

Case C-104/91

Colegio Oficial de Agentes de la Propiedad Inmobiliaria

v

José Luis Aguirre Borrell and Others

(Reference for a preliminary ruling
from the Juzgado de Instrucción No 20, Madrid)

(Freedom of establishment — Recognition of diplomas —
Estate agents)

Report for the Hearing	I - 3005
Opinion of Advocate General Jacobs delivered on 26 February 1992	I - 3013
Judgment of the Court (Sixth Chamber), 7 May 1992	I - 3023

Summary of the Judgment

1. *Free movement of persons — Freedom of establishment — Estate agents — Access to the profession — Obligation on Member States to assess equivalence between the diplomas and qualifications required under national law and those obtained in the Member State of origin — Obligation to give decisions which state reasons and which are capable of being the subject of judicial proceedings*
(EEC Treaty, Arts 52 and 57)

2. *Free movement of persons — Freedom of establishment — Pursuit of a regulated profession by a national of another Member State who does not fulfil the conditions laid down by the host State — Imposition of criminal penalties — Whether permissible — Conditions (EEC Treaty, Arts 52 and 57)*
1. Articles 52 and 57 of the Treaty must be interpreted as meaning that:
- in the absence of a directive on the mutual recognition of diplomas, certificates or other evidence of formal qualifications relating to the profession of estate agent, the authorities of a Member State, in response to a request for permission to practice that profession from a national of another Member State who holds a diploma or qualification relating to the pursuit of that profession in his State of origin, must assess the extent to which the knowledge and skills certified by the diplomas or professional qualifications obtained by the person concerned in his State of origin correspond to those required by the rules of the host State;
 - where there is only partial equivalence between the diplomas or qualifications, the authorities of the host State are entitled to require the person concerned to show that he has acquired the knowledge and skills which are lacking by requiring him to pass an examination if necessary;
 - the decision to deny a national of another Member State recognition or equivalent treatment of the diploma or professional qualification awarded to him by the Member State of which he is a national must be capable of being the subject of judicial proceedings in which its legality under Community law can be reviewed and the person concerned must be able to ascertain the reasons for the decision taken.
2. Subject to the obligation on the part of the authorities of the host State, in the absence of a directive on the mutual recognition of diplomas, certificates or other evidence of formal qualifications relating to a regulated profession, to examine whether the diploma or professional qualification awarded by another Member State to a Community national is equivalent to the diploma or qualification required by the legislation of the first State, and to the requirement that the examination procedure must fulfil certain conditions with regard, in particular, to the statement of reasons for an adverse decision and the remedies available against such a decision, Articles 52 and 57 of the Treaty do not preclude a Member State from imposing criminal penalties in respect of the pursuit of that regulated profession by a national of another Member State who does not fulfil the conditions laid down by the legislation of the host Member State.