOSED ON THE PROVIDER OF THE SERVICES CANNOT BE CONSIDERED INCOMPATIBLE WITH THE TREATY WHERE THEY HAVE AS THEIR PURPOSE THE APPLICATION OF RULES GOVERNING SUCH ACTIVITIES . HOWEVER , THE FREEDOM TO PROVIDE SERVICES IS ONE OF THE FUNDAMENTAL PRINCIPLES OF THE TREATY AND MAY BE RESTRICTED ONLY BY PROVISIONS WHICH ARE JUSTIFIED BY THE GENERAL GOOD AND WHICH ARE IMPOSED ON ALL PERSONS OR UNDERTAKINGS OPERATING IN THE SAID STATE IN SO FAR AS THAT INTEREST IS NOT SAFEGUARDED BY THE PROVISIONS TO WHICH THE PROVIDER OF THE SERVICE IS SUBJECT IN THE MEMBER STATE OF HIS ESTABLISHMENT .

18 IT MUST BE NOTED IN THIS RESPECT THAT THE PROVISION OF MANPOWER IS A PARTICULARLY SENSITIVE MATTER FROM THE OCCUPATIONAL AND SOCIAL POINT OF VIEW . OWING TO THE SPECIAL NATURE OF THE EMPLOYMENT RELATIONSHIPS INHERENT IN THAT KIND OF ACTIVITY , PURSUIT OF SUCH A BUSINESS DIRECTLY AFFECTS BOTH RELATIONS ON THE LABOUR MARKET AND THE LAWFUL INTERESTS OF THE WORKFORCE CONCERNED . THAT IS EVIDENT , MOREOVER , IN THE LEGISLATION OF SOME OF THE MEMBER STATES IN THIS MATTER , WHICH IS DESIGNED FIRST TO ELIMINATE POSSIBLE ABUSE AND SECONDLY TO RESTRICT THE SCOPE OF SUCH ACTIVITIES OR EVEN PROHIBIT THEM ALTOGETHER .

19 IT FOLLOWS IN PARTICULAR THAT IT IS PERMISSIBLE FOR MEMBER STATES , AND AMOUNTS FOR THEM TO A LEGITIMATE CHOICE OF POLICY PURSUED IN THE PUBLIC INTEREST , TO SUBJECT THE PROVISION OF MANPOWER WITHIN THEIR BORDERS TO A SYSTEM OF LICENSING IN ORDER TO BE ABLE TO REFUSE LICENCES WHERE THERE IS REASON TO FEAR THAT SUCH ACTIVITIES MAY HARM GOOD RELATIONS ON THE LABOUR MARKET OR THAT THE INTERESTS OF THE WORKFORCE AFFECTED ARE NOT ADEQUATELY SAFEGUARDED . IN VIEW OF THE DIFFERENCES THERE MAY BE IN

CONDITIONS ON THE LABOUR MARKET BETWEEN ONE MEMBER STATE AND ANOTHER , ON THE ONE HAND , AND THE DIVERSITY OF THE CRITERIA WHICH MAY BE APPLIED WITH REGARD TO THE PURSUIT OF ACTIVITIES OF THAT NATURE ON THE OTHER HAND , THE MEMBER STATE IN WHICH THE SERVICES ARE TO BE SUPPLIED HAS UNQUESTIONABLY THE RIGHT TO REQUIRE POSSESSION OF A LICENCE ISSUED ON THE SAME CONDITIONS AS IN THE CASE OF ITS OWN NATIONALS .

20 SUCH A MEASURE WOULD BE EXCESSIVE IN RELATION TO THE AIM PURSUED , HOWEVER , IF THE REQUIREMENTS TO WHICH THE ISSUE OF A LICENCE IS SUBJECT COINCIDED WITH THE PROOFS AND GUARANTEES REQUIRED IN THE STATE OF ESTABLISHMENT . IN ORDER TO MAINTAIN THE PRINCIPLE OF FREEDOM TO PROVIDE SERVICES THE FIRST REQUIREMENT IS THAT IN CONSIDERING APPLICATIONS FOR LICENCES AND IN GRANTING THEM THE MEMBER STATE IN WHICH THE SERVICE IS TO BE PROVIDED MAY NOT MAKE ANY DISTINCTION BASED ON THE NATIONALITY OF THE PROVIDER OF THE SERVICES OR THE PLACE OF HIS ESTABLISHMENT ; THE SECOND REQUIREMENT IS THAT IT MUST TAKE INTO ACCOUNT THE EVIDENCE AND GUARANTEES ALREADY FURNISHED BY THE PROVIDER OF THE SERVICES FOR THE PURSUIT OF HIS ACTIVITIES IN THE MEMBER STATE OF HIS ESTABLISHMENT .

21 THE REPLY TO THE SECOND AND THIRD QUESTIONS RAISED BY THE HOGE RAAD IS THEREFORE THAT ARTICLE 59 DOES NOT PRECLUDE A MEMBER STATE WHICH REQUIRES AGENCIES FOR THE PROVISION OF MANPOWER TO HOLD A LICENCE FROM REQUIRING A PROVIDER OF SERVICES ESTABLISHED IN ANOTHER MEMBER STATE AND PURSUING SUCH ACTIVITIES ON THE TERRITORY OF THE FIRST MEMBER STATE TO COMPLY WITH THAT CONDITION EVEN IF HE HOLDS A LICENCE ISSUED BY THE STATE IN WHICH HE IS ESTABLISHED , PROVIDED HOWEVER , THAT IN THE FIRST PLACE WHEN CONSIDERING APPLICATIONS FOR LICENCES AND IN GRANTING THEM THE MEMBER STATE IN WHICH THE SERVICE IS PROVIDED MAKES NO DISTINCTION BASED ON THE NATIONALITY OF THE PROVIDER OF THE SERVICES OR HIS PLACE OF ESTABLISHMENT , AND IN THE SECOND PLACE THAT IT TAKES INTO ACCOUNT THE EVIDENCE AND GUARANTEES ALREADY PRODUCED BY THE PROVIDER OF THE SERVICES FOR THE PURSUIT OF HIS ACTIVITIES IN THE MEMBER STATE IN WHICH HE IS ESTABLISHED .

Decision on costs

THE COSTS INCURRED BY THE GOVERNMENTS OF THE NETHERLANDS , THE FEDERAL REPUBLIC OF GERMANY , THE UNITED KINGDOM , FRANCE AND DENMARK AND BY THE COMMISSION , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . AS THE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED , IN THE NATURE OF A STEP IN THE PROCEEDINGS BEFORE THE NATIONAL COURT , THE DECISION AS TO COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,
THE COURT

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE HOGE RAAD DER NEDERLANDEN BY A JUDGMENT OF 17 DECEMBER 1981 , HEREBY RULES :

1 . THE EXPRESSION ' ' SERVICES ' ' IN ARTICLE 60 OF THE EEC TREATY INCLUDES THE PROVISION OF MANPOWER WITHIN THE MEANING OF THE WET OP HET TER BESCHIKKINGSTELLEN VAN ARBEIDSKRACHTEN .

2 . ARTICLE 59 DOES NOT PRECLUDE A MEMBER STATE WHICH REQUIRES AGENCIES FOR THE PROVISION OF MANPOWER TO HOLD A LICENCE FROM REQUIRING A PROVIDER OF SERVICES ESTABLISHED IN ANOTHER MEMBER STATE AND PURSUING ACTIVITIES ON THE TERRITORY OF THE FIRST MEMBER STATE TO COMPLY WITH THAT CONDITION EVEN IF HE HOLDS A LICENCE ISSUED BY THE STATE IN WHICH HE IS ESTABLISHED , PROVIDED , HOWEVER , THAT IN THE FIRST PLACE WHEN CONSIDERING APPLICATIONS FOR LICENCES AND IN GRANTING THEM THE MEMBER STATE IN WHICH THE SERVICE IS PROVIDED MAKES NO DISTINCTION BASED ON THE NATIONALITY OF THE PROVIDER OF THE SERVICES OR HIS PLACE OF ESTABLISHMENT , AND IN THE SECOND PLACE THAT IT TAKES INTO ACCOUNT THE EVIDENCE AND GUARANTEES ALREADY PRODUCED BY THE PROVIDER OF THE SERVICES FOR THE PURSUIT OF HIS ACTIVITIES IN THE MEMBER STATE IN WHICH HE IS ESTABLISHED .