

**Avis juridique important**

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**Judgment of the Court of 3 December 1974. - Johannes Henricus Maria van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid. - Reference for a preliminary ruling: Centrale Raad van Beroep - Netherlands. - Freedom to provide services. - Case 33-74.**

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Summary

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Keywords

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*1 . SERVICES - FREEDOM TO PROVIDE SERVICES - RESTRICTIONS - ABOLITION - DIRECT EFFECT*

*( EEC TREATY, FIRST PARAGRAPH OF ARTICLE 59 AND THIRD PARAGRAPH OF ARTICLE 60 )*

*2 . SERVICES - FREEDOM TO PROVIDE SERVICES - RESTRICTIONS - CONDITION OF RESIDENCE - PROHIBITION - PARTICULAR SERVICES - PERSONS ASSISTING ADMINISTRATION OF JUSTICE - PROFESSIONAL RULES - OBSERVANCE OF SUCH RULES - REQUIREMENT OF PROFESSIONAL ESTABLISHMENT - OBJECTIVE NECESSITY - LAWFUL REQUIREMENT*

*( EEC TREATY, FIRST PARAGRAPH OF ARTICLE 59 AND THIRD PARAGRAPH OF ARTICLE 60 )*

Summary

*1 . THE FIRST PARAGRAPH OF ARTICLE 59 AND THE THIRD PARAGRAPH OF ARTICLE 60 HAVE DIRECT EFFECT AND MAY THEREFORE BE RELIED ON BEFORE NATIONAL COURTS, AT LEAST IN SO FAR AS THEY SEEK TO ABOLISH ANY DISCRIMINATION AGAINST A PERSON PROVIDING A SERVICE BY REASON OF HIS NATIONALITY OR OF THE FACT THAT HE RESIDES IN A MEMBER STATE OTHER THAN THAT IN WHICH THE SERVICE IS TO BE PROVIDED .*

*2 . THE FIRST PARAGRAPH OF ARTICLE 59 AND THE THIRD PARAGRAPH OF ARTICLE 60 OF THE EEC TREATY MUST BE INTERPRETED AS MEANING THAT THE NATIONAL LAW OF A MEMBER STATE CANNOT, BY IMPOSING A REQUIREMENT AS TO HABITUAL RESIDENCE WITHIN THAT STATE, DENY PERSONS ESTABLISHED IN ANOTHER MEMBER STATE THE RIGHT TO PROVIDE SERVICES, WHERE THE PROVISION OF SERVICES IS NOT SUBJECT TO ANY SPECIAL CONDITION UNDER THE NATIONAL LAW APPLICABLE .*

*HOWEVER, TAKING INTO ACCOUNT 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 BY 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 .*

ACCORDINGLY THE REQUIREMENT THAT PERSONS WHOSE FUNCTIONS ARE TO ASSIST THE ADMINISTRATION OF JUSTICE MUST BE PERMANENTLY ESTABLISHED FOR PROFESSIONAL PURPOSES WITHIN THE JURISDICTION OF CERTAIN COURTS OR TRIBUNALS CANNOT BE CONSIDERED INCOMPATIBLE WITH THE PROVISIONS OF ARTICLES 59 AND 60, WHERE SUCH REQUIREMENT IS OBJECTIVELY JUSTIFIED BY THE NEED TO ENSURE OBSERVANCE OF PROFESSIONAL RULES OF CONDUCT CONNECTED, IN PARTICULAR, WITH THE ADMINISTRATION OF JUSTICE AND WITH RESPECT FOR PROFESSIONAL ETHICS .

Parties

IN CASE 33/74

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE CENTRALE RAAD VAN BEROEP ( NETHERLANDS COURT OF LAST INSTANCE IN SOCIAL SECURITY MATTERS ) FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

JOHANNES HENRICUS MARIA VAN BINSBERGEN, FITTER, RESIDING AT BEESEL ( NETHERLANDS ),

AND

BESTUUR VAN DE BEDRIJFSVERENIGING VOOR DE METAALNIJVERHEID, ( BOARD OF THE TRADE ASSOCIATION OF THE ENGINEERING INDUSTRY ), REGISTERED AT THE HAGUE,

Subject of the case

ON THE INTERPRETATION OF ARTICLES 59 AND 60 OF THE EEC TREATY RELATING TO FREEDOM TO PROVIDE SERVICES WITHIN THE COMMUNITY,

Grounds

1 BY ORDER OF 18 APRIL 1974, LODGED AT THE REGISTRY OF THE COURT ON 15 MAY, THE CENTRALE RAAD VAN BEROEP PUT TO THE COURT, UNDER ARTICLE 177 OF THE EEC TREATY, QUESTIONS RELATING TO THE INTERPRETATION OF ARTICLES 59 AND 60 OF THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY CONCERNING FREEDOM TO PROVIDE SERVICES WITHIN THE COMMUNITY .

2 THESE QUESTIONS AROSE INCIDENTALLY, DURING THE COURSE OF AN ACTION BEFORE THE SAID COURT, AND ARE CONCERNED WITH THE ADMISSION BEFORE THAT COURT OF THE PERSON WHOM THE APPELLANT IN THE MAIN ACTION CHOSE TO ACT AS HIS LEGAL REPRESENTATIVE .

3 IT APPEARS FROM THE FILE THAT THE APPELLANT HAD ENTRUSTED THE DEFENCE OF HIS INTERESTS TO A LEGAL REPRESENTATIVE OF NETHERLANDS NATIONALITY ENTITLED TO ACT FOR PARTIES BEFORE COURTS AND TRIBUNALS WHERE REPRESENTATION BY AN ADVOCaat IS NOT OBLIGATORY .

4 SINCE THIS LEGAL REPRESENTATIVE HAD, DURING THE COURSE OF THE PROCEEDINGS, TRANSFERRED HIS RESIDENCE FROM THE NETHERLANDS TO BELGIUM, HIS CAPACITY TO REPRESENT THE PARTY IN QUESTION BEFORE THE CENTRALE RAAD VAN BEROEP WAS CONTESTED ON THE BASIS OF A PROVISION OF NETHERLANDS LAW UNDER WHICH ONLY PERSONS ESTABLISHED IN THE NETHERLANDS MAY ACT AS LEGAL REPRESENTATIVES BEFORE THAT COURT .

5 IN SUPPORT OF HIS CLAIM THE PERSON CONCERNED INVOKED THE PROVISIONS OF THE TREATY RELATING TO FREEDOM TO PROVIDE SERVICES WITHIN THE COMMUNITY, AND THE CENTRALE RAAD VAN BEROEP REFERRED TO THE COURT TWO QUESTIONS RELATING TO THE INTERPRETATION OF ARTICLES 59 AND 60 OF THE TREATY .

THE ACTUAL SCOPE OF ARTICLES 59 AND 60

6 THE COURT IS REQUESTED TO INTERPRET ARTICLES 59 AND 60 IN RELATION TO A PROVISION OF NATIONAL LAW WHEREBY ONLY PERSONS ESTABLISHED IN THE TERRITORY OF THE STATE CONCERNED ARE ENTITLED TO ACT AS LEGAL REPRESENTATIVES BEFORE CERTAIN COURTS OR TRIBUNALS .

7 ARTICLE 59, THE FIRST PARAGRAPH OF WHICH IS THE ONLY PROVISION IN QUESTION IN THIS CONNEXION, PROVIDES THAT : " WITHIN THE FRAMEWORK OF THE PROVISIONS SET OUT BELOW, RESTRICTIONS ON FREEDOM TO PROVIDE SERVICES WITHIN THE COMMUNITY SHALL BE PROGRESSIVELY ABOLISHED DURING THE TRANSITIONAL PERIOD IN RESPECT OF NATIONALS OF MEMBER STATES WHO ARE ESTABLISHED IN A STATE OF THE COMMUNITY OTHER THAN THAT OF THE PERSON FOR WHOM THE SERVICES ARE INTENDED " .

8 HAVING DEFINED THE CONCEPT " SERVICES " WITHIN THE MEANING OF THE TREATY IN ITS FIRST AND SECOND PARAGRAPHS, ARTICLE 60 LAYS DOWN IN THE THIRD PARAGRAPH THAT, WITHOUT PREJUDICE TO THE PROVISIONS OF THE CHAPTER RELATING TO THE RIGHT OF ESTABLISHMENT, THE PERSON PROVIDING A SERVICE MAY, IN ORDER TO PROVIDE THAT SERVICE, TEMPORARILY PURSUE HIS ACTIVITY IN THE STATE WHERE THE SERVICE IS PROVIDED, UNDER THE SAME CONDITIONS AS ARE IMPOSED BY THAT STATE ON ITS OWN NATIONALS .

9 THE QUESTION PUT BY THE NATIONAL COURT THEREFORE SEEKS TO DETERMINE WHETHER THE REQUIREMENT THAT LEGAL REPRESENTATIVES BE PERMANENTLY ESTABLISHED WITHIN THE TERRITORY OF THE STATE WHERE THE SERVICE IS TO BE PROVIDED CAN BE RECONCILED WITH THE PROHIBITION, UNDER ARTICLES 59 AND 60, ON ALL RESTRICTIONS ON FREEDOM TO PROVIDE SERVICES WITHIN THE COMMUNITY .

10 THE RESTRICTIONS TO BE ABOLISHED PURSUANT TO ARTICLES 59 AND 60 INCLUDE ALL REQUIREMENTS IMPOSED ON THE PERSON PROVIDING THE 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 .

11 IN PARTICULAR, A REQUIREMENT THAT THE PERSON PROVIDING THE SERVICE MUST BE HABITUALLY RESIDENT WITHIN THE TERRITORY OF THE STATE WHERE THE SERVICE IS TO BE PROVIDED MAY, ACCORDING TO THE CIRCUMSTANCES, HAVE THE RESULT OF DEPRIVING ARTICLE 59 OF ALL USEFUL EFFECT, IN VIEW OF THE FACT THAT THE PRECISE OBJECT OF THAT ARTICLE IS TO ABOLISH RESTRICTIONS ON FREEDOM TO PROVIDE SERVICES IMPOSED ON PERSONS WHO ARE NOT ESTABLISHED IN THE STATE WHERE THE SERVICE IS TO BE PROVIDED .

12 HOWEVER, TAKING INTO ACCOUNT 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 .

13 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 .

14 IN ACCORDANCE WITH THESE PRINCIPLES, THE REQUIREMENT THAT PERSONS WHOSE FUNCTIONS ARE TO ASSIST THE ADMINISTRATION OF JUSTICE MUST BE PERMANENTLY ESTABLISHED FOR PROFESSIONAL PURPOSES WITHIN THE JURISDICTION OF CERTAIN COURTS OR TRIBUNALS CANNOT BE CONSIDERED INCOMPATIBLE WITH THE PROVISIONS OF ARTICLES 59 AND 60, WHERE SUCH REQUIREMENT IS OBJECTIVELY JUSTIFIED BY THE NEED TO ENSURE OBSERVANCE OF PROFESSIONAL RULES OF CONDUCT CONNECTED, IN PARTICULAR, WITH THE ADMINISTRATION OF JUSTICE AND WITH RESPECT FOR PROFESSIONAL ETHICS .

15 THAT CANNOT, HOWEVER, BE THE CASE WHEN THE PROVISION OF CERTAIN SERVICES IN A MEMBER STATE IS NOT SUBJECT TO ANY SORT OF QUALIFICATION OR PROFESSIONAL REGULATION AND WHEN THE REQUIREMENT OF HABITUAL RESIDENCE IS FIXED BY REFERENCE TO THE TERRITORY OF THE STATE IN QUESTION .

16 IN RELATION TO A PROFESSIONAL ACTIVITY THE EXERCISE OF WHICH IS SIMILARLY UNRESTRICTED WITHIN THE TERRITORY OF A PARTICULAR MEMBER STATE, THE REQUIREMENT OF RESIDENCE WITHIN THAT STATE CONSTITUTES A RESTRICTION WHICH IS INCOMPATIBLE WITH ARTICLES 59 AND 60 OF THE TREATY IF THE ADMINISTRATION OF JUSTICE CAN SATISFACTORILY BE ENSURED BY MEASURES WHICH ARE LESS RESTRICTIVE, SUCH AS THE CHOOSING OF AN ADDRESS FOR SERVICE .

17 IT MUST THEREFORE BE STATED IN REPLY TO THE QUESTION PUT TO THE COURT THAT THE FIRST PARAGRAPH OF ARTICLE 59 AND THE THIRD PARAGRAPH OF ARTICLE 60 OF THE

EEC TREATY MUST BE INTERPRETED AS MEANING THAT THE NATIONAL LAW OF A MEMBER STATE CANNOT, BY IMPOSING A REQUIREMENT AS TO HABITUAL RESIDENCE WITHIN THAT STATE, DENY PERSONS ESTABLISHED IN ANOTHER MEMBER STATE THE RIGHT TO PROVIDE SERVICES, WHERE THE PROVISION OF SERVICES IS NOT SUBJECT TO ANY SPECIAL CONDITION UNDER THE NATIONAL LAW APPLICABLE .

THE QUESTION OF THE DIRECT APPLICABILITY OF ARTICLES 59 AND 60

18 THE COURT IS ALSO ASKED WHETHER THE FIRST PARAGRAPH OF ARTICLE 59 AND THE THIRD PARAGRAPH OF ARTICLE 60 OF THE EEC TREATY ARE DIRECTLY APPLICABLE AND CREATE INDIVIDUAL RIGHTS WHICH NATIONAL COURTS MUST PROTECT .

19 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 .

20 WITH A VIEW TO THE PROGRESSIVE ABOLITION DURING THE TRANSITIONAL PERIOD OF THE RESTRICTIONS REFERRED TO IN ARTICLE 59, ARTICLE 63 HAS PROVIDED FOR THE DRAWING UP OF A " GENERAL PROGRAMME " - LAID DOWN BY COUNCIL DECISION OF 18 DECEMBER 1961 ( 1962, P . 32 ) - TO BE IMPLEMENTED BY A SERIES OF DIRECTIVES .

21 WITHIN THE SCHEME OF THE CHAPTER RELATING TO THE PROVISION OF SERVICES, THESE DIRECTIVES ARE INTENDED TO ACCOMPLISH DIFFERENT FUNCTIONS, THE FIRST BEING TO ABOLISH, DURING THE TRANSITIONAL PERIOD, RESTRICTIONS ON FREEDOM TO PROVIDE SERVICES, THE SECOND BEING TO INTRODUCE INTO THE LAW OF MEMBER STATES A SET OF PROVISIONS INTENDED TO FACILITATE THE EFFECTIVE EXERCISE OF THIS FREEDOM, IN PARTICULAR BY THE MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS AND THE COORDINATION OF LAWS WITH REGARD TO THE PURSUIT OF ACTIVITIES AS SELF-EMPLOYED PERSONS .

22 THESE DIRECTIVES ALSO HAVE THE TASK OF RESOLVING THE SPECIFIC PROBLEMS RESULTING FROM THE FACT THAT WHERE THE PERSON PROVIDING THE SERVICE IS NOT ESTABLISHED, ON A HABITUAL BASIS, IN THE STATE WHERE THE SERVICE IS PERFORMED HE MAY NOT BE FULLY SUBJECT TO THE PROFESSIONAL RULES OF CONDUCT IN FORCE IN THAT STATE .

23 AS REGARDS THE PHASED IMPLEMENTATION OF THE CHAPTER RELATING TO SERVICES, ARTICLE 59, INTERPRETED IN THE LIGHT OF THE GENERAL PROVISIONS OF ARTICLE 8 ( 7 ) OF THE TREATY, EXPRESSES THE INTENTION TO ABOLISH RESTRICTIONS ON FREEDOM TO PROVIDE SERVICES BY THE END OF THE TRANSITIONAL PERIOD, THE LATEST DATE FOR THE ENTRY INTO FORCE OF ALL THE RULES LAID DOWN BY THE TREATY .

24 THE PROVISIONS OF ARTICLE 59, THE APPLICATION OF WHICH WAS TO BE PREPARED BY DIRECTIVES ISSUED DURING THE TRANSITIONAL PERIOD, THEREFORE BECAME UNCONDITIONAL ON THE EXPIRY OF THAT PERIOD .

25 THE PROVISIONS OF THAT ARTICLE 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 THEREFORE, AS REGARDS AT LEAST THE SPECIFIC REQUIREMENT OF NATIONALITY OR OF RESIDENCE, ARTICLES 59 AND 60 IMPOSE A WELL-DEFINED OBLIGATION, THE FULFILMENT OF WHICH BY THE MEMBER STATES CANNOT BE DELAYED OR JEOPARDIZED BY THE ABSENCE OF PROVISIONS WHICH WERE TO BE ADOPTED IN PURSUANCE OF POWERS CONFERRED UNDER ARTICLES 63 AND 66 .

27 ACCORDINGLY, THE REPLY SHOULD BE THAT THE FIRST PARAGRAPH OF ARTICLE 59 AND THE THIRD PARAGRAPH OF ARTICLE 60 HAVE DIRECT EFFECT AND MAY THEREFORE BE RELIED ON BEFORE NATIONAL COURTS, AT LEAST IN SO FAR AS THEY SEEK TO ABOLISH ANY DISCRIMINATION AGAINST A PERSON PROVIDING A SERVICE BY REASON OF HIS NATIONALITY OR OF THE FACT THAT HE RESIDES IN A MEMBER STATE OTHER THAN THAT IN WHICH THE SERVICE IS TO BE PROVIDED .

Decision on costs

28/29 THE COSTS INCURRED BY THE GOVERNMENT OF IRELAND, THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE COMMISSION OF THE EUROPEAN COMMUNITIES, WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT, ARE NOT RECOVERABLE AND AS THESE PROCEEDINGS ARE, IN SO FAR AS THE PARTIES TO THE MAIN ACTION ARE CONCERNED, A STEP IN THE ACTION PENDING BEFORE THE CENTRALE RAAD VAN BEROEP, COSTS ARE A MATTER FOR THAT COURT .

Operative part

*ON THOSE GROUNDS,  
THE COURT*

*IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE CENTRALE RAAD VAN BEROEP BY ORDER OF 18 APRIL 1974, HEREBY RULES :*

*1 . THE FIRST PARAGRAPH OF ARTICLE 59 AND THE THIRD PARAGRAPH OF ARTICLE 60 OF THE EEC TREATY MUST BE INTERPRETED AS MEANING THAT THE NATIONAL LAW OF A MEMBER STATE CANNOT, BY IMPOSING A REQUIREMENT AS TO HABITUAL RESIDENCE WITHIN THAT STATE, DENY PERSONS ESTABLISHED IN ANOTHER MEMBER STATE THE RIGHT TO PROVIDE SERVICES, WHERE THE PROVISION OF SERVICES IS NOT SUBJECT TO ANY SPECIAL CONDITION UNDER THE NATIONAL LAW APPLICABLE;*

*2 . THE FIRST PARAGRAPH OF ARTICLE 59 AND THE THIRD PARAGRAPH OF ARTICLE 60 HAVE DIRECT EFFECT AND MAY THEREFORE BE RELIED ON BEFORE NATIONAL COURTS, AT LEAST IN SO FAR AS THEY SEEK TO ABOLISH ANY DISCRIMINATION AGAINST A PERSON PROVIDING A SERVICE BY REASON OF HIS NATIONALITY OR OF THE FACT THAT HE RESIDES IN A MEMBER STATE OTHER THAN THAT IN WHICH THE SERVICE IS TO BE PROVIDED .*