

## Summary

1. A Member State cannot be denied the right to take measures to prevent a person whose activity is entirely or principally directed towards its territory from exercising the freedom guaranteed by Article 59 of the Treaty in order to evade the rules of conduct which would be applicable to him if he were established within that State.

In particular, where a cultural policy seeks to establish a pluralistic and non-commercial radio and television broadcasting system, legislation which has the effect, with a view to safeguarding the exercise of the freedoms guaranteed by Articles 59 and 67 of the Treaty, of ensuring that national broadcasting organizations cannot improperly evade their obligations concerning programme content cannot be regarded as incompatible with those articles.

2. The provisions of the Treaty on the free movement of capital and the freedom to provide services must be interpreted as not precluding legislation of a Member State which prohibits a broadcasting organization established in that State from investing in a broadcasting company established or to be established in another Member State and from providing that company with a bank guarantee or drawing up a business plan and giving legal advice to a television company to be set up in another Member State, where those activities are directed towards the establishment of a commercial television station whose broadcasts are intended to be received, in particular, in the territory of the first Member State and where those prohibitions are necessary in order to ensure the pluralistic and non-commercial character of the audio-visual system introduced by that legislation.

## Parties

In Case C-148/91,

REFERENCE to the Court under Article 177 of the EC Treaty by the Nederlandse Raad van State (Council of State of the Netherlands) for a preliminary ruling in the proceedings pending before that court between

Vereniging Veronica Omroep Organisatie

and

Commissariaat voor de Media

on the interpretation of Articles 59 and 67 of the EEC Treaty and of the First Directive of the Council of 11 May 1960 for the implementation of Article 67 of the Treaty (OJ English Special Edition 1959-1962, p. 49) and Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the EEC Treaty (OJ 1988 L 178, p. 5),

THE COURT,

composed of: O. Due, President, C.N. Kakouris, G.C. Rodríguez Iglesias, M. Zuleeg and J.L. Murray (Presidents of Chambers), G.F. Mancini, R. Joliet, F.A. Schockweiler, J.C. Moitinho de Almeida, F. Grévisse, and D.A.O. Edward, Judges,

Advocate General: G. Tesauro,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- ° Vereniging Veronica Omroep Organisatie, by R.A.A. Duk, of the Hague Bar,
- ° the Commissariaat voor de Media, by G.H.L. Weesing, of the Amsterdam Bar,
- ° the Netherlands Government, by T.P. Hofstee, acting Secretary General, Ministry of Foreign Affairs, acting as Agent,
- ° the Commission of the European Communities, by B. Smulders and P. van Nuffel, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Vereniging Veronica Omroep Organisatie, the Netherlands Government, represented by J.W. De Zwaan, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, and the Commission, at the hearing on 6 October 1992,

after hearing the Opinion of the Advocate General at the sitting on 18 November 1992, gives the following

## Judgment

## Grounds

1 By order of 27 May 1991, received at the Court Registry on 3 June 1991, the judicial division of the Netherlands Raad van State referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions on the interpretation of the provisions of the Treaty concerning the freedom to provide services and the free movement of capital with a view to deciding whether national rules imposing restrictions on the activities of broadcasting organizations were compatible with Community law.

2 Those questions were raised in proceedings between Vereniging Veronica Omroep Organisatie, a non-commercial broadcasting organization established in the Netherlands and governed by Dutch law (hereinafter "Veronica"), and the body responsible for overseeing broadcasting, the Commissariaat voor de Media, concerning restrictions contained in Article 57(1) of the Mediawet (the Dutch Law of 21 April 1987 laying down rules on the broadcasting of radio and television programmes, royalties from broadcasting and measures for support of the press, published in Staatsblad No 249 of 4 June 1987). Veronica considers those restrictions to be contrary to Articles 59 and 67 of the Treaty and to the First Directive of the Council of 11 May 1960 for the implementation of Article 67 of the Treaty (OJ, English Special Edition 1959-1962, p. 49) and Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the EEC Treaty (OJ 1988 L 178, p. 5).

3 Under Article 31 of the Mediawet, radio and television broadcasting time on the national Dutch network is allocated by the Commissariaat voor de Media to broadcasting organizations. According to Article 14 of that Law, those organizations are associations of listeners or viewers set up in order to represent a given social, cultural, religious or spiritual trend indicated in their statutes; they have legal personality. They

must have as their sole, or at least main, object the production of programmes for broadcasting and thereby to seek to satisfy the social, cultural, religious and spiritual needs of the Dutch people. Article 57(1) of the Law, the provision at issue in these proceedings, provides: "Apart from producing their programmes, the organizations which have obtained broadcasting time may not pursue any activities other than those provided for or authorized by the Commissariaat voor de Media". According to Article 57(4), the income from such activities must be used for the production of the organization's programmes. Finally, under Article 101, the broadcasting organizations are financed for the most part by means of grants which are shared out by the Commissariaat voor de Media. The grants are themselves built up from royalties levied on listeners and viewers and by receipts from commercial advertising.

4 In the present case, the Commissariaat voor de Media claims essentially that Veronica infringed Article 57(1) of the Mediawet by contributing to the setting up in the Grand Duchy of Luxembourg of a commercial station broadcasting to the Netherlands and by providing material support for it. Its allegation is based on three facts. First, the chairman and the secretary of the governing board of Veronica respectively drew up a business plan and gave legal advice with a view to the incorporation of a Luxembourg limited company, RTL-Véronique, to operate a commercial television station in Luxembourg and broadcast programmes which could be relayed by cable to the Netherlands. The costs of those services were borne by Veronica. Veronica then agreed to provide a guarantee for a current-account credit facility granted to RTL-Véronique by a banking establishment. Finally, Veronica agreed to provide financing to another company for the purpose of setting up a new company which would acquire a minority holding in the capital of RTL-Véronique.

5 The national court considered that those activities were prohibited by Article 57(1) of the Mediawet. However, it entertained doubts as to whether those prohibitions were compatible with Community law.

6 It therefore considered that a preliminary ruling should be obtained on the following five questions:

"1. Must the provisions on the free movement of capital, in particular Article 67 of the EEC Treaty, as implemented by the directive of the Council of 10 May 1960, including the amendments thereto, and Council Directive 88/361/EEC of 24 June 1988, be interpreted as meaning that there is a prohibited restriction on capital movements where the effect of a national rule, such as Article 57(1) of the Mediawet, is that participation by a broadcasting organization authorized under national legislation in the capital of a broadcasting organization established or to be established in another Member State and the provision by the authorized broadcasting organization of guarantees in favour of a broadcasting organization established in another Member State are made subject to restrictive provisions?

2. Must the provisions on the freedom to provide services, in particular Article 59 of the EEC Treaty, be interpreted as meaning that there is a prohibited restriction on the freedom to provide services where the effect of a national rule, such as Article 57(1) of the Mediawet, is that participation by a broadcasting organization authorized under national legislation in the capital of a broadcasting organization established or to be established in another Member State and the provision by that broadcasting organization of guarantees in favour of a broadcasting organization established in another Member State are made subject to restrictive provisions, if such transactions are not to be regarded as capital movements, as described in Question 1?

3. Must the provisions on the freedom to provide services, in particular Article 59 of the EEC Treaty, be interpreted as meaning that there is a prohibited restriction on the freedom to provide services where the effect of a national rule, such as Article 57(1) of the Mediawet, is that the carrying out by a broadcasting organization established or to be established under national legislation of transactions and dealings which serve in part to establish and to promote a broadcasting organization to be established in another Member State, inter alia by the drawing-up of a 'business plan' and the performance of legal work, are made subject to restrictive provisions?

4. In the application of the Treaty provisions on the free movement of capital and freedom to provide services, must national rules containing a restriction on capital movements or on the provision of services, in order to be valid, comply not only with the requirement of non-discrimination but also with the requirement that the rules are justified on grounds of the general interest and are not disproportionate in relation to the objective pursued?

5. If the answer to Question 4 is affirmative, may objectives based on the maintenance of a pluralist and non-commercial broadcasting system constitute such justification?"

7 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 In its first three questions, the Nederlandse Raad van State essentially seeks to ascertain whether the Treaty provisions on the free movement of goods and the freedom to provide services must be interpreted as precluding legislation of a Member State which prohibits a broadcasting organization established in that State from investing in a broadcasting company established or to be established in another Member State and providing a bank guarantee or drawing up a business plan and giving legal advice to a television company to be set up in another Member State.

9 It must first be borne in mind that, as the Court held in its judgments in Case C-353/89 *Commission v Netherlands* [1991] ECR I-4069, paragraphs 3, 29 and 30, and Case C-288/89 *Stichting Collectieve Antennevoorziening Gouda v Commissariaat voor de Media* [1991] ECR I-4007, paragraphs 22 and 23, the Mediawet is designed to establish a pluralistic and non-commercial broadcasting system and thus forms part of a cultural policy intended to safeguard, in the audio-visual sector, the freedom of expression of the various (in particular social, cultural, religious and philosophical) components existing in the Netherlands.

10 It also follows from those two judgments (see respectively paragraphs 41 and 42 and 23 and 24) that those cultural-policy objectives are objectives relating to the public interest which a Member State may legitimately pursue by formulating the statutes of its own broadcasting organizations in an appropriate manner.

11 Article 57(1) of the Mediawet contributes to the attainment of those objectives. It seeks to prohibit national broadcasting organizations from engaging in activities which are alien to the tasks assigned to them by the Law or undermine the aims thereof, in the view of the Commissariaat voor de Media. Thus, in particular, it provides that the financial resources available to the national broadcasting organizations to enable them to ensure pluralism in the audio-visual sector must not be diverted from that purpose and used for purely commercial ends.

12 Finally, the Court has held in relation to Article 59 of the Treaty that a Member State cannot be denied the right to take measures to prevent the exercise by a person whose activity is entirely or principally directed towards its territory of the freedoms guaranteed by the Treaty for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State (judgment in Case 33/74 Van Binsbergen v Bedrijfsvereniging Metaalnijverheid [1974] ECR 1299, paragraph 13).

13 By prohibiting national broadcasting organizations from helping to set up commercial radio and television companies abroad for the purpose of providing services there directed towards the Netherlands, the Netherlands legislation at issue has the specific effect, with a view to safeguarding the exercise of the freedoms guaranteed by the Treaty, of ensuring that those organizations cannot improperly evade the obligations deriving from the national legislation concerning the pluralistic and non-commercial content of programmes.

14 In those circumstances, the requirement that national broadcasting organizations do not engage in activities other than those provided for by the Law or authorized by the Commissariaat voor de Media cannot be regarded as incompatible with Articles 59 and 67 of the Treaty.

15 It must therefore be stated in reply to the national court that the provisions of the Treaty on the free movement of capital and the freedom to provide services must be interpreted as not precluding legislation of a Member State which prohibits a broadcasting organization established in that State from investing in a broadcasting company established or to be established in another Member State and from providing that company with a bank guarantee or drawing up a business plan and giving legal advice to a television company to be set up in another Member State, where those activities are directed towards the establishment of a commercial television station whose broadcasts are intended to be received, in particular, in the territory of the first Member State and those prohibitions are necessary in order to ensure the pluralistic and non-commercial character of the audio-visual system introduced by that legislation.

16 In view of the answer given to the first three questions, the fourth and fifth questions, concerning the justification for certain restrictions on the free movement of capital and the freedom to provide services, do not call for an answer.

#### Decision on costs

#### Costs

17 The costs incurred by the Netherlands Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

#### Operative part

On those grounds,

THE COURT

in answer to the questions referred to it by the judicial division of the Nederlandse Raad van State, by order of 27 May 1991, hereby rules:

The provisions of the Treaty on the free movement of capital and the freedom to provide services must be interpreted as not precluding legislation of a Member State which prohibits a broadcasting organization established in that State from investing in a broadcasting company established or to be established in another Member State and from providing that company with a bank guarantee or drawing up a business plan and giving legal advice to a television company to be set up in another Member State, where those activities are directed towards the establishment of a commercial television station whose broadcasts are intended to be received, in particular, in the territory of the first Member State and those prohibitions are necessary in order to ensure the pluralistic and non-commercial character of the audio-visual system introduced by that legislation.