CASE C-286/82 LUISI AND CARBONE V MINISTERS DEL TESORO (SERVICES)

EUROPEAN UNION LAW

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LIST OF ABBREVIATIONS

Art.	Article
CJEU; The Court	The Court of Justice of European Union
EEC	European Economic Community
EU	European Union
SEA	The Single European Act
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union

I. INTRODUCTION

In this article, the Luisi and Carbone judgment, which is one of the landmark decisions of the Court of Justice of the European Union (CJEU) regarding services, will be examined and articulated.

Free movement of services includes three situations as regards service providers, service recipients, and services. In the first situation, service providers may go from one Member State to another to provide services. In contrast, in the second one, the service receivers go from one Member State to another to receive services. In the third situation, neither the provider nor the receiver moves; however, the service itself moves over the internet or telephone. The case of Luisi and Carbone is focused on recipients of services.

Before coming to the details and significance of this case, the free movement of services, which is an indispensable part of the concept of the internal market, will be explained with a general-to-specific approach. Then, the case will be summarized, and the questions referred to the Court of Justice for the preliminary ruling procedure and judgment of the Court will be articulated. After that, the previous and subsequent decisions to which this case is correlated will be explained to have a better vision of its influences on the European Union Law. After the scope and impact of the decision are better understood, the question of why this is a landmark decision will be examined.

II. DEVELOPMENT OF THE INTERNAL MARKET

The European Union (EU) is a unique community consisting of 27 Member States which aim to "*create an ever closer union among the peoples of Europe*," as is stated in the Preamble of Treaty on European Union.[1] For this purpose to be fulfilled, the European Economic Community was founded in 1957 by the Treaty of Rome (the EEC Treaty) as economic integration with the aim of establishing a common market between the Member States. The intention of creating a common market among the Member States is clearly provided in Art. 3 (3) TEU as one of the tasks of the EU.[2] To complete the common market in the EU, European Council requested from the European Commission to prepare a strategic plan. The European Commission introduced the term "internal market" which is used in the

[1] Marja-Liisa Öberg, "Internal Market: Unity," in *The Boundaries of the EU Internal Market: Participation without Membership* (Cambridge: Cambridge University Press, 2020), 91.
[2] Friedl Weiss and Clemens Kaupa, *European Union Internal Market Law* (Cambridge: Cambridge University Press, 2014), 1.

same meaning as a common market, for the first time with White Paper.[3] The strategy and measures that adopted by the White Paper (1985), which was comprehensive and radical at that time,[4] was enforced by the Single European Act (SEA, 1986) and the Maastricht Treaty (1992) and formed a concomitant internal market of the EU.[5] The SEA set a definite deadline of 31 December 1992 for the establishment of the internal market.[6]

The internal market, which requires the adoption of measures in order to establish or ensure its functioning, is defined in Art. 26 TFEU as "*an area without internal frontiers in which the free movement of goods, persons, services, and capital is ensured in accordance with the provisions of the Treaties.*" Although the four basic free movements are the basis of the internal market of the EU, to ensure its proper functioning, a common trade policy and a common competition policy were required.[7] Later, this general definition was enhanced by the judgments of the Court of Justice.[8] In the Schul judgment of the Court, the internal market was explained furtherly as:

"*The concept of a common market as defined by the court in a consistent line of decisions involves the elimination of all obstacles to intra-Community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market.*"[9]

Establishing an intricate integration such as an internal market, which goes beyond free trade area and customs union, entails different stages and transposition periods for Member States to adjust their economic and legal systems since it is not only an economic integration but also a political integration. Its purpose is to abolish all impediments to free movement and provide a functioning market among Member States as if they are one country. Therefore, the constitution of a customs union is the indispensable step to developing an

[3] Ioana Nely Militaru, "Chapter I Evolution of the internal market of the European Union" in *The Internal Market of the European Union. Fundamental Freedoms* (Bucharest: ADJURIS, 2018), 12.
[4] Jacques Pelkmans, *Economic Approaches of the Internal Market* (Brussels: Bruges European Economic Research papers, 2008), 2.
[5] Weiss and Kaupa, *European Union Internal Market Law*, 1.
[6] Christina Ratcliff and Barbara Martinello, "The internal market: general principles," last modified October, 2021, https://www.europarl.europa.eu/factsheets/en/sheet/33/the-internal-market-general-principles.
[7] Pelkmans, *Economic Approaches of the Internal Market*, 3.
[8] Peter Oliver and Martín Martínez Navarra, "Free Movement of Goods," in *European Union Law* (Oxford: Oxford University Press, 2020), 340.; Friedl Weiss and Clemens Kaupa, *European Union Internal Market Law*, (Cambridge: Cambridge University Press, 2014), 1.
[9] Case 15/81, *Schul* [1982] ECR 1409, para. 33.; Oliver and Navarra, "Free Movement of Goods," 340.

internal market.[10] Pursuant to Art. 28 (1) TFEU, the customs union in the EU covers all trade in goods.[11] The free movement of goods necessary for the development of an internal market is provided under the customs union of the EU.[12]

Furthermore, when examining the internal market, in addition to the free movement of goods, the free movement of persons, services, and capital should also be taken into consideration. These four free movement rights are based on a parallel regulative model prohibiting discrimination and restrictions in the Member States.[13]

In the early days of European integration, many of the Court's prominent cases focused on the free movement of goods, as trade in goods accounted for an essential portion of European GDPs. However, with the changes brought by time, the importance of free movement has also increased in other areas. The service sector has become the heart of the internal market in the EU as well as national economies. For example, services today form more than 73% of European GDPs.[14]

III. FREE MOVEMENT OF PERSONS

In the EU Law, another free movement that has an indispensable economic role for the functioning of the internal market is the free movement of persons. The legal basis for the free movement of persons in the EU is provided under Art. 3 (2) TEU: "*The Union shall offer its citizens an area of freedom, security, and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration, and the prevention and combating of crime*."

[10] Armin Cuyvers. "The EU Common Market," in *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, ed. Armin Cuyvers, Emmanuel Ugirashebuja, John Eudes Ruhangisa, and Tom Ottervanger (Leiden, The Netherlands: Brill | Nijhoff, 2017), 294, https://doi.org/10.1163/9789004322073_025.
[11] Oliver and Navarra, "Free Movement of Goods," 340.
[12] Ioana Nely Militaru, "Chapter II Free movement of goods in the European Union" in *The Internal Market of the European Union. Fundamental Freedoms* (Bucharest: ADJURIS, 2018), 24.
[13] Síofra O'Leary and Sara Iglesias Sánchez, "Free Movement of Persons and Services," in *The Evolution of EU Law* (Oxford University Press, 2021), 506. https://oxford.universitypressscholarship.com/view/10.1093/oso/9780192846556.001.0001/oso-9780192846556-chapter-16.
[14] Stefaan Van den Bogaert, Armin Cuyvers, and Ilektra Antonaki, "Chapter 14 Free Movement of Services, Establishment and Capital," in *The Law of the European Union and the European Communities* (The Netherlands: Kluwer Law International B.V., 2018), 1.

The aim of the free movement of persons is to assist the progress for EU nationals to accomplish professional activities throughout the Union.[15]

With the developments in the EU, the notion of the free movement of persons has changed. At present, Titles IV and V, Part III of the TFEU, are included in this concept. In the EEC Treaty, Title III (Title IV of TFEU), which consists of free movement of workers, right of establishment, and free movement of services, was only included in this field, whereas Title V of TFEU, which is about the area of freedom, security, and justice is now considered within this scope.[16]

In addition to these, in an internal market, people should have the right to move freely regardless of their motivations. So, general freedom of movement was provided in the Maastricht Treaty under a new section called the Citizenship of the Union. However, since EU citizenship does not involve economic activity, only the other two categories are included in the internal market due to their economic characteristics. [17]

Free movement of workers, right of establishment, and free movement of services are distinguished from each other by fundamental differences.

A. An Overview of Free Movement of Workers

Free movement of workers has a fundamental importance in the enhancement of harmonious progress of the economic activities between the Member States. Art. 45 TFEU secures the free movement of workers in the EU by prohibiting any limitations as to the free movement of workers.[18]

Even though founding treaties provide detailed provisions regarding the free movement of workers, the term "worker" is not defined. So, the CJEU interprets this term based on its judgments, independent of the laws of the Member States, to ensure uniformity in the EU.[19] A comprehensive definition of the term worker was provided by the Court in the Lawrie-Blum decision of 1985 by introducing the following criteria:

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[15] O'Leary and Sánchez, "Free Movement of Persons and Services," 509. https://oxford.universitypressscholarship.com/view/10.1093/oso/9780192846556.001.0001/oso-9780192846556-chapter-16.

[16] Ioana Nely Militaru, "Chapter III Free movement of persons in the European Union" in *The Internal Market of the European Union. Fundamental Freedoms* (Bucharest: ADJURIS, 2018), 49.

[17] Ulrich Becker, "Freedom of Movement for Workers," in *European Fundamental Rights and Freedoms*, ed. Dirk Ehlers (Berlin, Boston: De Gruyter, 2011), 255.

[18] Nicola Rogers, Rick Scannell, John Walsh, *Free Movement of Persons in the Enlarged European Union* (London: Sweet & Maxwell, 2012), 89-90.

[19] Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 90.; Ioana Nely Militaru, "Chapter III Free movement of persons in the European Union," 51.

1. The person concerned has to perform services of some economic value. Economic activities must be effective and genuine, not marginal and ancillary.
2. The services must be performed for and under the direction of another person. So, there should be a hierarchy and a relationship of subordination. A worker is not a self-employed person.
3. In return for that performance, remuneration must be received.[20]

B. An Overview of Right of Establishment and Free Movement of Services

Even though the right of establishment is not mentioned among the four main freedoms in the provisions of the founding treaties as to the internal market, as a part of the free movement of persons, it is one of the fundamental freedoms of the EU law to ensure a functioning internal market.[21]

The right of establishment refers to the rights of individuals and legal persons to establish and pursue economic activities in the Member States of the EU regardless of their nationalities or residences.[22]

There is a close correlation between the notions of "establishment" and "services." The primary resemblance is the fact that EU citizens who established themselves or provided service in another Member State are self-employed. This detail distinguishes self-employed persons from workers who carry out economic activities in an employed capacity.[23]

According to the CJEU, in the Jany decision of 2001, an economic activity performed by a self-employed person must be;

1. Outside the relationship of subordination in any means,
2. Under the responsibility of the person concerned, and
3. Paid in return in full and directly to that person in terms of remuneration.[24]

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[20] Case 66/85, *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121.; Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 92-93.
[21] Christian Tietje, "Freedom of Establishment," in *European Fundamental Rights and Freedoms*, ed. Dirk Ehlers (Berlin, Boston: De Gruyter, 2011), 281.
[22] Ioana Nely Militaru, "Chapter IV Right of establishment and freedom to provide services in the European Union" in *The Internal Market of the European Union. Fundamental Freedoms* (Bucharest: ADJURIS, 2018), 71.; Case 115/78, *J. Knoors v Staatssecretaris van Economische Zaken* [1979] ECR 399, para. 16.
[23] Van den Bogaert, Cuyvers, and Antonaki, "Chapter 14 Free Movement of Services, Establishment, and Capital," 4.
[24] Case 26/99, *Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie* [2001] ECR 8615.

As a result, this jurisprudence of the Court made a clear distinction between workers and self-employed persons.

In the scope of the right of establishment under the Art. 54 TFEU, a self-employed person carries out an economic activity by settling in another Member State on a permanent or a long-term basis. On the other hand, according to Art. 56 TFEU, a self-employed person who offers and provides services in another Member State on a temporary basis, enjoys the free movement of services.[25]

IV. FREE MOVEMENT OF SERVICES

The free movement of services is one of the major breakthroughs since the service sector has become a significant part of the economy. In the Treaty of Rome, the concept of a common market, which includes free movement of goods, persons, services, and capital, was created. In the early times of the European Economic Communities, the services sector was a minor part of the European economy when compared with goods.[26]

Over time, the services sector has seized a central position in national economies and the internal market of the EU. However, simultaneously, market integration for services demonstrated a lack of progress, and a real internal market as regards services had not been provided. The service sector is especially mentioned in the Monti report, which focuses on the future of the internal market, as one of the sectors in which further improvement can be accomplished.[27]

During the 1990s, the proliferation in the number of cases about services before the CJEU indicates the development in the services sector. Most of the cases have been in the scope of seeking to clarify and apply the provisions of the founding treaties on the free movement of establishment and services.[28] As a result, in 2004, the European Commission

[25] Christina Ratcliff and Barbara Martinello, "Freedom of establishment and freedom to provide services," last modified October, 2021, https://www.europarl.europa.eu/factsheets/en/sheet/40/freedom-of-establishment-and-freedom-to-provide-services

[26] Paolo Cecchini, Alexis P. Jacquemin, John Robinson, and Michel Catinat, *The European challenge 1992: The Benefits of a Single Market.* (Aldershot: Wildwood House, 1988.), 90.

[27] Van den Bogaert, Cuyvers, and Antonaki, "Chapter 14 Free Movement of Services, Establishment, and Capital," 1.

[28] Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market (2014), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/227069/2901084_SingleMarket_acc.pdf.

prepared a new proposal on the free movement of establishment and services within the internal market, named Services Directive.

A. Treaty Provisions on Free Movement of Services

Provisions of free movement of services provided under Articles 56-62 TFEU. These Articles provide a general outline for the free movement of services. Art. 56 prohibits the Member States from restricting the free movement of services.[29] Moreover, it has a vertical direct effect.[30] On the other hand, Art. 57 defines the services.

Article 56 TFEU

"Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of the Member States who are established in a Member State other than that of the person for whom the services are intended."

Article 57 TFEU

"Services shall be considered to be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

Services shall in particular include:

a) activities of an industrial character;

b) activities of a commercial character;

c) activities of craftsmen;

d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals."

These two Articles provide the free movement of services in a very general sense. Therefore, further problems, questions, and issues depend on the decisions of the European

[29] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 377.
[30] Case 33/74, *Van Binsbergen* [1974] ECR 129, para. 26.

Court of Justice.[31] The jurisdiction of the Court to interpret EU Law also has an essential impact on the concept of free movement of services.

The aim of the provisions of the founding treaty is that individuals or companies established in one Member State should be able to pursue its economic activity and provide services in the other Member States. In the Gebhard (v. Consigol dell''Ordine Degli Avvocati e Procuratori di Milano) Case, the Court considered that provisions relating to the provisions of services are subordinate to the provisions of right of establishment.[32]

In the first paragraph of Art. 57, it is clearly stated that a person will fall within the scope of the provisions which regulate services if they are not in the scope of provisions that regulate free movement of goods, capital, and persons.[33] Furthermore, according to the Court, free movement of workers and right of establishment within the Member States are included within the scope of free movement of persons.[34] As a result, if an individual is within the scope of right of establishment provisions of the Treaty, that person will not be benefiting from the free movement of services.

B. Services Directive

The Services Directive was adopted in 2006 and the transposition process into the national law was completed until the end of December 2009. This transformation process caused some complications since this directive outlawed many restrictions in national laws of the Member States on the free movement of the services.

The Services Directive aims to create a free market for the service sector. It also abolishes the legal or administrative obstacles that can prevent businesses from offering their services in other Member States and it also aims to encourage cross-border competition.[35]

C. Three Situations of Services

The concept of services is defined in the founding treaty as all economic activities that are normally provided for remuneration and that are not covered by other freedoms. To be qualified as an economic activity, it suffices that an activity is normally done in return for a benefit. This consideration may be very little and does not even have to be in money, nor is it

[31] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 377.
[32] Case 55/94, *Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* [1995] ECR 4165.
[33] Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 128.
[34] Joined Cases 286/82 & 26/83, *Luisi and Carbone* [1984] ECR 377.
[35] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 384-385.

required that the service provider seek to make a profit.[36] The Court has also found that the consideration itself does not have to be paid by the service receiver. The only thing that matters is that the provider receives some form of consideration, not who pays it. Consequently, the consideration may also be paid by a third party, including the state.[37]

The second feature of services, according to Art. 57 TFEU, is that activity only qualifies as a service where it is not covered by one of the other freedoms. The primary difficulty in this regard is to distinguish services from the establishment. Even though it is really hard to distinguish in practice, the essential difference between services and establishment is the temporary nature of the activity. The right of establishment is intended to be more permanent and open-ended. On the other hand, services are intended to be temporary and limited in time.[38]

After determining what is covered by the concept of services, it should be determined which individuals are entitled to demand free movement of services relying on Art. 56. At the time this Article was drafted, it was regulating the situation in which a service provider would go to another Member State to provide services to a receiver. Therefore, it can be said that only service providers would rely on this Article.[39]

However, in the Case of Luisi and Carbone, the Court decided that not only service providers but also service recipients may rely on Art. 56. Although the founding treaties do not make such a distinction, in the decisions of the Court of Justice, the free movement of services includes; service providers who may go to another Member State to provide services on a temporary basis, services itself which may cross border in a situation where service provider and services receiver are in their own Member State, and service recipients who may travel from one Member State to another to receive services.[40] All three situations will be explained one by one:

1. Service Providers

According to the Services Directive, "*The concept of 'provider' should cover any natural person who is a national of a Member State or any legal person engaged in a service activity in a Member State, in exercise either of the freedom of establishment or of the free*

[36] Case 157/99 *Smits and Peerbooms* [2001] ECR 5473, para. 50-52.; Case 281/06 *Jundt* [2007] ECR 816.
[37] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 384-385.
[38] Case 55/94, *Gebhard*.
[39] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 377.
[40] *Ibid*, 383-384.

movement of services."[41] Thus, companies that are established in the Member States shall benefit from the provisions on the free movement of services like natural persons. This freedom to provide services in other Member States includes the abolition of any discrimination against a service provider.[42]

For the service providers, the economic activity, cross-border element, temporary character, and nationality of natural persons or companies of the services can be examined.

First of all, Art. 57 TFEU defines services as the activities that are normally provided for remuneration, but the list in Art. 57 is not exhaustive. Therefore, the requirements of Art. 57 would be fulfilled by any activity that has an economic character. An action with no remuneration does not fall within the scope of the Treaty.[43] For example, in the Belgium v Humbel Case, state education was considered as not fulfilling the economic activity because states do not seek any revenue through education.[44] However, we should state that, according to the Wirth v Landefhauptstadt Hannover Case, private education is distinguished from public education.[45]

Secondly, according to the Court, provisions of free movement of services in the TFEU apply to the activities that take place in more than one Member State. Therefore, there is a cross-border requirement of provisions of services. This requirement can be satisfied by the provider or the recipient of the service. In the Services Directive, it is stated that:

"The concept of provider should thus not be limited solely to cross-border service provision within the framework of the free movement of services but should also cover cases in which an operator establishes itself in a Member State in order to develop its service activities there."

The scope of the freedom to provide services has limits. Art. 56 TFEU only applies where a cross-border element is present; situations only take place in one Member State are not covered by this freedom. A person who is a service provider may temporarily pursue their

[41] Directive 2006/123/EC of the European Parliament and the Council of December 12, 2006.
[42] Case 490/04, *Commission v Germany* [2007] ECR 6095.
[43] Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 128.
[44] Case 263/86, *Belgium v Humbel and Adele* [1988] ECR 5365.
[45] Case 109/92, *Wirth v Landefhauptstadt Hannover* [1993] ECR 6447.

activity in another Member State, of which they are not a citizen, under the same conditions as are imposed by the Member State on its own nationals.[46]

There are four possible scenarios of being a cross-border service:[47] Firstly, the service provider may travel to another Member State to provide a service, only services without identified recipients are also included in this freedom.[48] Secondly, service recipients may travel to another Member State to receive a service, which is interpreted after the Luisi and Carbone decision of the Court of Justice.[49] Thirdly, the service provider and service recipient may both travel to another Member State.[50] Lastly, this requirement can be satisfied without the persons physically moving across the border to provide or receive the service. The service itself may cross a border, for example, via telephone or internet.[51] In this article, the last division of services will be examined separately from the service providers.

Thirdly, service activity should be on a temporary basis to be able to fit into the service provisions. A stable and permanent economic activity established in another Member State is only in the concern of Art. 49, which is about right of establishment, not services.[52] The temporary feature is determined by the duration, regularity, periodicity, and continuity of the service, according to the Court of Justice.[53]

Lastly, the service provider must be a European Union national. The Court of Justice held that the requirement about the nationality of the intended recipient is only considered when the rights of the recipient are the concern.[54]

2. Recipients of Services

Art. 6 of the Citizens' Rights Directive enables European Union citizens and their family members to receive services in all the Member States for up to three months without any other requirements.[55] Also, the Court held that EU citizens have the right to move freely within the Member States in the exercise of the freedom to provide services that can be

[46] Christina Ratcliff and Barbara Martinello, "Freedom of establishment and freedom to provide services," last modified October, 2021, https://www.europarl.europa.eu/factsheets/en/sheet/40/freedom-of-establishment-and-freedom-to-provide-services
[47] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 383-384.
[48] Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 378.
[49] Joined Cases 286/82 & 26/83, *Luisi and Carbone*.
[50] Case 154/89, *Commission v. France* [1991] ECR 76.
[51] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 384; Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 128.
[52] Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 129.
[53] Case 55/94 *Gebhard*.
[54] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 384.
[55] Directive 2004/38.

enjoyed by both the service providers and recipients.[56] However, even the movement of service providers is expressly provided under Art. 57 of TFEU, the movement of the recipients of services is not provided. The Court of Justice, in the Luisi and Carbone Case, held that free movement of the service recipients is a necessary corollary of the right provided under Art. 57 for the reason that the Article stated as "*where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital, and persons*."[57]

This right is only exercised by the EU citizens and their family members. There is no restriction on the type of services that the recipient should be traveling to receive in another Member State. The free movement of services includes the freedom to go to another Member State in order to receive service there in relation to payments.[58] The Court held that tourists, persons receiving medical treatment, and persons traveling for the purposes of education or business are to be regarded as recipients of services in the Luisi and Carbone Case.[59] Also, before the application of EU free movement rules to the health care sector was put on the political agenda by the cases of Kohll and Decker, the economic nature of private health services was acknowledged by the Court in the cases Luisi and Carbone.[60]

Later in the Bickel and Franz Case, the Court of Justice stated that Art. 56 TFEU covers all nationals of the EU who are visiting another Member State where they are intended or are likely to receive services, independent of freedoms guaranteed by the Treaty.[61] Since the first and most important element of service provisions is remuneration, an EU citizen shall be considered as a recipient of services only if the received service is paid for.[62] For instance, as mentioned before, in the Humbel Case, even if there is some financial contribution to the school, state school education does not fulfill the requirement of remuneration.

3. Services

This category needs to be addressed separately, as the services in which service providers and receivers do not physically cross the borders are increasing. This may occur by receiving services over phones or over the internet. Without worrying about the way services

[56] Case 43/93, *Vander Elst v Office des Migrations Internationales* [1994] ECR 38083.
[57] Joined Cases 286/82 & 26/83, *Luisi and Carbone*.
[58] Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 129.
[59] Joined Cases 286/82 & 26/83, *Luisi and Carbone*.
[60] W. Gekiere, R. Baete, & W. Palm. Free movement of services in the EU and health care, Cambridge: Cambridge University Press, (2010), 466.
[61] Case 274/96, *Bickel and Franz* [1998] ECR 563.
[62] Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 129.

are delivered and how big or small the service is, it can be argued that potentially any type of service purchase may be accepted as service. For example, getting advice or any other service via telephone or downloading services from internet in another Member State.[63]

The cross-border requirement can be satisfied without the person or company physically moving across the border to provide the service.[64] According to the Alpine Investments decision of the Court, services that are not actually moving to other Member States are included in the services provisions of TFEU.[65] This freedom includes the free movement of services itself, such as in the banking and communication sector where service provider and services receiver are in their own Member State, but the service moves such as in the e-commerce or e-trade transactions.

V. LUISI AND CARBONE

In the joined cases of Luisi and Carbone v Ministero Del Tesoro, the Court provided that the recipients of services are also included within the free movement of services as service providers. The Court interpreted Art. 59 EEC Treaty (Art. 56 TFEU) as that service recipients also fall within the scope of this Article, based on the essence of the free movement of services, though it only refers to the freedom to provide services. In addition, tourists, people who are traveling to the other Member States for the purposes of business, education, and medical treatment are considered as service recipients in that sense.[66]

A. Summary of the Case

In both cases, the plaintiffs of main proceedings, Mrs. Luisi and Mr. Carbone, who are both Italian citizens residing in Italy, exceeded the maximum limit for means of payment in foreign currency permitted by Italian law. At that time, Italian law authorized the exchange value of LIT 500 000 per annum as the ceiling for exportation of foreign currency to be spent on tourism, education, business, and medical treatment. Due to their infringement of Italian legislation, the Ministero del Tesoro imposed fines on Mrs. Luisi and Mr. Carbone, which are equal to the difference between the exported amount and the maximum permitted limit.

[63] Nigel Foster, *Foster on EU Law* (Oxford: Oxford University Press, 2017), 339-340.
[64] Rogers, Scannell, Walsh, *Free Movement of Persons in the Enlarged European Union*, 130-131.
[65] Case 384/93, *Alpine Investments BV v Minister van Financiën* [1995] ECR 1141.
[66] Joined Cases 286/82 & 26/83, *Luisi and Carbone*.

Therefore, they contested the legality of Italian legislation on the imposition of fines by Ministero del Tesoro.[67]

Mrs. Luisi indicated that the exported currency was specifically for various periods which she spent as a tourist in the Federal Republic of Germany and France. Additionally, at that time, she had undergone several medical treatments in Germany. She claimed that the provisions of Italian law restricting the exportation of means of payments in foreign currency was contrary to the Community law as to the movement of capital and current payments.[68]

On the other hand, Mr. Carbone asserted that he used a concerning amount of foreign currency as a tourist when he went to the Federal Republic of Germany for a three months period. According to him, restriction on the means of payment in foreign currency was conflicting with Community law in respect of Articles 3 (c), 5, 67, 68, 71, and 106 of the EEC Treaty.[69]

The Tribunale di Genova, in Case 286/82 (1982), whose plaintiff is Mrs. Luisi, considered tourism, business, education, and medical treatment travels in the scope of invisible transactions listed in Annex III to the EEC Treaty. Thus, payments made for these purposes fall within the first subparagraph of Art. 106 (3) EEC Treaty and Member States should refrain from putting forth any new restrictions between themselves. However, the Tribunal found it appropriate to refer the case to the Court of European Union in order for the Court to interpret the precise scope of Art. 106 regarding the movement of capital, particularly as to physical transfers of banknotes.[70]

In Case 26/83 (1983) whose plaintiff is Mr. Carbone, the Tribunale, which only considered the transfers of foreign currency for the purpose of tourism, regarded tourism under Art. 106 (3) as an invisible transaction listed in Annex III to the EEC Treaty. However, it had doubts about whether tourism simultaneously should be deemed within the scope of free movement of services and governed by Art. 106 (1), which provides liberalization of payments regarding four fundamental freedoms of the common market.[71]

Pursuant to Art. 177 of the EEC Treaty, the national courts stayed the proceedings and referred the cases to the Court for a preliminary ruling procedure for the interpretation of Art. 106 EEC Treaty in terms of a number of questions, deciding whether the Italian rules on

[67] *Ibid*, para. 1-2.
[68] *Ibid*.
[69] Joined Cases 286/82 & 26/83, *Luisi and Carbone*.
[70] *Ibid*.
[71] *Ibid*.

foreign currency transfers were compatible with Community law.[72] The Court, considering their subject matters and procedural economy, joined the cases.

The questions submitted to the Court by the Tribunale di Genova for a preliminary ruling can be examined under four categories:

a) "*Whether tourism and travel for the purposes of a business, education and medical treatment fall within the scope of services, or of invisible transactions within the meaning of Article 106 (3) of the Treaty, or of both those categories at once;*

b) *Whether the transfer of foreign currency for those four purposes must be regarded as a current payment or as a movement of capital, in particular when banknotes are transferred physically;*

c) *What degree of liberalization of payments relating to those four purposes as provided for in Article 106 of the Treaty;*

d) *What control measures regarding transfers of foreign currency Member States are entitled to take in relation to the payments so liberalized*."[73]

There were mainly three stances as regards the applicability of Articles of the EEC Treaty in the joined cases of Luisi and Carbone:

As the parties supporting the applicability of Art. 67 EEC Treaty, the Italian and French governments alleged that the transfer of foreign currency for the purpose of tourism should be regarded under Art. 67 as the movement of capital. They asserted that the aforementioned exportation of foreign currency is not designated for remuneration of specific service, yet it is solely a currency transfer between the Member States. So, the transaction in question meets the conditions to be considered as a movement of capital under Art. 67.[74]

Another view supported the applicability of Art. 106 (3), which is claimed by German and Belgian Governments, asserted that restrictions on the transfer of payments for purposes of tourism, business, education, and medical treatment cannot be considered as movement of capital.[75]

[72] *Ibid*, para. 1.
[73] *Ibid*, para. 8.
[74] *Ibid.*
[75] *Ibid.*

Finally, the last opinion on this issue was on the applicability of Art. 106 (1). The plaintiffs of the main cases, Mrs. Luisi and Mr. Carbone, the Government of the Kingdom of the Netherlands, and the Commission, observed tourism in relation to the free movement of services. In accordance with their view, pursuant to Art. 106 (1) EEC Treaty, the transfer of payment for the purposes of tourism which related to services should be liberalized as well as the services to which they relate.[76]

Thereat, as it can be understood from the General Program for the abolition, it was evident that the Council considered tourism under the provisions of services. Additionally, it is clear that according to Art. 3 of the Directive 63/340 of 31 May 1962 on the abolition of all prohibitions on or obstacles to payments for services under Art. 106 (2), in Community law, tourism is involved in the services category under Art. 59 and 60 EEC Treaty. Furthermore, tourists areas, the recipient of services, are subject to provisions of freedom to provide services as well as service providers. These two completely similar situations should not be treated differently. It is even more often that the service receiver goes to the service provider than the service provider goes to the recipient of that service. Regarding them differently, it would be to exclude tourism which is significant for the economy from the application field of the EEC Treaty.[77]

B. Judgment of the Court

As it can be understood from the questions asked by the Tribunale and their referring to the Court, the problems arising from the interpretation of Community law can be examined under four headings.[78] According to the interpretation of Art. 106 by the Court:

a) By taking into consideration the provisions of the General Programme for the Abolition of Restrictions on Freedom to Provide Services drawn up by the Council and Council Directive 64/221/EEC of 25 February 1964, the Court stated that:

"[…] *the freedom to provide services includes the freedom, for the recipients of services, to go to another Member State in order to receive as service there, without being obstructed by restrictions, even in relation to payments and that*

[76] *Ibid.*
[77] Joined Cases 286/82 & 26/83, *Luisi and Carbone*.
[78] *Ibid*, para. 8.

tourists, persons receiving medical treatment and persons traveling for the purpose of education or business are to be regarded as recipients of services."[79]

Services can be provided if either the service provider goes to the Member State of the recipient of the services or the person to whom the service is provided goes to the Member State where the provider is established. The first case explicitly stated in the third paragraph of Art. 60, allows service providers to pursue economic activities on a temporary basis in the Member State in which the service is provided, while the second case, which is a necessary concomitant of the first situation, has an essential role for fulfilling the purpose of liberalization of all profitable activities that are not in the scope of the free movement of goods, persons, and capital.[80]

In the list in Annex III to the EEC Treaty, which points out "invisible transactions" under Art. 106 (3), *inter alia*, tourism, travel for the purposes of business, education, and medical treatment are included. Nonetheless, due to the subordinate character of the said paragraph to the first and second paragraphs of the same Article, the requirement of progressive abolition of restrictions on transfers that fall within the invisible transactions cannot be applied to the aforementioned four transactions.[81]

b) The Court has ruled that payments for tourism, education, business, and medical treatment, even in the form of physical banknote transfers, cannot be considered as movement of capital regardless of the means of payment. They comprise current payments.[82]

Even though the physical transfer of banknotes is included in List D in the annexes to the two directives adopted by the Council of European Union in accordance with Art. 69 EEC Treaty does not necessarily mean that any transfer in that form has to be in the scope of movement of capital.[83]

When comparing Articles 67 and 106 EEC Treaty, whereas transfers of foreign currency as remuneration in the context of a transaction are regarded as current payments, movements of capital are financial transactions primarily related to the

[79] *Ibid*, para. 16.
[80] *Ibid*, para. 10.
[81] *Ibid*, para. 17-18.
[82] *Ibid*, para. 23.
[83] *Ibid*, para. 19-20.

investment of said funds instead of consideration for a service. In consequence, if an operation in which the physical transfer of banknotes is in question is about the movement of goods or services, it cannot be alleged as the movement of capital.[84]

c) Art. 106 (1) of the EEC Treaty requires liberalization of the payments regarding the movement of services to the extent that the movement of services itself has been liberalized between the Member States according to the Treaty. In accordance with Art. 59 of the Treaty, within the Community, any restrictions on the payments which are within the scope of freedom to provide services have to be abolished from the end of the transition period. Therefore, it is also an obligation for the Member States to liberalize the payments for the purposes of tourism, business, education, and medical treatment.[85]

d) At the time of this judgment, although the transition period had expired, movements of goods, services, and capital were not completely liberalized yet. However, Art. 67 must be interpreted as the restrictions on exportation of foreign currency cannot be considered abolished, even after the expiration of transition period for liberalization regardless of the directives adopted by the Council pursuant to Art. 69 EEC Treaty.[86]

So, Member States are authorized to verify that transfers in foreign currency allegedly used for the intention of liberalized payments are not actually allocated for capital movements that are not permitted by that State. Nonetheless, controls to be introduced shall not restrict payments and transfers made under the provision of services to a specified amount per transaction or for a certain time period. Additionally, they cannot have the effect of rendering illusory exercise of the freedoms provided by the Treaty or of subordination to the discretion of the administration.[87]

Member States may introduce control measures involving the fixing of flat-rate limit below which verification is not requested, whilst for payments exceeding those limitations, it would be necessary to demonstrate that they indeed have been used for the movement of services. However, this flat-rate limit should not

[84] *Ibid*, para. 21-22.
[85] *Ibid*, para. 24-25.
[86] *Ibid*, para. 29-30.
[87] *Ibid*, para. 37.

be fixed to an amount that may prevent the provision of services in a normal pattern.[88]

VI. Cases In Correlation with Luisi and Carbone

In order to acquire a perspective about the significance of the Luisi and Carbone Case in the European Union law, previous conditions and subsequent jurisprudence should be examined.

A. Previous Precedents

The importance of the decision of Luisi and Carbone demonstrates itself also in its novelty. Prior to Luisi and Carbone, except a number of general statements in R. v Thompson and Others and Casati decisions, there was no definitive jurisprudence regarding the liberalization of current payments.[89]

According to R. v Thompson and Others, Art. 106 EEC Treaty intends "*to ensure that the necessary monetary transfers may be made both for the liberalization of movements of capital and for the free movement of goods, services, and persons*."[90] Furthermore, in the Casati decision, which is also centered on movements of capital, the Court repeated the same statement.[91] However, the former case was about the free movement of goods, whereas the latter one was centered on movements of capital.[92]

Consequently, apart from their emphasis on liberalization of current payments in terms of Art. 106 EEC Treaty, there was no previous precedence to guide the Luisi and Carbone Case, especially in terms of its landmark character.

B. Subsequent Cases

1. Gravier v City of Liège

In this case, Gravier, who is a French national, applied to Académie Royale des Beaux-Artsin which is in Liège, Belgium. The school demanded an enrolment fee from

[88] *Ibid*.
[89] *Ibid*, Opinion of Mr. Mancini (Advocate General), 409.
[90] Case 7/78, *R. v Thompson and Others* [1978] ECR 2247.
[91] Case 203/80, *Casati* [1981] ECR 2595.
[92] Case 7/78, *R. v Thompson and Others*.; Case 203/80, *Casati*.

Gravier, and that fee was only demanded from foreign students. When Gravier refused to pay the fee, the school rejected her, and her study visa to study in Belgium was also revoked.[93]

The Court ruled that EU nationals have the right to equal access to receive a university education, vocational training in EU Law terms under equal conditions. It is creating discrimination on the grounds of nationality that imposing a fee as a condition of access to training where it is not a condition for the nationals of that Member State. Therefore, this case also supported the ruling that states service receivers are also included in the provision of free movement of services, especially in the educational area.[94]

The decision of the Court, in this case, was upheld in the Blaizot v University of Liège (2 February 1988) and Belgium v Humbel (27 September 1988) cases as well.[95]

2. Ian William Cowan v Trésor public

In June 1982, British national Ian William Cowan, while visiting Paris, was assaulted outside a metro station, and he was robbed of FF 150. The assailants, who could not be identified, threw him to the ground before escaping. Mr. Cowan was seriously injured from this fall; his second lumbar vertebra was broken and crushed.[96]

As the assailants could not be identified, Mr. Cowan, in order to receive compensation for his injury, applied to the Commission d'indemnisation des victimes d'infraction (Compensation Commission for Crime Victims) attached to the Tribunal de Grande Instance Paris, on the ground of Article 706-3 of the Code de Procédure Pénale (Code of Criminal Procedure). This was a provision that allowed the victim of an assault that causes physical injury of a certain severity to be able to seek compensation from the State if that person is unable to obtain that from any other source. However, it was contacting discriminatory requirements for someone to be able to be compensated by State.[97]

When the case referred to the Court for a preliminary ruling procedure, in terms of the services angle, it ruled that in particular, people who travel for the purpose of tourism to another Member State as a recipient of services should be guaranteed with the protection of Community law without being subject to any discrimination. In its decision, the Court referred to the Case Luisi and Carbone to support its view that recipients of services, under

[93] Case-293/83, *Gravier v City of Liege* [1985] ECR 593.
[94] *Ibid*.
[95] *Foster on EU Law*, 339.
[96] Case186/87, *Ian William Cowan v Trésor public* [1989] ECR 195, para. 2.
[97] *Ibid*, para. 3-4.

the freedom to provide services, have the right to go to the other Member States to receive services without being subject to any restrictions.[98]

3. Commission of the European Communities v Kingdom of Spain

The decision involved the right of EU nationals to visit the museums without charge on the basis of nationality. Before the ruling of the Court, there was a system in Spain allowing Spanish nationals to benefit from free admission to Spanish museums, while for the other Member States nationals over the age of 21, there was a requirement to pay an entrance fee.[99]

The Court ruled that this practice in Spanish museums led to the failure of the Kingdom of Spain to fulfill the requirements of Articles 7 and 59 EEC Treaty, therefore incompatible with free movement of services by imposing restrictions between the national of Member States in terms of services recipients.[100]

4. Raymond Kohll v Union des Caisses de Maladie

In Case, C-158/96 Raymond Kohll v Union des Caisses de Maladie in 1998, Mr. Kohll from Luxembourg sought reimbursement for a medical treatment which is provided for his daughter by an orthodontist in Germany. Kohll's social security institution refused the reimbursement. They decided that Kohll had not been authorized to receive reimbursement in advance of the treatment because of the reason that he had purchased the service abroad without prior authorization, the treatment was not urgent, and also it could be provided in Luxembourg. Later, in the proceedings between Luxembourg nationals and the Luxembourg Conseil Arbitral des Assurance Sociales (Social Insurance Arbitration Council) and the Cour de Cassation (Court of Cassation) sought a ruling from the Court of Justice of the European Communities on whether national rules under which reimbursement of medical expenses incurred abroad is subject to prior authorization are compatible with Community law.[101]

Mr. Kohll put forward that the reimbursement of the cost of medical services is being subject to prior authorization by the institution of that State where the services were provided in another Member State creates a restriction on the freedom to provide services. These rules are examined by the Court of Justice from the point of view of the provision on the free movement of goods and services. The Court of Justice stated that treatment by an

[98] *Ibid*.; Foster, *Foster on EU Law*, 339.
[99] Case 45/93, *Commission of the European Communities v Kingdom of Spain* [1994] ECR 911.
[100] *Ibid*.
[101] Case 158/96, *Raymond Kohll v Union des caisses de maladie* [1998] ECR 1931.; *Foster on EU Law*, 339.

orthodontist, even if it is outside of any hospital infrastructure and it is not urgent, that treatment was regarded as a service. Restricting such reimbursement with certain conditions to be met would discourage EU citizens from resorting to foreign medical treatment providers. The Court decided that this rule deterred insured persons from providers of medical services established in the other Member States. Therefore, these rules create inequality and a barrier to the freedom to provide services.[102]

As a result, the Court of Justice decided that a restriction to the free movement of services, especially to provide services, is created by rules under which reimbursement of the cost of treatment in another Member State.[103]

5. Leyla Ecem Demirkan v. Bundesrepublik Deutschland

In this case, Leyla Ecem Demirkan, who is a Turkish citizen, applied to the German Embassy for a tourist visa in order to visit her relatives residing in Germany. This application was rejected by the Embassy. Subsequently, Demirkan brought the case to the National Court of Germany, claiming that she had the right to enter the German territory as a tourist without a visa as to the German law, which was valid at the time the Additional Protocol came into force for Germany.[104] Also, the Ankara Agreement, which is an international agreement between Turkey and the EU, makes a reference to the founding treaty provision of free movement of services. Ankara Agreement does not clearly provide for the movement of services itself, but it states that the free movement of services is provided in the founding treaties.[105] The Court of Justice interpreted the free movement of services provision in the founding treaty since the 1980s, and the Luisi and Carbone decision is a very important judgment of the Court saying that free movement of services is freedom for service providers as well as for service receivers.[106] So, the service receivers can also enjoy a free moment in the EU.

Advocate General Villalón argued that before the Luisi and Carbone decision of the Court of Justice, the freedom of services only included the service providers explicitly. Service recipients being included or not by means of secondary legislation was a controversial topic until this case. Therefore, according to Advocate General, this shows that the

[102] *Ibid*.
[103] *Ibid*.
[104] Case 221/11, *Leyla Ecem Demirkan v. Bundesrepublik Deutschland* [2013] ECR 583.
[105] A. Aslı Bilgin and Pierluigi Simone, "One Step Forward, Two Steps Back: Legal Arguments on the Visa-Free Travel of Turkish Citizens to the EU," *Uluslararasi Iliskiler Dergisi*, Vol. 16, no. 61 (2019): 90-91. DOI: 10.33458/uidergisi.541538
[106] Joined Cases 286/82 & 26/83, *Luisi and Carbone*.

Contracting Parties did not present a clear intention in Additional Protocol about the scope of freedom to provide services.[107]

According to Article 41 of Additional Protocol, visa-free travel was valid for Turkish citizens that are conducting or planning to conduct economic activity in the EU. Therefore, Turkish citizens had the right to enter Germany for up to three months without a residence permit. However, the German Administrative Court dismissed the application, which is based on Art. 41. It is said that this provision is not applicable to a residence permit for the purposes of a family visit. Mrs. Demirkan appealed to Higher Court. Later, Higher Court asked the Court of Justice via preliminary ruling that whether this type of passive freedom to provide services fall within the concept of freedom to provide services within the meaning of Art. 41 of AP.[108]

The Court of Justice said it is not included, even though the freedom covers the passive side of the free movement of services which means service recipients in the Luisi and Carbone Case. According to the Court, the scope and the purpose of the Ankara Agreement and the TFEU are different from each other. While AA promotes balanced and continuous strengthening of trade and economic relations between Turkey and the EU, TFEU aims to establish an internal market with free movement of goods, persons, services, and capital. According to this, under EU law, acceptance of passive freedom to provide services, service recipients is a requirement to abolish all restrictions on free movement to persons to establish an internal market. Also, the acceptance of passive freedom to provide services goes back to 1984 AP was signed before.[109] Thus, we see that the Court of Justice refused to interpret the passive side of the freedom to provide services, which is the service recipients, within the extent of free movement of services regarding the meaning of Art. 41 AP.[110]

VII. Why Is This a Landmark Case?

The concept of services, free movement of services, used to include only the ones who actively pursue economic activities because it is provided as such under the founding treaties. However, the concept of services has been expanded to the ones who receive the services of

[107] "Legal Analysis of The Opinion of Advocate General Villalón in Demirkan Case," *Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs*, June 20, 2013, https://www.ab.gov.tr/49022_en.html.
[108] Bilgin and Simone, "One Step Forward, Two Steps Back: Legal Arguments on the Visa-Free Travel of Turkish Citizens to the EU," 90-91.
[109] Case 221/11, *Demirkan*, para. 59-60.
[110] Bilgin and Simone, "One Step Forward, Two Steps Back: Legal Arguments on the Visa-Free Travel of Turkish Citizens to the EU," 90-91.

economic activities. Still, this aspect does not take place under the provision of TFEU, but it is provided under the Directives.[111] For the first time, in the Luisi and Carbone Case, it is confirmed that the free movement of services is also applicable for recipients of services.

In the Luisi and Carbone Case, as mentioned before, two Italian nationals were prosecuted under Italian currency regulations on taking money to the other Member States to pay for health and tourism purposes. According to the Court of Justice, because they had received services in exchange for payments in the other Member States, they could rely on the free movement of services provisions against the Italian law, which restricts the export of foreign currency. Therefore, this decision states that provision on the free movement of services includes the recipients of services without any restrictions on receiving a service from another Member State by going there. According to the Luisi and Carbone Case, tourists, persons receiving medical treatment, persons traveling for the purpose of business or education are to be regarded as recipients of services even in relation to the payment.[112]

Therefore, in Luisi and Carbone, the Court of Justice held that not just service providers but also service receivers may rely on Art. 56 TFEU.[113] According to this case, all individuals that receive some kind of services by traveling to another Member State may rely on the free movement of services. Furthermore, national entities that are providing services to service recipients from the other Member States may also rely on Art. 56 TFEU. Such additions and lines of case law have widely expanded the scope of Art. 56 TFEU.[114]

Consequently, Luisi and Carbone is a landmark case because, with this decision, the Court of Justice held that service recipients may rely on Art. 56 TFEU, provision on the free movement of services besides service providers.

[111] *Foster on EU Law* 339, 339-340.
[112] Joined Cases 286/82 & 26/83 *Luisi and Carbone*, para. 16.
[113] *Ibid*.
[114] Cuyvers. "Freedom of Establishment and the Freedom to Provide Services in the EU," 385.

VII. Conclusion

In the European Union, the aim is to enable EU citizens to live, work, study, shop, and retire in any Member State and enjoy goods and services from all over the Europe. For the provision of these, free movement of goods, services, capital, and persons in a single EU internal market is established. The EU allows citizens to trade and do business freely by removing legal, technical, and bureaucratic barriers between the Member States. Free movement of services, which is an indispensable element of the internal market, is provided under the Articles between the 56-62 Treaty on the Functioning of the European Union. Article 56 of the TFEU is written in a way to serve this aim and define freedom. Until Luisi and Carbone, only service providers traveling to another Member State to provide its service may rely on this article, and this would give them a right to free movement.

According to the Court of Justice, provision on the free movement of services includes the recipients of services without any restrictions on receiving service in another Member State by going there after the Luisi and Carbone. In this case, the Court held that not just service providers but also service recipients may rely on the principle which is regulating the free movement of services Art. 56 TFEU. So, the provision of freedom to provide services includes the freedom to go to another Member States to receive service there as a service recipient. Because of this decision of the Court, service recipients are able to benefit from free movement of services without facing any restrictions in relation to payments. Finally, according to this decision of the Court, tourists, persons receiving medical treatment, and persons traveling for the purpose of education or business are considered as recipients of services.

Consequently, this case expanded the scope of Article 56 TFEU and the scope of free movement of services. Therefore, this landmark case also helped to the development of the internal market of the EU. The decision of Luisi and Carbone, in terms of services, constitutes essential progress to complete the European Internal Market.

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