# Ministere Public and Chambre Syndicale des Agents Artistiques et Impresarii de Belgique Asbl v. Willy Van Wesemael and Jean Poupaert (Case 110/78) Ministere Public, Chambre Syndicale des Agents Artistiques et Impresarii de Belgique Asbl v. Romano Follachio and Robert Leduc (Case 111/78)

## Before the Court of Justice of the European Communities

## ECJ

## ( The President, Kutscher C.J.; Mertens de Wilmars and Lord Mackenzie Stuart PP.C.; Donner, Pescatore, Sorensen, O'Keeffe, Bosco and Touffait JJ.) Mr Jean-Pierre Warner, Advocate General.

## 18 January 1979

Reference by the Tribunal de Première Instance de Tournai under Article 177 EEC.

**Employment agencies. Freedom to supply services.**

Fee-charging employment agencies for entertainers do not fall within Group 839 of the I.S.I.C. as 'employment agencies', but in separate categories relating to entertainment, and so are not covered by EEC Directive 67/43. [16]-[17]

**Freedom to supply services. Direct effect.**

The essential requirements of Article 59 EEC on freedom to supply services became directly and unconditionally applicable on expiry of the transitional period and 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. [26]-[27]

**Freedom to supply services. Professional regulation. Employment agencies. Entertainers.**

Where fee-charging employment agencies are, in the State where the service is provided, required to have a licence, and the service is provided by an agency established in another member-State where it is subject to comparable licensing and supervision (or where it comes under that State's public administration), the former State may neither (a) require the agency to have a domestic licence nor (b) require the foreign agency to act through a duly licensed domestic agency. [28]-[30], [39]

**Private international law. Contract for services. Proper law.**

*88 *Semble* that where an employment agency established in one member-State arranges a contract between an entertainer established in that same State and an establishment situated in a second member-State, the contract to be performed (*i.e.* the entertainment to be given) in the latter establishment, the contract being signed in the former State, the services supplied by the employment agency are being so supplied in the latter member-State and not in the former.
The Court *interpreted* Article 59 EEC *in the context of* contracts signed in France between French entertainers and Belgian cafés through the instrumentality of French employment agencies, resulting in prosecution by the Belgian authorities of both the Belgian restaurateurs and the French employment agencies for engaging in unlicensed placing of entertainers contrary to Belgian legislation *to the effect that,* provided the French employment agencies were licensed under French law and subject to comparable supervision by the French authorities they should be entitled to provide their services as intermediaries in Belgium directly without being required either to take out a Belgian licence or to act through an agency licensed in Belgium. Both the Court and the Advocate General seemed to take it for granted that the French employment agencies were in fact providing a service in Belgium, where the entertainer supplied his services, and not in France, where the agency was at all times when supplying its services.

**Representation**

Pierre Hebey and Thierry Desurmont, of the Paris Bar, for Jean Poupaert.
J. Dufour, Conseiller Adjoint to the Ministry for Foreign Affairs, for the Belgian Government.
Philippe E. Evrard and Luc Schlogel presented oral submissions on behalf of the Chambre Syndicale des Agents Artistiques et Impresarii de Belgique.
Jean-Claude Séché, legal adviser to the E.C. Commission, for the Commission as amicus curiae.

The following cases were referred to by the Advocate General:

1. J. H. M. Van Binsbergen v. Bestuur Van de Bedrijfsvereniging voor de Metaalnijverheid (33/74), 3 December 1974: [1975] 1 C.M.L.R. 298; [1974] E.C.R. 1299.
2. Walrave and Koch v. Association Union Cycliste Internationale (36/74), 12 December 1974: [1975] 1 C.M.L.R. 320; [1974] E.C.R. 1405.
3. R. G. Coenen v. the Sociaal-Economische Raad (39/75), 26 November 1975: [1976] 1 C.M.L.R. 30; [1975] E.C.R. 1547.
4. Reyners v. the Belgian State (2/74), 21 June 1974: [1974] 2 CM.L.R. 305; [1974] E.C.R. 631.
5. Patrick v. Minister of Cultural Affairs (11/77), 28 June 1977: [1977] 2 C.M.L.R. 523; [1977] E.C.R. 1199.
*89 6. Thieffry v. Conseil de l'Ordre des Avocats A la Cour de Paris (71/76), 28 April 1977: [1977] 2 C.M.L.R. 373; [1977] E.C.R. 765.
7. Regina v. Bouchereau (30/77), 27 October 1977: [1977] 2 C.M.L.R. 800; [1977] E.C.R. 1999.

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**Facts**

In accordance with the provisions of Part Two, Title III, Chapters 2 and 3 of the EEC Treaty providing for the abolition of restrictions on freedom of establishment and freedom to provide services within the Community, on 18 December 1961 the Council adopted a 'General Programme for the abolition of restrictions on freedom to provide services' and a 'General Programme for the abolition of restrictions on freedom of establishment'.
Within the framework of these Programmes, and in application of Articles 54 and 63 of the Treaty, on 12 January 1967 the Council adopted Directive 67/43/EEC concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with ... the provisions of certain 'Business services not elsewhere classified' (I.S.I.C. Group 839).
Article 3 (1) of that directive provides that the provisions of the directive shall apply, with certain stated exceptions,
'to activities of self-employed persons engaging in business services not elsewhere classified as referred to in Annex I to the General Programme for the abolition of restrictions on freedom of establishment (I.S.I.C. Group 839). ...'
The 'International Standard Industrial Classification of All Economic Activities' (I.S.I.C.) published by the Statistical Office of the United Nations and used by the Community in drawing up the aforesaid Programmes, defines Group 839 as follows:

*Group 839:*

'Business services not elsewhere classified

Agencies for advertising, credit and financial reporting, adjustment and collection of bills; duplicating, blueprinting, photostating, addressing, mailing and stenographic services; compiling and selling classified mailing lists; employment agencies; news gathering and reporting agencies, journalists and writers; fashion designers; business consultants not elsewhere classified'.
It also defines Groups 841 and 842 as follows: *90

*Group 841:*

'Motion picture production, distribution and projection
Production and distribution of motion pictures, and the operation of cinemas; services allied with motion picture production and distribution such as film processing, editing, renting and repairing of equipment; casting bureaus'.

*Group 842:*

'Theatres and related services
Theatres, opera companies, concert organizations and stock companies; services such as theatrical employment agencies and booking agencies; radio and television broadcasting studios; dance bands, orchestras and entertainers operating on a contract or fee basis; phonograph recording'.
The Belgian Arrêté Royal [Royal Decree] of 28 November 1975 relating to the operation of fee-charging employment agencies (*Moniteur Belge*, 22 January 1976) detailed rules for the application of which are laid down in the Arrêté Ministériel [Ministerial Order] of 1 December 1975 (*Moniteur Belge*, 22 January 1976) provides *inter alia* as follows in the sector in question:

*Section 2:*

'The operation of fee-charging employment agencies shall be prohibited'.

*Section 3:*

'The operation of fee-charging employment agencies for entertainers shall however be authorized under the conditions laid down in this Arrêté'.

*First paragraph of section 6:*

'The operation of a fee-charging employment agency for entertainers shall be subject to the grant of a licence by the Minister responsible for employment'.

*Section 20:*

'Foreign employment agencies for entertainers may not, in the absence of a reciprocal agreement between Belgium and their country, place anyone in employment in Belgium except through a fee-charging employment agency

holding a licence. Each agency is to receive half the commission prescribed in the Arrêté Ministeriel'.
The provisions of sections 6 and 20 in substance re-enact those of sections 5 and 15 of the old Arrêté Royal of 10 April 1954.
In addition section 27 provides for the punishment of any person:
'who resorts to an unlicensed fee-charging employment agency' (s. 27 (3));
'operating a foreign employment agency, his servants or agents, who places anyone in employment in Belgium for a fee in disregard of the conditions laid down in section 20 of this Arrêté; and any worker who has been placed in employment in this way' (s. 27 (5)).
In February 1978 two prosecutions were brought before the Tribunal de Première Instance de Tournai [Court of First Instance of Tournai] Criminal Chamber, under section 27 of the Arrêté Royal of 28 November 1975 for infringement of the aforesaid sections 6 and 20 against:
*91 (a) Willy Van Wesemael, a worker in a café, residing in Ath (Belgium) who was charged with having resorted to an unlicensed fee-charging employment agency in Belgium (in this case the agency of Jean Poupaert) for the engagement of a variety artist, and
Jean Poupaert (alias Jean-Pierre Panir), employment agent for entertainers residing in Lille (France), who was charged with having procured the engagement of a variety artist for Mr. Wesemael by a contract of 29 March 1976 without acting through a fee-charging employment agency holding a licence in Belgium.
(Case 110/78)
(b) Romano Follachio, restaurant proprietor, residing in Peruwelz (Belgium), who was charged with having resorted to an unlicensed fee-charging employment agency in Belgium (in this case the agency of Robert Leduc) for the engagement of a variety artist, and
Robert Leduc (alias Trébor), employment agent for entertainers, residing in Valenciennes (France), who was charged with having procured the engagement of a variety artist for Mr. Follachio by a contract of 29 March 1976 without acting through a fee-charging employment agency holding a licence in Belgium.
(Case 111/78)
The accused pleaded that the aforementioned provisions of national law were incompatible with the EEC Treaty, in particular Articles 52, 55, 59 and 60 thereof.

## Opinion of the Advocate General (Mr. Jean-Pierre Warner)

These two cases come to the Court by way of references for preliminary rulings by the Tribunal de première instance of Tournai.
A quick reading of the Orders for reference might lead one to think that they raise only two relatively unimportant questions, the first being a narrow question of interpretation of Council Directive 67/43/EEC of 12 January 1967 [FN1] on the attainment of freedom of establishment and freedom to provide services in respect of certain activities of self-employed persons, and the second being a question of interpretation of an **Article** of the EEC Treaty the effect of which, since the expiration of the transitional period, is largely spent, *viz.* Article 62,

forbidding member-States to introduce any new restrictions on the freedom to provide services in fact attained at the date of the entry into force of the Treaty.

FN1 J.O. 140/67.

*92 As, however, has been apprehended by all those who have submitted observations to this Court, the cases in truth raise wider questions of interpretation of the provisions of the Treaty about the freedom to provide services, questions the answers to which are pointed to, but not in all respects given, by the Judgments of the Court in Case 33/74 the Van Binsbergen case, [FN2] Case 36/74 Walrave and Koch v. Union Cycliste International [FN3] and Case 39/75 the Coenen case. [FN4]

FN2 [1974] E.C.R. 1299, [1975] 1 C.M.L.R. 298.

FN3 [1974] E.C.R. 1405, [1975] 1 C.M.L.R. 320.

FN4 [1975] E.C.R. 1547, [1976] 1 C.M.L.R. 30.

The facts are these.
There are pending before the Tribunal at Tournai prosecutions of persons who are alleged to have committed offences against a Belgian Arrêté Royal of 28 November 1975 relating to fee-charging employment agencies. Section 6 [FN5] of that Arrêté Royal makes it unlawful to conduct a fee-charging employment agency for persons in the entertainment industry without a licence from the Minister responsible for employment. Section 20 provides that foreign employment agencies for such persons may not, in the absence of a reciprocal convention between Belgium and their country, place anyone in employment in Belgium except through an agency holding a licence; and that, in such a case, each agency is to receive half the prescribed commission. Section 27 provides for the punishment, by imprisonment for between eight days and one year, or by a fine of between 100 and 5,000 francs, of any person offending against the Arrêté Royal. It provides in particular, by virtue of paragraph 3, for the punishment in that manner of any person who resorts to an unlicensed fee-charging employment agency and, by virtue of paragraph 5, for the punishment in like manner of any person conducting a foreign employment agency who places anyone in employment in Belgium in disregard of the provisions of section 20.

FN5 The Advocate General uses the word 'Article' to translate the French ' Article'. We are, however, changing this to 'section' in accordance with our policy of referring to sub-divisions of all national legislation as 'section' etc., reserving the word 'Article' for International and Community instruments (and national constitutions).--Ed.

In Case 110/78 the defendants are M. Willy Van Wesemael of Ath, in Belgium,

who is described as an 'ouvrier de af1e', and M. Jean Poupaert, who carries on at Lille, in France, under the name of 'Jean-Pierre Panir', the business of an employment agency for entertainments. It appears that M. Van Wesemael organises each year at Ath an entertainment on the occasion of that town's trade fair. In March 1976 he engaged through M. Poupaert's agency, a French entertainer called Yves Lecocq to perform at Ath for one night on 13 August 1976. M. Poupaert says that he provided that service from his office in Lille, to which M. Van Wesemael went to sign the contract with M. Lecocq. According to M. Van Wesemael the reason why he employed M. Poupaert was that the latter's commission was only *93 10 per cent. whereas the Belgian employment agency which he had first consulted charged 25 per cent. M. Van Wesemael is being prosecuted under paragraph 3 of section 27 of the Arrêté Royal; M. Poupaert under paragraph 5.

In Case 111/78 the defendants are Signor Romano Follachio, who is a restaurateur at Bon-Secours, in Belgium, and M. Robert Leduc, who runs at Valenciennes, in France, an employment agency for entertainers called the ' Agence Robert Trebor'. It appears that, through M. Leduc's agency, Signor Follachio engaged a number of French entertainers for a three-day festival at Bon-Secours in October 1976. There again it seems that the reason for the choice of a French agency rather than a Belgian one was the much lower cost. Signor Follachio is being prosecuted under paragraph 3 of section 27; M. Leduc under paragraph 5.

M. Poupaert and M. Leduc both hold licences issued to them in France under French legislation corresponding to the Arrêté Royal in question, namely sections L762-3 *et seq.* of the Code du Travail. It is, however, common ground that they do not hold Belgian licences and that there is no relevant reciprocal convention (other than the EEC Treaty, between Belgium and France.

In both cases the 'Chambre Syndicale des agents artistiques et impresarii de Belgique' has intervened against the defendants as 'partie civile'. Indeed it appears that these prosecutions are incidents in a wider dispute between that association and the 'Syndicat National des Agents Artistiques de France' as to the compatibility of the Arrêté Royal with the Treaty.

M. Poupaert and M. Leduc say that the latter association, to which they belong, interprets the Treaty as entitling licensed Belgian agencies to provide their services freely in France and that it does not seek to prevent them from doing so.

In Case 111/78 there is an additional 'partie civile', M. Albert Gérard who owns an employment agency for entertainers at Liège and who was disappointed in his hope of earning commission for arranging the contracts for the festival at Bon-Secours. He claims from the defendants compensation of 10,000 francs and interest.

The Orders for reference evince that the attention of the Tribunal de première instance of Tournai was directed to two points only.

One was whether sections 6 and 20 of the Arrêté Royal of 28 November 1975 introduced 'new restrictions' contrary to Article 62 of the Treaty.

As to that the Tribunal states that the Arrêté Royal repealed an earlier Arrêté Royal of 10 April 1954 relating to the operation of fee-charging employment

agencies, sections 5 and 15 of which had contained the same restrictions. Thus the Arrêté Royal of 28 November 1975 merely re-enacted pre-existing law. From that the Tribunal concluded that there had been no breach of **Article 62.** I will say at once that I agree that the mere repeal and re-enactment of old *94 restrictions does not constitute the introduction of new restrictions within the meaning of **Article 62.**

The other point considered by the Tribunal was whether employment agencies for entertainers had been 'freed' for the purposes of Articles 52 and 59 of the Treaty by Directive 67/43/EEC.

That Directive was adopted by the Council pursuant to Articles 54 and 63 of the Treaty in implementation of the General Programmes for the abolition of restrictions on freedom of establishment and of restrictions on freedom to provide services that had themselves been adopted by the Council on 18 December 1961. [FN6] In framing both the timetable prescribed by those General Programmes and some of the directives adopted in implementation of them the Council listed the economic activities concerned by reference to the 'Indexes to the International Standard Industrial Classification of All Economic Activities' (or 'ISIC') published by the Statistical Office of the United Nations, the version used being that resulting from the first Revision of those Indexes (made in 1958).

FN6 J.O. 32/62 and 36/62.

Directive 67/43/EEC is expressed by its title to concern 'the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with:

1. matters of "Real Estate" (excluding 6401) (ISIC Group ex 640)
2. the provision of certain "Business services not elsewhere classified" (ISIC Group 839).'

Article 1 of the Directive provides in general terms, by reference to the provisions of the General Programmes, for the abolition of restrictions on freedom of establishment and freedom to provide services 'affecting the right to take up and pursue the activities specified in Articles 2 and 3 of this Directive'.

Article 2 specifies the activities concerning real estate to which the Directive is to apply.

Article 3, which is parenthetically headed 'Business services not elsewhere classified)', is, so far as material, in the following terms:

1. 'The provisions of this Directive shall apply also to activities of self-employed persons engaging in business services not elsewhere classified as referred to in Annex I to the General Programme for the abolition of restrictions on freedom of establishment (ISIC Group 839, but excluding the following activities):

--journalism;

--activities of customs agents;

--advice on economic, financial, commercial, statistical and labour and employment matters;

--debt collections.

2. Pursuant to paragraph 1 of this Article, the following groups of activities fall

within the scope of this Directive:
(a) private employment agencies;
(b) ...'

*95 The relevant question therefore is whether private employment agencies for persons in the entertainments industry are within Group 839 of the ISIC (Rev. 1). The Tribunal came to the conclusion that they were not. The Commission has submitted before us that in this it was right, and I agree.
In Part I (B) of the ISIC, which lists the 'Divisions, Major Groups and Groups' of economic activities, one finds (at pp. 18-19) that Major Group 83 headed 'Business Services', comprises Groups 831 'Legal Services', 832 ' Accounting, auditing and book-keeping services', 833 'Engineering and technical services' and 839 'Business services not elsewhere classified', whilst Major Group 84 headed 'Recreation Services' comprises Groups 841 'Motion picture production, distribution and projection', 842 'Theatres and related services' and 843 'Recreation services, except theatres and motion pictures'.
In Part I (C), which contains the 'Detailed Classification', Group 839 is (at pp. 40-41) worded as follows:
'Business services not elsewhere classified
Agencies for advertising, credit and financial reporting, adjustment and collection of bills; duplicating, blueprinting, photostating, addressing, mailing and stenographic services; compiling and selling classified mailing lists; employment agencies; news gathering and reporting agencies, journalists and writers; fashion designers; business consultants not elsewhere classified.'
Groups 841 and 842 are as follows:
'841 Motion picture production, distribution and projection.
Production and distribution of motion pictures, and the operation of cinemas; services allied with motion picture production and distribution such as film processing, editing, renting and repairing of equipment; casting bureaux.
842 Theatres and related services
Theatres, opera companies, concert organizations and stock companies; services such as theatrical employment agencies and booking agencies; radio and television broadcasting studios; dance bands, orchestras and entertainers operating on a contract or fee basis; phonograph recording.'
Thus 'casting bureaux' and 'theatrical employment agencies', which are expressly mentioned in Groups 841 and 842 respectively, cannot be regarded as ' not elsewhere classified' for the purposes of Group 839. Group 843, comprising recreation services other than motion pictures and theatres, mentions no sort of employment agency, but no-one has suggested that anything turns on that.
For the sake of completeness I should mention that Part II of the ISIC, containing the 'Numeric Index' lists under Group 839 'Employment Agency, Excluding Theatrical and Radio' (see p. 174), whilst Part III, containing the ' Alphabetic Index', has (at p. 226) the following entries:
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Such are the reasons for which I agree with the Tribunal of Tournai and with the Commission that Group 839 does not include the kind of employment agency here in question.
Despite the conclusions it had reached, the Tribunal of Tournai took the view that it should refer to this Court the question of the conformity of the Arrêté Royal with the EEC Treaty and ask it to rule 'in particular but not exclusively' (*notamment*, *et non limitativement*) on four questions.
Of those questions the first two relate to the interpretation of Directive 67/43/EEC. In my opinion they will be sufficiently answered if your Lordships rule that the Directive does not apply to fee-charging employment agencies for entertainers because these are not within Group 839 of the ISIC.
The third question relates to the interpretation of Article 62 of the EEC Treaty. It would in my opinion be appropriately answered by a ruling that that **Article** does not (by itself) forbid the repeal and re-enactment of restrictions that existed before the entry into force of the Treaty.
The fourth question is in these terms:
'If the said fee-charging employment agencies for entertainers are not classifiable under Group 839 of the ISIC international classification does the Court confirm the interpretation according to which they fall within Group 842 which has not yet been freed?'
It appears to me that the circumstance that the tribunal asked those four questions 'in particular but not exclusively', coupled with the assumption expressed in the fourth question that, if fee-charging employment agencies for entertainers are within Group 842, they have 'not yet been freed', requires this Court to go deeper.
From the cases that I cited at the outset, namely the Van Binsbergen, Walrave and Koch and Coenen cases, the following general principles may be deduced:
(1) Since the end of the transitional period the first paragraph of Article 59 of the Treaty has, with direct effect in the member-States, prohibited restrictions on freedom to provide services within the Community.
(2) The prohibition extends to any restrictions on a person providing a service 'by reason in particular of his nationality or of the fact that he does not habitually reside in the State where the service is provided, which do not apply to persons established, within the national territory or which may prevent or otherwise obstruct the activities of the person providing the service' (Paragraph 10 of the Judgment in the Van Binsbergen case and paragraph 6 of the Judgment in the Coenen case).
(3) The General Programme and the Directives envisaged by *97 Article 63 of the Treaty have lost, since the end of the transitional period, their function of abolishing restrictions on freedom to provide services. They retain the function of introducing into the laws of member-State 'a set of provisions intended to facilitate the effective exercise of this freedom, in particular by the mutual recognition of professional qualifications and the co-ordination of laws with regard to the pursuit of activities as self-employed persons' (Paragraph 21 of the Judgment in the Van Binsbergen case).
In laying down those general principles the Court was of course following its

earlier decision in Case 2/74 Reyners v. Belgium, [FN7] relating to freedom of establishment. The law on this has been further developed in Case 71/76 the Thieffry case [FN8] and Case 11/77 the Patrick case. [FN9]

FN7 [1974] E.C.R. 631, [1974] 2 C.M.L.R. 305.

FN8 [1977] E.C.R. 765, [1977] 2 C.M.L.R. 373.

FN9 [1977] E.C.R. 1199, [1977] 2 C.M.L.R. 523.

Those general principles are subject to express exceptions contained in the Treaty. Thus they do not apply to services not normally provided for remuneration or to services governed by the provisions of the Treaty relating to freedom of movement for goods, capital or persons (Article 60). Nor do they apply to services in the field of transport, which are governed by the provisions relating to transport (Article 61 (1)). As regards banking and insurance services connected with movements of capital their application is limited, though not excluded, by Article 61 (2). They do not apply to activities which, in a given member-State, 'are connected, even occasionally, with the exercise of official authority' (Articles 66 and 55), an exception which must be interpreted in the light of the Judgment of the Court in the Reyners case. Nor do they 'prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health' (Articles 66 and 56), an exception which must be read in the light of a number of directives issued by the Council and of a number of Judgments of this Court, of which the last in date is, I think, that in Case 30/77 Reg. v. Bouchereau. [FN10]

FN10 [1977] E.C.R. 1999, [1977] 2 C.M.L.R. 800.

No-one has suggested that any of those exceptions applies here.
To those exceptions must be added a qualification that has been held by the Court to be implicit in the Treaty and the application of which in the circumstances of these cases appears to me to be the main question that they raise.
Before I advert to that, however, I must deal with two points made by the Belgian Government, both of which were much pressed upon us at the hearing by Counsel for the Chambre Syndicale des Agents Artistiques et Impresarii de Belgique
*98 Of those points the first is based on Convention 96 of the International Labour Organisation.
That Convention, which, according to its preamble, may be cited as 'The Fee-Charging Employment Agencies Convention (Revised) 1949', but which I find it more convenient, as did Counsel, to refer to as 'Convention 96', has been ratified, so the Commission has told us, by seven of the member-States of the Community, viz. all of them save Denmark and the United Kingdom.

The Convention is expressed to be 'complementary to the Employment Service Convention, 1948, which provides that each Member for which the Convention is in force shall maintain or ensure the maintenance of a free public employment service'.

Part II of the Convention provides for the progressive abolition of fee-charging employment agencies conducted wth a view to profit and for the regulation of other agencies. Part III provides only for the regulation of fee-charging employment agencies, including those conducted with a view to profit. Article 2 (in Part I of the Convention) gives a Member of the ILO ratifying the Convention the option of accepting ether Part II or Part III. If a Member accepts Part III it may subsequently notify its acceptance of Part II, in which case Part III ceases to apply to it. It appears that, of the seven member-States of the Community that have ratified the Convention, all accept Part II, though Ireland and Italy initially accepted Part III.

The relevant provisions of Part II may be summarised as follows. 'The competent authority' (an expression which is undefined but which, from the context, appears to mean whatever authority is appropriate in each country) is given by Article 3 a discretion as to the period within which agencies conducted with a view to profit are to be abolished, coupled with a discretion to prescribe different periods for the abolition of agencies catering for different classes of persons. Article 4 provides that, pending their abolition, such agencies shall be subject to the supervision of the competent authority and shall only charge fees and expenses on a scale approved by that authority. That supervision is to be 'directed more particularly towards the elimination of all abuses connected with the operations of fee-charging employment agencies conducted with a view to profit'. Article 5 permits the competent authority to allow exceptions from the requirement of abolition 'in respect of categories of persons, exactly defined by national laws or regulations, for whom appropriate placing arrangements cannot conveniently be made within the framework of the public employment service'. It goes on to provide:

'Every fee-charging employment agency for which an exception is allowed under this Article--

(a) shall be subject to the supervision of the competent authority;

(b) shall be required to be in possession of a yearly licence renewable at the discretion of the competent authority;

(c) shall only charge fees and expenses on a scale submitted to *99 and approved by the competent authority or fixed by the said authority;

(d) shall only place or recruit workers abroad if permitted to do so by the competent authority and under conditions determined by the laws or regulations in force.'

Article 8 requires appropriate penalties, including the withdrawal when necessary of a licence, to be prescribed for any violation of any law or regulation giving effect to the Convention.

The Belgian Government and the Chambre Syndicale say that the Arrêté Royal here in issue was enacted in compliance with Belgium's obligations under the Convention. Indeed its preamble refers to the Convention and continues:

'Considérant que les derniers bureaux de placement payants autorisés pour domestiques et gens de maison et pour travailleurs agricoles ont cessé leur activité;
Considérant qu'il ne peut être actuellement convenablement pourvu dans le cadre du service public de l'emploi, au placement des artistes du spectacle et, que l'existence des bureaux de placement payants les concernant doit être provisoirement maintenue et leur contrôle renforcé ou organisé.' [FN11]

FN11 'Whereas the last fee-paying employment agencies for domestic servants and for agricultural workers have ceased to operate; Whereas the public employment services cannot at present properly cope with the placing of theatrical artistes and the existence of fee-paying employment agencies for the latter may be provisionally maintained and their supervision strengthened or organised.'

Consistently with the preamble, sections 2 and 3 by their combined effect, forbid the existence of any fee-charging employment agencies except those for entertainers. The subsequent sections regulate employment agencies for entertainers in the manner envisaged by the Convention. They are to operate only until the responsible Minister considers that the public employment service can efficiently ensure the placing of entertainers--see section 17, which, in combination with section 10, provides for the renewal of licences, on the occurrence of that event, for only three further years.
Neither the Belgian Government nor the Chambre Syndicale went so far as to submit that, if Belgium permitted fee-charging employment agencies licensed in France to provide their services in Belgium, Belgium would be in breach of the Convention. That certainly, albeit perhaps surprisingly, is not so, because the Convention (by virtue of section 5 (d)) requires each ratifying Member of the ILO to regulate the provision of services abroad by employment agences established on its territory and is silent as to any obligation of a Member to regulate the provision of services on its territory by agencies established abroad. Thus, under the scheme of the Convention, the function of regulating the provision of services in Belgium by agencies established in France falls to be discharged by the competent French authority.
The point made by the Belgian Government and by the Chambre Syndicale is, if I have understood their submissions correctly, that *100 it would be strange if Articles 59 *et seq.* of the Treaty had the consequences for which the defendants and the Commission here contend, because that would *pro tanto* defeat the policy underlying the Convention, which is also Belgian policy. In my opinion the answer to that, and I hope that I shall be acquitted of discourtesy if I express it shortly, is that that policy, whatever its merits or demerits, is not Community policy. Neither the Convention, nor anything like it, is part of Community law.
The other point made by the Belgian Government and the Chambre Syndicale is that the Arrêté Royal does not discriminate against theatrical employment agencies established in other member-States of the Community, because any such agency may apply for and obtain a licence under the Arrêté. I found that, I

confess, a surprising assertion, because it seemed to me, on a reading of the Arrêté, that some at least of its requirements could only be fulfilled by an agency established in Belgium. It is not for me however, at all events on a reference under Article 177 of the Treaty. to express an opinion as to the interpretation of Belgian legislation, much less to speculate as to the prospects of success, in practice, of an application for a licence under that legislation made by a firm established outside Belgium. From information given to the Court on behalf of the Belgian Government at the hearing and by telex since, it would appear that, whilst licences have in two cases been granted to Dutch nationals having offices in Belgium, there is in fact no case of a licence having been granted to a firm having no establishment in Belgium.

The Belgian Government concedes, at all events, that such a firm, in order to be licensed in Belgium, would have to comply at least with the requirements of section 8 (8) of the Arrêté Royal as to the deposit in Belgium of prescribed documents, *i.e.* of the documents prescribed, pursuant to section 9, by section 6 of an implementing Arrêté Ministériel of 1 December 1975.

Those documents are:

(1) Individual cards giving details of each placing effected by the agency;

(2) A register, which must be in a form prescribed in an annex to the Arrêté Ministériel and be 'ot1e et paraphé au greffe du tribunal de commerce du ressort', also giving details of those placings; and

(3) A copy of every written contract made as a result of a placing effected by the agency.

There is nothing in the Arrêté Ministériel to suggest that, in the case of an agency established outside Belgium, only placings effected in Belgium need be recorded in those documents. In fact the Arrêté Ministériel does not seem to envisage the possibility of an agency established outside Belgium being subject to its provisions.

Among the other conditions to which an applicant for a Belgian *101 licence is subject, there is, by virtue of section 8 (6) of the Arrêté Royal, the requirement that he should deposit a 'cautionnement' [FN12] with the Banque Nationale de Belgique, the Caisse des Dépôts et Consignations or the Caisse générale d'Epargne et de Retraite, and the requirement that he should meet certain 'frais d'enquête' [FN13] prescribed by the Minister under section 9. Those 'frais d'enquête' are, by virtue of section 2 (7) of the Arrêté Ministériel that I have mentioned, fixed at 1,000 francs. The ' cautionnement' is, by virtue of section 3 of that Arrêté Ministériel, normally 50,000 francs, but it is 100,000 francs if the agency concerned wants to be able to place entertainers abroad or recruit them from abroad. It is not stated whether an agency established abroad, and wishing to have a Belgian licence only in order to be able to place entertainers in Belgium, is required to deposit the smaller or the larger sum.

FN12 'Surety'.

FN13 'Investigation fees'.

Thus, an agency established outside Belgium, if it wants, even occasionally, to provide a service to customers in Belgium, will be met, if the Belgian Government and the Chambre Syndicale are right, with appreciable administrative and financial obstacles. I would test whether that situation is compatible with the situation envisaged by the authors of Artices 59 to 66 of the Treaty in this way. Suppose that legislation identical to that of Belgium existed in all nine of the member-States. An agency wanting to have a Community-wide business would then need, not only to apply for a licence in each member-state, but also to deposit elaborate documents and a substantial sum of money in each of them. That cannot, in my opinion, be what the authors of the Treaty meant by 'freedom to provide services'. Nor is it compatible with the concept of a Common Market. It seems to me to be precisely the sort of thing that this Court had in mind when it spoke, in the Van Binsbergen and Coenen cases, of 'restrictions ... which may prevent or otherwise obstruct the activities of the person providing the service'.
It is noteworthy that the Council has repeatedly placed on record that it holds a similar view. Among instances of that, I take as an example the preamble to Council Directive 78/686/EEC of 25 July 1978, [FN14] which contains measures to facilitate the effective exercise of the right of establishment by dentists and their freedom to provide services. It recites that 'in the case of the provision of services, the requirement of registration with or membership of professional organisations or bodies ... would ... undoubtedly constitute an obstacle to the persons wishing to provide the service ...'. Article 15 of the Directive accordingly enjoins the abolition of such requirements, subject to a power for a member-State to provide for ' automatic temporary registration with or pro forma membership of a professional organisation or body or entry in a register, provided that such registration does not delay or in any way complicate the provision *102 of services or impose any additional costs on the person providing the services'; and subject also to a power for a member-State to require a person providing services on its territory, where they involve a temporary stay by him there, to supply, either before or, in urgent cases, 'as soon as possible after the services have been provided', a declaration as to them and certificates as to his qualifications.

FN14 [1978] O.J. L233/1.

In my opinion the Belgian Government has, in this case, if I may be pardoned for saying so, misapprehended the true issue.
I said earlier that the main question raised by these cases was, in my view, as to the application to them of a principle that the Court has held to be implicit in the Treaty. To that question I now, lastly, turn.
In his Opinion in the Van Binsbergen case, Mayras A.G. stated the relevant problem in these terms, which I quote from the original [FN15]:
'... il est essential, pour la solution que vous donnerez à la présente affaire préjudicielle, de nous expliquer sur la distinction qu'il y a lieu de faire entre les règles relatives au droit d'établissement et celles qui gouvernent la libre prestation de services.

FN15 [1974] Rec. at pp. 1316-1317, [1975] 1 C.M.L.R. at pp. 305-306.

Il faut, en effet, souligner que le professionnel, ressortissant d'un Etat membre, '*établi*', au sens de **l'article 52,** sur le territoire d'un autre Etat membre, est, du fait même de cet établissement, soumis à la loi du pays d'accueil dont la puissance publique peut lui imposer, pour l'accès à son activité et pour son exercice, les conditions mêmes qu'il exige de ses propres nationaux et le soumettre, par conséquent, aux mêmes contrôles.
C'est dire que ce résident étranger, privilégié parce que communautaire, doit certes bénéficier de l'égalité de traitement, mais ne peut se soustraire aux prescriptions du droit national, quand bien même ce droit serait, dans l'avenir, harmonisé avec les législations des autres Etats de la Communauté.
Le prestataire de services, au contraire, n'est pas, par définition, un résident; il n'est pas 'établi'. ...
Dès lors, et c'est un aspect fondamental de la différence qui existe entre, *d'une part,* les simples prestations, occasionnelles, de services, voire l'activité temporaire et, *d'autre part.* l'établissement: le prestataire de services a, dans une certaine mesure, la possibilité de se soustraire à l'emprise et au contrôle des autorités nationales du pays où sont fournies les prestations.
Il est aisé de comprendre qu'une telle situation comporte des risques, tant sur le plan de la déontologie que pour la mise en jeu éventuelle de la responsabilité: professionnelle, civile ou même pénale, du prestataire de services. ...
C'est pourquoi, tout en assurant le respect du principe de non-discrimination, il est nécessaire d'en concilier les exigences avec celles que requiert la protection des particuliers, destinataires des prestations de services, et de tenir compte des nécessaires moyens de contrôle que les autorités nationales doivent pouvoir mettre en oeuvre dans ce but.' [FN16]

FN16 'On the other hand, it is essential to the Court's solution of this preliminary reference that I should explain the distinction which must be drawn between the rules relating to the right of establishment and those governing the freedom to provide services. It must in fact be emphasised that a professional man who is a national of a member-State 'Established' in the territory of another member-State, within the meaning of Article 52, is, by the very fact of that establishment, subject to the law of the host country, the government of which may impose on him, in relation to his right to take up and pursue his activities, the same conditions as those required of its own nationals and subject him, in consequence, to the same supervision. This means that a person resident abroad, who is privileged because he is a Community national, must undoubtedly enjoy the same treatment as nationals but cannot avoid the provisions of national law even if this law is, in the future, to be harmonised with the laws of the other States of the Community. On the other hand, the person providing services is not, by definition, a resident; he is not 'established'.... Consequently, a fundamental aspect of the difference between, *On the One Hand,* Mere Occasional Provision of Services, Even Temporary Activities and, *On the other Hand,* establishment, is

that the person providing services falls outside the competence and control of the national authorities of the country where the services are provided. It is easy to see that there are risks in such a situation, both with regard to professional ethics and with regard to the possibility of attributing liability of a professional, civil or even criminal nature, to the person providing the services. That is why, as well as ensuring respect for the principle of non-discrimination, it is necessary to reconcile its requirements with those relating to the protection of individuals in receipt of services and to take account of the necessary methods of control which the national authorities can employ for this purpose.'

*103 In the Van Binsbergen case the Court, after stating the general effect of Article 59 of the Treaty, continued (in paragraphs 12 and 13 of the Judgment): 'However, taking into acount the particular nature of the services to be provided, specific requirements imposed on the person providing the service cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules justified by the general good-- in particular rules relating to organization, qualifications, professional ethics, supervision and liability--which are binding upon any person established in the State in which the service is provided, where the person providing the service would escape from the ambit of those rules being established in another member-State.
Likewise, a member-State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by **Article 59** for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State; such a situation may be subject to judicial control under the provisions of the chapter relating to the right of establishment and not of that on the provision of services.'
In the Coenen case I ventured the opinion that 'In stating those principles the Court was ... recognising that which was recognised by the authors of the Treaty themselves in Article 57, namely that there are many professions and trades of such a kind that, unless rules are made and enforced to ensure that those carrying them on are persons of probity and adequate skill, observing appropriate standards, *104 great harm may be suffered by members of the public who are their clients, patients or customers. [FN17]

FN17 [1975] E.C.R. at p. 1560, [1976] 1 C.M.L.R. at p. 36.

In the present cases the second principle stated by the Court in the Van Binsbergen case does not apply, because no-one suggests that M. Poupaert's or M. Leduc's activities are entirely or principally directed towards Belgium. But the first is relevant because, as is common ground, the main purpose of the Arrêté Royal of 28 November 1975 is to safeguard persons in the entertainment industry and their prospective employers from exploitation by unscrupulous agencies. The question is how, in the particular circumstances, effect is to be given to that principle.

The Commission submitted that the principle would be satisfied if it were held that an agency established in any member-State was free to provide its services without restriction in any other member-State provided that it was subject, in the State where it was established, to rules as to organisation, ethics, supervision and liability equivalent to those of the State where the services were to be provided. The Commission further submitted that, where in both States the relevant rules drew their inspiration directly from the same international Convention, such equivalence should be taken for granted.
In view of those submissions the Court caused to be placed before it details of the relevant legislation actually in force in each of the member-States.
As to that the position may, I think, be summarised as follows. In two member-States, namely Italy and Luxembourg, the public employment services has a monopoly; private employment agencies are forbidden. With two exceptions, there is in force everywhere else legislation providing for private employment agencies to be licensed. Although that legislation is not everywhere identical, the safeguards it affords are substantially similar, even in Denmark and Great Britain. Between the Belgian and the French legislation there is virtually no difference. The two exceptions are Northern Ireland and the Netherlands. It appears that there is no relevant legislation in force in Northern Ireland. In the Netherlands there is legislation regulating employment agencies generally, but, so the Commission told us, the Hoge Raad has held it inapplicable to agencies for persons in the entertainment industry because their contracts with their employers are contracts for services and not contracts of service. [FN18]

FN18 [1966] N.J. 366.

Of course the state of legislation in the different member-States from time to time cannot be admissible as such as an aid to the interpretation of the Treaty. But consideration of it can help the Court in deciding how, as a practical matter, it may most usefully formulate its answer to a national Court on a question such as the present.
In the circumstances I agree with the Commission to this extent *105 that it would be appropriate for your Lordships to rule that, since the end of the transitional period, Articles 59 to 66 of the Treaty have rendered it unlawful for a member-State to impose any restriction on the freedom to provide services in its territory of a private employment agency for persons in the entertainment industry established in another member-State and duly licensed to conduct business there, if the legislation under which it is so licensed affords to persons resorting to the agency safeguards substantially similar to those afforded, in the case of an agency licensed in the former member-State, by the legislation of that State. Such a ruling would leave open the question, which does not call for determination in the present cases, whether and if so to what extent, a private agency licenced in one member-State is free to provide services in another member-State where the public employment service enjoys a monopoly.
I would, however, reject the submission of the Commission according to which it should be taken into account whether the legislation of the member-State in

which the agency is established draws its inspiration from an international Convention. Firstly, I can think of no legal principle on the basis of which there could be attributed to a Convention such as Convention 96 of the ILO a role in Community law. Secondly, the requirements of the Convention (which I have quoted) are expressed so briefly and in such vague terms that they are susceptible of widely divergent application in different States. Thirdly, the situation in the Netherlands (if the Commission is right about it) illustrates that the mere circumstance that a State has ratified the Convention does not entail that it will have relevant or adequate legislation. In truth, to adopt the Commission's suggestion would mean discriminating as between agencies established in different member-States not on the basis of the legal situation actually prevailing in each State but on the basis of an irrelevant criterion.

The Tribunal de Première Instance de Tournai found that, according to an interpretation by the departments of the Commission, feecharging employment agencies for entertainers covered by the Arrêté Royal of 28 November 1975 are classifiable not in Group 839 of the I.S.I.C. but in Group 842, which has not yet been liberalised. It observed that this interpretation would entitle it to hold that the Arrêté Royal at issue conformed to the EEC Treaty, since:

The Arrêté Royal did not introduce any new discriminatory measure, because its sections 6 and 20 re-enact sections 5 and 15 of the Arrêté Royal of 10 April 1954 which was in force previously;

The sector of fee-charging employment agencies for entertainers had not yet been liberalised.

None the less it decided to stay the proceedings in both cases, and on 21 March 1978 ordered that the following questions should be referred to the Court of Justice under Article 177 of the EEC Treaty:

*106 1. Are fee-charging employment agencies for entertainers classifiable in Group 839 of the I.S.I.C. under the term 'employment agencies'?

2. If the answer to the preceding question is in the affirmative have the activities of these fee-charging employment agencies in fact been properly liberalised by the Council Directive of 12 January 1967 concerning 'the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with:

(1) matters of "Real Estate" (excluding 6401) (I.S.I.C. Group ex 640)

(2) the provision of certain "Business services not elsewhere classified" (I.S.I.C. Group 839)'

in Article 3 (2) (*a*) thereof: 'private employment agencies'?

3. If the answer to the preceding question is in the affirmative does Article 62 of the Treaty of Rome of 25 March 1957 authorise a member-State to re-enact discriminatory provisions which were in force previously in its legislation without making them more discriminatory?

4. If the said fee-charging employment agencies for entertainers are not classifiable under Group 839 of the I.S.I.C. does the Court confirm the interpretation according to which they fall within Group 842 which has not yet been liberalised?

**JUDGMENT**

[1] By two judgments both delivered on 21 March 1978 and received at the Court of Justice on 8 May 1978, the Tribunal de Première Instance de Tournai referred under Article 177 of the EEC Treaty several questions on the interpretation of Council Directive 67/43/EEC of 12 January 1967 [FN19] and of certain provisions of the EEC Treaty relating to freedom to provide services. [2] These questions were raised in the context of two cases of criminal proceedings each against a person established in Belgium and a French employment agent for entertainers established in France, who are charged with having infringed the provisions of sections 6 and 20 of the Belgian Arrêté Royal of 28 November 1975 relating to the operation of fee-charging employment agencies for entertainers. [3] It provides that, 'the operation of a fee-charging employment agency for entertainers shall be subject to the grant of a licence by the Minister responsible for employment', and that, 'foreign employment agencies for entertainers may not, in the absence of a reciprocal convention between Belgium and their country, place anyone in employment in Belgium except through a fee-charging *107 employment agency holding a licence'. [4] In each of the two cases the first accused is charged with having, for the purpose of engaging entertainers, resorted to a fee-charging employment agency situated in France the operator of which does not hold a licence in Belgium, and the second accused is charged with having placed persons in employment in that State without acting through an agency holding a licence in Belgium. [5] The accused pleaded that the aforementioned provisions of national law were incompatible with the Treaty in that they restricted the freedom to provide services referred to in Articles 52, 55, 59 and 60.

FN19 [1967] O.J. Spec. Ed. 3.

[6] The cases were joined for the purpose of the oral procedure, and the joinder should be maintained for the purpose of the judgment.
[7] Since the activity at issue in these proceedings consists in the provision of services, the consideration of the questions raised by the national court must primarily start from a consideration of the provisions of the Treaty relating to 'services'.
[8] The first question asks whether the activities of fee-charging employment agencies for entertainers are classifiable in Group 839 of the I.S.I.C. under the term 'employment agencies'. [9] If that question is answered in the affirmative, it is then asked whether the activities of the said employment agencies have in fact been properly liberalised by Council Directive 67/43/EEC of 12 January 1967.
[10] If the preceding question is answered in the affirmative, the national court's third question asks whether Article 62 of the Treaty authorises a member-State to re-enact discriminatory provisions which were in force previously in its legislation without making them more discriminatory. [11] Finally, if it is found that the aforesaid employment agencies are not classifiable in Group 839, the national court's fourth question asks whether the Court of Justice confirms the

interpretation according to which they fall within Group 842 'which has not yet been liberalised'.
[12] Adopted by the Council pursuant to Articles 54 and 63 of the Treaty and the General Programme for the abolition of restrictions on freedom to provide services adopted by the Council on 18 December 1961 [FN20] the Directive of 12 January 1967 concerns the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with certain groups of the 'International Standard Industrial Classification of All Economic Activities' (I.S.I.C.) published by the Statistical Office of the United Nations. [13] In listing in Annexes I to IV the activities liberalisation of which was to be gradually attained during the transitional period in accordance with the timetable laid down by the provisions of Title V, the General Programme adopted the aforesaid I.S.I.C. for each activity or group of activities, *108 so that the I.S.I.C. forms an integral part of the Community measures at issue.

FN20 Official Journal, English Special Edition, Second Series IX. Resolutions of the Council and of the Representatives of the member-States, p. 3.

[14] The first question seeks definition of the classification of the activities concerned with regard to Group 839 of the I.S.I.C. [15] The I.S.I.C. defines Group 839 of Major Group 83, Division 8 ('Services') as a residuary group, concerning 'business services not elsewhere classified'. [16] The detailed version of the I.S.I.C. which was adopted in 1964 expressly states that although employment agencies come within that group, theatrical and radio employment is excluded from it. [17] That version places 'casting bureaus' under Group 841 in the sector of motion pictures and allied services, and services 'such as theatrical employment agencies' under Group 842 in the area of theatres and related services. [18] Accordingly, fee-charging employment agencies for entertainers are not classifiable in Group 839 of the I.S.I.C. under the term 'employment agencies'.
[19] It emerges from Questions 2 and 4 that the national court raised the issue of the classification of the activities concerned in the context of the I.S.I.C. only in order to determine whether those activities have been liberalised within the meaning of the provisions of Article 59 of the Treaty on freedom to provide services. [20] It may be deduced from the words 'not yet ... liberalised' which appear at the end of Question 4 that the national court asked that question on the assumption that, even after the transitional period, the liberalisation of those activities can be held to have been achieved only in so far as it is provided for by a Community measure such as the aforementioned Council Directive 67/43/EEC.
[21] In the field of judicial co-operation under Article 177 between national courts and the Court of Justice, which are required to make direct and complementary contributions to the application of Community law in a uniform manner in all the member-States, the Court may extract from the wording of the questions formulated by the national court, having regard to the particulars given by the latter and especially to the general question which it raised as to whether ' the Arrêté Royal at issue conforms to the Treaty of Rome', those elements of

Community law which are necessary for that court to be able to resolve in accordance with Community law the legal problem which it has before it. [22] Therefore, it is necessary in the present case to consider whether and to what extent the activities in question have been liberalised within the meaning of Articles 59 to 66 of the Treaty, even in the absence of a Community measure adopted by the Council such as the aforesaid directive.
[23] This question must be resolved with reference to the whole of the chapter relating to services, taking account, moreover, of the provisions relating to the right of establishment to which reference is made in Article 66.
*109 [24] The first paragraph of Article 59 of the Treaty provides that '... restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of member-States ...' of the Community. [25] In laying down that freedom to provide services shall be attained by the end of the transitional period, that provision, interpreted in the light of Article 8 (7) of the Treaty, imposes an obligation to attain 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. [26] It follows that the essential requirements of Article 59 of the Treaty, which was to be implemented progressively during the transitional period by means of the directives referred to in Article 63, became directly and unconditionally applicable on the expiry of that period. [27] Those essential requirements, which lay down the freedom to provide services, 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. [28] Taking into account the particular nature of certain services to be provided, such as the placing of entertainers in employment, specific requirements imposed on persons providing services cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules, justified by the general good or by the need to ensure the protection of the entertainer, which are binding upon any person established in the said State, in so far as the person providing the service is not subject to similar requirements in the member-State in which he is established. [29] However, when the pursuit of the employment agency activity at issue is made subject in the State in which the service is provided to the issue of a licence and to supervision by the competent authorities, that State may not, without failing to fulfil the essential requirements of Article 59 of the Treaty, impose on the persons providing the service who are established in another member-State any obligation either to satisfy such requirements or to act through the holder of a licence, except where such requirement is objectively justified by the need to ensure observance of the professional rules of conduct and to ensure the said protection. [30] Such a requirement is not objectively justified when the service is provided by an employment agency which comes under the public administration of a member-State or when the person providing the service is established in another member-State and in that State holds a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first State to proper supervision

covering all employment agency activity whatever may be the member-State in which the service is provided.
[31] The Belgian Government argues that the employment agency *110 activity in question comes under the provisions of Convention 96 of the International Labour Organisation concerning fee-charging employment agencies, revised at Geneva on 1 July 1949, which allows measures of control over such agencies to be adopted by the competent authorities. [32] In the submission of the Belgian Government, that Convention, which was ratified in Belgium by the Act of 3 March 1958, is 'strictly observed by the Arrêté Royal of 28 November 1975, which lays down as a general principle that it shall be prohibited to operate fee-charging employment agencies (section 2) and which allows only one "exception" to that general principle, which relates exclusively to fee-charging employment agencies for entertainers on the express condition that they shall be conducted in accordance with the strict legal conditions stipulated'.
[33] The aforementioned international Convention lays down the general principle of the prohibition of fee-charging employment agencies conducted with a view to profit, and for that purpose Article 3 (1) thereof provides that such agencies 'shall be abolished within a limited period of time determined by the competent authority'. [34] Moreover, Article 5 (1) of the Convention provides that, 'exceptions to the provisions of ... Article 3 of [the] Convention shall be allowed by the competent authority in exceptional cases in respect of categories of persons, exactly defined by national laws or regulations, for whom appropriate placing arrangements cannot conveniently be made within the framework of the public employment service ...'. [35] Thus, since the maintenance of fee-charging employment agencies does not correspond to an obligation under Convention 96, the Belgian Government cannot rely on that Convention in order to set aside the provisions of the Treaty in the field of freedom to provide services. [36] Consequently, obligations under Convention 96 cannot be relied upon as a ground for not applying the provisions of Community law in the sector under consideration. [37] Furthermore, nothing in the Convention prevents a member-State which makes use of the exception provided for in Article 5 from applying that provision to persons providing services established in another member-State in such a way as to comply with the requirements of Article 59 of the Treaty as stated above. [38] Moreover, it emerges even from section 20 of the Belgian Arrêté of 28 November 1975 that foreign employment agencies for entertainers may, where there is a reciprocal agreement between Belgium and their country, place persons in employment in Belgium without acting through a fee-charging employment agency holding a Belgian licence.
[39] For all these reasons, the answer should be that when the pursuit of the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, that State may not impose on the persons providing the service who are established in another member-State *111 any obligation either to satisfy that requirement or to act through a fee-charging employment agency which holds such a licence when the service is provided by an employment agency which comes under the public administration of a member-State or when the person providing the services

holds in the member-State in which he is established a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first State to proper supervision covering all employment agency activity whatever may be the member- State in which the service is provided.

*Costs*

[40] The costs incurred by the Belgian Government and the Commission of the European Communities, which submitted observations to the Court, are not recoverable. [41] As these proceedings are in the nature of a step in the criminal proceedings pending before the national court, costs are a matter for that court.

**Order**

On those grounds, THE COURT, in answer to the questions referred to it by the Tribunal de Première Instance de Tournai by judgments of 21 March, 1978, HEREBY RULES:
1. Fee-charging employment agencies for entertainers are not classifiable in Group 839 of the International Standard Industrial Classification under the term 'employment agencies'.
2. The essential requirements of Article 59 of the Treaty, which was to be implemented progressively during the transitional period by means of the directives referred to in Article 63, became directly and unconditionally applicable on the expiry of that period.
3. When the pursuit of the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, that State may not impose on the persons providing the service who are established in another member-State any obligation either to satisfy that requirement or to act through a fee-charging employment agency which holds such a licence when the service is provided by an employment agency which comes under the public administration of a member-State or when the person providing the service holds in the member-State in which he is established a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first State to proper supervision covering *112 all employment agency activity whatever may be the member-State in which the service is provided.



[1979] 3 C.M.L.R. 87

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