

JUDGMENT OF THE COURT (Eighth Chamber)

2 December 2010\*

In Joined Cases C-422/09, C-425/09 and C-426/09,

REFERENCES for a preliminary ruling under Article 234 EC from the Simvoulitis Epikratias (Greece), made by decisions of 12 May 2009, received at the Court on 28 October 2009, in the proceedings

**Vassiliki Stylianou Vandorou** (C-422/09),

**Vassilios Alexandrou Giankoulis** (C-425/09),

**Ioannis Georgiou Askoxilakis** (C-426/09)

v

**Ipourgos Ethnikis Pedias kai Thriskevmaton,**

\* Language of the case: Greek.

THE COURT (Eighth Chamber),

composed of K. Schiemann (Rapporteur), President of the Chamber, L. Bay Larsen and C. Toader, Judges,

Advocate General: P. Mengozzi,  
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 23 September 2010,

after considering the observations submitted on behalf of:

— the Greek Government, by E. Skandalou, acting as Agent,

— the European Commission, by G. Zavvos and H. Støvlbæk, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### **Judgment**

- 1 These references for a preliminary ruling concern the interpretation of Articles 1(e) and 4(1)(b) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 (OJ 2001 L 206, p. 1) ('Directive 89/48').
  
- 2 The references were made in the context of disputes between Ms Vandorou, Mr Gi-ankoulis and Mr Askoxilakis and the Ipourgos Ethnikis Pedias kai Thriskevmaton (Minister for National Education and Religious Affairs) relating to certain decisions made by the Simvoulio Anagnorisis Epangelmatikis Isotimias Titlon Tritovathmias Ekpaidevsis (Council for the Recognition of the Equivalence of Higher Education Diplomas) ('the Saeitte'). By those decisions, the Saeitte made entitlement of the applicants in the main proceedings to pursue in Greece their professions, which they are authorised to pursue in other Member States, conditional on fulfilment of supplementary requirements, namely an aptitude test or an adaptation period.

## Legal context

### *European Union legislation*

- 3 According to its third and fourth recitals, Directive 89/48 has as its object the establishment of a general system of recognition of higher-education diplomas to enable European citizens to pursue all those professional activities which in a host Member State are dependent on the completion of post-secondary education and training, provided they hold such a diploma preparing them for those activities awarded on completion of a course of studies lasting at least three years and issued in another Member State.
  
- 4 Article 1 of Directive 89/48 provides:

‘For the purposes of this Directive the following definitions shall apply:

- (a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:
  - which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;

- which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of equivalent level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and
  
- which shows that the holder has the professional qualifications required for the taking-up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by the diploma, certificate or other evidence of formal qualifications were received mainly in the Community, or the holder thereof has three years' professional experience certified by the Member State which recognised a third-country diploma, certificate or other evidence of formal qualifications.

...

...

- (c) a regulated profession: the regulated professional activity or range of activities which constitute this profession in a Member State;

(d) regulated professional activity: a professional activity, in so far as the taking-up or pursuit of such activity or one of its modes of pursuit in a Member State is subject, directly or indirectly by virtue of laws, regulations or administrative provisions, to the possession of a diploma. The following in particular shall constitute a mode of pursuit of a regulated professional activity:

— pursuit of an activity under a professional title, in so far as the use of such a title is reserved to the holders of a diploma governed by laws, regulations or administrative provisions,

— pursuit of a professional activity relating to health, in so far as remuneration and/or reimbursement for such an activity is subject by virtue of national social security arrangements to the possession of a diploma.

...

(e) professional experience: the actual and lawful pursuit of the profession concerned in a Member State;

(f) adaptation period: the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. ...

- (g) aptitude test: a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State.

In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant.

The aptitude test must take account of the fact that the applicant is a qualified professional in the Member State of origin or the Member State from which he comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to exercise the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State. The detailed application of the aptitude test shall be determined by the competent authorities of that State with due regard to the rules of Community law.

...'

- 5 According to the first paragraph of its Article 2, Directive 89/48 applies to any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person.

6 Article 3(a) of Directive 89/48 provides:

‘Where, in a host Member State, the taking-up or pursuit of a regulated profession is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

(a) if the applicant holds the diploma required in another Member State for the taking-up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State ...’

7 Article 4 of Directive 89/48 states:

‘1. Notwithstanding Article 3, the host Member State may also require the applicant:

(a) to provide evidence of professional experience, where the duration of the education and training adduced in support of his application, as laid down in Article 3(a) and (b), is at least one year less than that required in the host Member State. ...

...



(b) to complete an adaptation period not exceeding three years or take an aptitude test:

- where the matters covered by the education and training he has received as laid down in Article 3(a) and (b), differ substantially from those covered by the diploma required in the host Member State, or

...

If the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first examine whether the knowledge acquired by the applicant in the course of his professional experience is such that it fully or partly covers the substantial difference referred to in the first subparagraph.

Should the host Member State make use of this possibility, it must give the applicant the right to choose between an adaptation period and an aptitude test. By way of derogation from this principle, for professions whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may stipulate either an adaptation period or an aptitude test ...

2. However, the host Member State may not apply the provisions of paragraph 1(a) and (b) cumulatively.

*National legislation*

Measures transposing Directive 89/48 into national law

- 8 Presidential Decree 165/2000 of 23 June 2002 (FEK A' 149/28.6.2000), as amended by Presidential Decrees 373/2001 of 22 October 2001 (FEK A' 251) and 385/2002 of 23 December 2002 (FEK A' 334) ('Decree 165/2000'), transposes Directive 89/48 into Greek law.
- 9 Thus, Articles 2(5) and (7), 3, 4(1)(a) and 5 of Decree 165/2000 reproduce, respectively, Articles 1(e) and (g), 2, 3(a) and 4 of Directive 89/48, referred to above.
- 10 In addition, Article 10 of Decree 165/2000 provides for the creation of the Saeitte as a collegiate body within the Ministry for National Education and Religious Affairs whose task, pursuant to Article 11 of that Decree, is to rule on applications for recognition of higher education diplomas that fall within the scope of Directive 89/48.

The professions of mechanical engineer and telecommunications engineer

- 11 In Greece, the professions of mechanical engineer and telecommunications engineer are regulated professions, whose practice is restricted to members registered with the Techniko Epimelitirio tis Elladas (Greek Technical Chamber) ('the TEE').

- 12 The Presidential Decree of 27 November and 14 December 1926 codifying provisions establishing the TEE (FEK A' 430), as amended by Law 1486/1984 (FEK A' 161) and by Presidential Decree 512/1991 of 30 November and 12 December 1991 (FEK A' 190) ('the TEE decree'), states in Article 2(1) that all nationals of a Member State 'who have graduated from the National Polytechnic of Metsovo, polytechnic colleges in Greece and equivalent colleges abroad who have been granted authorisation to pursue their profession must register as ordinary members of the Technical Chamber of Greece'.
- 13 Professionals are classified under nine specialisms set out in Article 2(5) of that decree, which includes the specialism of mechanical engineer but not that of telecommunications engineer.
- 14 Pursuant to Article 2(6) of the TEE decree, specialisms not included among those listed in Article 2(5) of that decree are to be included under the closest specialism. Nevertheless, a member of the TEE who has been thus registered has the professional rights of the specialism or mere specialisation referred to in his authorisation to pursue the profession, as laid down by the legislation in force.
- 15 Article 4(3) of the TEE decree provides, inter alia, that the TEE is to conduct examinations, grant authorisation to pursue the profession of engineer in accordance with the provisions in force and keep the Register of Engineers.
- 16 In that connection, Articles 1 and 4 of Law 1225/1981 of 30 and 31 December 1981 (FEK B' 713) provide that competence to grant authorisation to engineers who graduated from higher education establishments in Greece and from equivalent foreign

higher education establishments to pursue their profession in Greece is vested in the TEE. Pursuant to Article 1(3) of that law, it also applies to engineers who graduated from foreign higher education establishments offering specialisations that are different from those of engineers who graduated from national higher education establishments.

- 17 On the basis of Law 1225/1981, Inter-ministerial Order ED5/4/339 of 14 September and 5 October 1984 of the Minister for Public Works and the Minister for National Education and Religious Affairs, established the procedure to be applied by the TEE for issuing authorisation to pursue the profession of engineer.

### **The disputes in the main proceedings and the questions referred for a preliminary ruling**

#### *Case C-422/09 (Vandorou)*

- 18 After taking postgraduate classes and exams at London Guildhall University (United Kingdom) during the period from September 1994 to February 1997, Ms Vandorou was awarded the degree 'Master of Business Administration'. During her studies, she had worked in the United Kingdom, in particular for the company Elf Oil Ltd ('Elf Oil').
- 19 On 15 August 1997, Ms Vandorou registered with the United Kingdom Association of Chartered Certified Accountants ('the ACCA'). After passing a set of exams and gaining the necessary approved work experience in the field of accounting/auditing,

she became an official member of that professional organisation on 17 April 2000 and was awarded the professional title of 'Chartered Certified Accountant'. Between those two dates, she worked in Greece for the public limited auditing company Pricewaterhouse Coopers ('Pricewaterhouse Coopers').

- 20 On 10 April 2002, Ms Vandorou applied to the Saeitte for recognition of her entitlement to pursue the profession of accountant/tax advisor in Greece.
- 21 She submitted certificates attesting to her entitlement to pursue the profession of Chartered Certified Accountant in the United Kingdom and describing the activities that that profession encompasses. She also referred to the professional experience she had acquired at Elf Oil and Pricewaterhouse Coopers and submitted corresponding attestations from those companies.
- 22 By Report No 80 of 23 March 2004 ('the first contested report'), the Saeitte stated, first, that the profession of accountant was a regulated profession both in Greece and in the United Kingdom and that Ms Vandorou, as holder of the professional title of 'Chartered Certified Accountant' conferred by the professional organisation ACCA in the United Kingdom, should be regarded as holding an accounting diploma in accordance with Directive 89/48 and Presidential Decree 165/2000. The Saeitte then found that supplementary requirements had to be imposed on Ms Vandorou 'owing to substantial differences in her course, compared with the education of accountants in Greece'. It therefore decided to convene a three-member committee to determine the content of the above requirements to be imposed on the applicant.

- 23 On the basis of the decision of that three-member committee, the Saeitte subsequently, by Report No 89 of 25 October 2004 ('the second contested report'), required Ms Vandorou, as a supplementary requirement in order to be recognised as entitled to pursue the profession of accountant/tax advisor in Greece, to undergo an aptitude test in domestic law, specifically, in company, commercial, employment and tax law, since pursuit of the profession of accountant/tax advisor required precise knowledge of the rules of domestic law. Relying on Article 5 of Decree 165/2000, transposing Article 4(1)(b) of Directive 89/48, the Saeitte further stated that Ms Vandorou could not choose between an aptitude test and an adaptation period because the profession of accountant/tax advisor was a profession 'whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity'.
- 24 Finally, the Saeitte found that the professional experience that Ms Vandorou had acquired in Greece in the course of her work at Pricewaterhouse Coopers could not be taken into account. That was because the conditions referred to in Article 2(5) of Decree 165/2000, which, mirroring Article 1(e) of Directive 89/48, define the terms 'professional experience' as the 'actual and lawful pursuit of the profession concerned in a Member State', were not fulfilled, since Ms Vandorou did not have authorisation to pursue the profession of accountant in Greece during the period when she acquired the experience in question.
- 25 Ms Vandorou then brought before the Simvoulio tis Epikratias two sets of proceedings against, respectively, the first and second contested reports.
- 26 According to the Simvoulio tis Epikratias, the first contested report should be annulled since it does not give adequate reasons for requiring Ms Vandorou to fulfil supplementary requirements. The Saeitte confined itself to referring in a vague and

general manner to ‘substantial differences in the course’, whereas it should have referred in a specific and clear manner to the subjects covered by the education and training received by Ms Vandorou and the subjects covered by the corresponding Greek diploma, identified the differences between those subjects and, formulated a fully and specifically reasoned determination as to the substantial nature of the differences at issue.

27 The referring court states that the validity of the second contested report depends on the validity of the first contested report and that annulment of the first should therefore lead to annulment of the second.

28 The *Simvoulio tis Epikratias* considers that it is nonetheless appropriate in this case to analyse the ground for annulment according to which the reasoning of the second contested report is vitiated by errors of law because, in that report, the *Saeitte* considered, when determining whether Ms Vandorou should be required to fulfil supplementary requirements, that her work experience acquired in Greece should be disregarded. According to the referring court, examination of that ground for annulment is necessary in order to identify the matters that the competent national authorities need to investigate following annulment of the contested reports, so that their obligations are clearly defined when they come to complying with the annulment decision of the court, thus affording Ms Vandorou, with due account for the principle of procedural economy, full and effective judicial protection.

29 In those circumstances, the *Simvoulio tis Epikratias* decided to stay the proceedings and refer to the Court the following question for a preliminary ruling:

‘For the purposes of Article 4(1)(b) of Directive 89/48 ..., does “professional experience”, taken into account by the competent national authority to assess whether the

knowledge acquired by the person concerned in the course of that work experience is such that it fully or partly covers the substantial difference established between the subjects covered by the education and training received by the person concerned in the Member State of origin and the subjects covered by the corresponding diploma required in the host Member State, include experience which displays, cumulatively, the following characteristics:

- (a) that experience was acquired by the person concerned after obtaining a diploma granting access to a specific regulated profession in the Member State of origin;
  
- (b) that experience was acquired in the course of a professional activity pursued in the host Member State, which whilst it may not be identical to the regulated profession which the person concerned is seeking entitlement to pursue in the host Member State in the application filed in reliance on Directive 89/48 ... (and which, moreover, cannot be lawfully pursued in the host Member State until such time as the said application has been accepted), is nonetheless, according to the relevant material finding of the national authority competent to rule on the application, a professional activity that appears to correlate with the aforementioned regulated profession, and
  
- (c) that experience is found, during the material appraisal by the aforementioned authority, to be such, owing to the above correlation, as covers at least some of the substantial differences between the knowledge acquired by the person concerned during the course of their education in the Member State of origin and the subject areas covered by the corresponding diploma in the host Member State?



*Case C-425/09 (Giankoulis)*

- 30 Mr Giankoulis holds a diploma from the Department of Engineering of the School of Technological Applications of the Kavala Technologiko Ekpedevtiko Idrima (Greece) and a Master of Science degree in IT for Product Engineering from the Cranfield Institute of Technology (United Kingdom).
- 31 On 17 April 1996, Mr Giankoulis was engaged by the company Elliniki Viomichania Aluminiou AE ('Elliniki Viomichania Aluminiou'). He worked in its Foundry Division as assistant maintenance engineer until 31 December 1997 and as head of foundry maintenance engineering until 31 December 2000.
- 32 Since 12 July 2000, Mr Giankoulis has been a member of the Institution of Mechanical Engineers in the United Kingdom. According to a certificate dated 8 November 2000 from that institution, he is entitled to use the title 'Chartered Engineer'. His registration on the register of 'Chartered Engineers' was on the basis of his academic qualifications and the professional experience he had acquired in Greece.
- 33 Since 1 January 2002, Mr Giankoulis has been working in the merged Foundry & Continuous Casting Division of Elliniki Viomichania Aluminiou as assistant maintenance engineer.

- 34 On 9 March 2001, Mr Giankoulis filed an application with the Saeitte seeking recognition of his entitlement to pursue the profession of mechanical engineer in Greece. In addition to the documents attesting to his abovementioned academic training, he provided a reference attesting to his professional experience at Elliniki Viomichania Aluminiau.
- 35 After several meetings that resulted only in decisions to stay the examination of the application, the Saeitte, by Report No 42 of 8 April 2002 ('the third contested report'), considered that Mr Giankoulis's education and training at the Kavala Technologiko Ekpedevtiko Idrima differed substantially from the corresponding training provided by the polytechnic departments of higher education establishments in Greece and that his professional experience, which is limited to Greece, was not relevant to the profession of mechanical engineer. The Saeitte also decided that to make up for those substantial differences in education and training Mr Giankoulis had to fulfil supplementary requirements and a three-member committee was to be convened to determine the content of those requirements.
- 36 The committee thus set up recommended, in its written Report of 12 November 2002, that Mr Giankoulis sit an examination or complete a three-year adaptation period in four subjects in order to cover the topics constituting the basic knowledge of a mechanical engineer and in seven other subjects in order to cover the areas of knowledge required of an electrical engineer.
- 37 After two further stays of the procedure, the Saeitte adopted Report No 87 of 21 September 2004 ('the fourth contested report') and decided not to accept the above committee's report except in as far as it concerned supplementary requirements relating to the profession of mechanical engineer. Thus, the Saeitte required Mr Giankoulis, as supplementary requirements, to sit an examination or work under supervision for

three years, in the following subjects in the field of mechanical engineering: 'thermal engineering, thermal engines, thermal installations, cooling installations, air conditioning, hoisting installations, hydraulic installations and pump rooms'

- 38 Mr Giankoulis then brought proceedings before the Simvoulio tis Epikratias seeking annulment, specifically, of the third and fourth contested reports.
- 39 According to the Simvoulio tis Epikratias, the third contested report should be annulled since it does not give adequate reasons for obliging Mr Giankoulis to fulfil supplementary requirements. The Saeitte confined itself to referring in a vague and general manner to substantial differences in Mr Giankoulis's education and training, whereas it should have referred in a specific and clear manner to the subjects covered by the education and training received by Mr Giankoulis and the subjects included in the course of study in Greece for obtaining a diploma that permits the pursuit, in conformity with the law, of the regulated professional activities of a mechanical engineer, identified the differences between those subjects and formulated a fully and specifically reasoned determination as to the substantial nature of the said differences.
- 40 The referring court states that the validity of the fourth contested report depends on the validity of the third contested report and that annulment of the third should therefore lead to annulment of the fourth.
- 41 The Simvoulio tis Epikratias considers that it is nonetheless appropriate in this case to analyse the ground for annulment according to which the reasoning of the second contested report is vitiated by errors of law in that, in adopting the report of the three-member committee, the Saeitte considered, when imposing supplementary re-

quirements, that the work experience acquired by the applicant in Greece should be disregarded. According to the referring court, examination of that ground is necessary in order to identify the matters which the competent national authorities need to investigate following annulment of the contested reports, so that their obligations are clearly defined when they come to complying with the annulment decision, thus affording Mr Giankoulis, with due account for the principle of procedural economy, full and effective judicial protection.

- <sup>42</sup> In its assessment of that ground, the referring court expresses doubts as to whether the professional experience acquired by Mr Giankoulis after obtaining the title ‘Chartered Engineer’ constitutes ‘professional experience’ which must be taken into account when applying Article 4(1)(b) of Directive 89/48.
- <sup>43</sup> In those circumstances, the Simvoulio tis Epikratias decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

‘Does the term “professional experience” referred to in Article 4(1)(b) of Directive 89/48... correspond to the term “professional experience” as defined in Article 1(e) of that directive and can it include experience which displays, cumulatively, the following characteristics:

- (a) that experience was acquired by the person concerned after obtaining a diploma granting access to a specific regulated profession in the Member State of origin,

- (b) that experience was acquired through pursuit of the same profession as that forming the subject of the application filed in reliance on Directive 89/48... (see the terms “the profession concerned”, “la profession concernée”, “der betreffende Beruf” used, respectively in the English, French and German versions of the Directive), and
- (c) that professional activity was lawfully pursued, that is to say, under the terms and conditions of the relevant legislation of the Member State where it took place, thereby excluding experience acquired in the profession concerned in the host Member State before the application was accepted, because the profession concerned cannot be lawfully pursued in the host Member State before the application is accepted (subject, of course, to Article 5 of that directive, which allows the applicant, subject to conditions, in order to undergo professional education and training not undergone in the Member State of origin, to pursue the profession in the host Member State with the assistance of a qualified member of the profession)?’

*Case C-426/09 (Askoxilakis)*

<sup>44</sup> Mr Askoxilakis holds a degree in physics from the Department of Physics of the University of Crete (Greece) and a postgraduate degree in the specialism of communications engineering from the Department of Electrical Engineering and Computing of the University of Munich (Germany). The latter allows him to pursue, in Germany, regulated professional activities in the field of communications engineering.

<sup>45</sup> On 21 October 2003 Mr Askoxilakis filed an application with the Saeitte for recognition of his entitlement to pursue in Greece the profession of telecommunications

engineer. In addition to documents attesting to his academic training, he attached an attestation from the Idrima Technologias kai Erevnas (Technology and Research Foundation) ('the ITE') stating that he worked there from 1 August 2002 to 28 February 2003 under research programmes of that institute, and that from 1 March 2003 he worked as a special technical scientist, specifically in its 'Telecommunications and Networks' laboratory. Upon request by the Saeitte, Mr Askoxilakis submitted a second attestation from the ITE describing in greater detail the subject-matter of his work for that institute.

<sup>46</sup> By Report No 87 of 21 September 2004 ('the fifth contested Report'), the Saeitte decided to impose supplementary requirements on Mr Askoxilakis in order to cover the substantial differences between the education and training he had undertaken and the subjects covered by the education and training provided in Greek polytechnics for the profession of computer, telecommunications and network engineer in Greece. The Saeitte further decided to convene a three-member committee to determine the content of those supplementary requirements.

<sup>47</sup> The committee thus set up recommended in its report of 10 February 2005 an aptitude test or an adaptation period of three years in the following subjects: 'A. Digital, electronic and analogue circuit design; analysis of networks. B. Computers: micro-computer systems. Functional computer systems. Design and implementation of programming languages. Algorithms and complexity. Structures and data bases. Software technology. C. Telecommunications and networks. Formatting, detection, evaluation and dissemination of signals. Wireless networks and dissemination. Internet and its application.'

<sup>48</sup> By report No 96 of 8 March 2005 ('the sixth contested report'), the Saeitte decided to comply with that report and imposed the aforementioned supplementary requirements on Mr Askoxilakis, without taking into account the professional experience he had acquired at the ITE.

49 Mr Askoxilakis then brought proceedings, specifically against the fifth and sixth contested reports.

50 Firstly, the Simvoulio tis Epikratias considers that the fifth contested report should be annulled since it does not give adequate reasons for obliging Mr Askoxilakis to fulfil supplementary requirements. The Saeitte confined itself to referring in a vague and general manner to 'substantial differences', whereas it should have referred in a specific and clear manner to the subjects covered by the education and training received by Mr Askoxilakis and the subjects included in the course of study in Greece for obtaining a diploma that permits the pursuit of the professional activities of a telecommunications engineer, identified the differences between those subjects and formulated a fully and specifically reasoned determination as to the substantial nature of the said differences.

51 Secondly, the Simvoulio tis Epikratias states that the validity of the sixth contested report depends on the validity of the fifth contested report and that annulment of the fifth should therefore lead to annulment of the sixth.

52 The Simvoulio tis Epikratias considers that it is nonetheless appropriate in this case to analyse the ground for annulment according to which the reasoning of the second contested report is vitiated by errors of law because, in that report the Saeitte disregarded the professional experience referred to by Mr Askoxilakis. According to the referring court, examination of that ground for annulment is necessary in order to identify the matters which the competent national authorities need to investigate following annulment of the contested reports, so that their obligations are clearly defined when they come to complying with the annulment decision of the court, thus affording Mr Askoxilakis, with due account for the principle of procedural economy, full and effective judicial protection.

53 In its assessment of that ground, the referring court expresses doubts as to whether Mr Askoxilakis's work at the ITE constitutes 'professional experience' that must be taken into account when applying Article 4(1)(b) of Directive 89/48.

54 In those circumstances, the Simvoulio tis Epikratias decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Does the term "professional experience" referred to in Article 4(1)(b) of Directive 89/48... correspond to the term "professional experience" as defined in Article 1(e) of that directive and can it include experience which displays, cumulatively, the following characteristics:

- (a) that experience was acquired by the person concerned after obtaining a diploma granting access to a specific regulated profession in the Member State of origin,
  
- (b) that experience was acquired during the pursuit of the profession which is the subject of the application filed in reliance on Directive 89/48 ... (see the terms "the profession concerned", "la profession concernée", "der betreffende Beruf" used, respectively in the English, French and German versions of the Directive) and
  
- (c) that professional activity was lawfully pursued, that is to say, under the terms and conditions of the relevant legislation of the Member State where it took place, thereby excluding experience acquired in the profession concerned in the host Member State before the application was accepted, because the profession con-



cerned cannot be lawfully pursued in the host Member State before the application is accepted (subject of course, to Article 5 of that directive, which allows the applicant, subject to conditions, in order to undergo professional education and training not undergone in the Member State of origin, to pursue the profession in the host Member State with the assistance of a qualified member of the profession)?'

- 55 By order of the President of the Court of 3 February 2009, Cases C-422/09, C-425/09 and C-426/09 were joined for the purposes of the written and oral procedures and of the judgment.

### **Consideration of the questions referred**

- 56 It is apparent from the case-files sent to the Court that each of the applicants in the main proceedings is seeking to pursue a regulated profession in Greece on the basis of his or her authorisation to pursue a corresponding regulated profession in another Member State. In each of the applicants' cases, the Saeitte found there to be substantial differences between the education and training acquired by the applicants in the main proceedings and that normally undertaken in order to pursue the corresponding professions in Greece. Consequently, the Saeitte found that it was necessary to impose supplementary requirements, as provided for under Article 4 of Directive 89/48.
- 57 In determining the scope of the supplementary requirements, the Saeitte decided that the practical experience acquired by the applicants in the main proceedings could not be taken into account, without examining whether that experience might, in whole or in part, cover those substantial differences in education and training.

- 58 By the questions it has referred, which it is appropriate to examine together, the referring court asks, in essence, to what extent a national authority responsible for recognition of professional qualifications acquired in other Member States is bound, when setting any supplementary requirements necessary to compensate for substantial differences between an applicant's education and training and the education and training required in the host Member State, to take into account practical experience which, in whole or in part, covers those differences.
- 59 It must be observed, at the outset, that the practical experience acquired by the applicants in the main proceedings in the course of their work is not, according to the information submitted to the court, capable of constituting a 'professional experience' within the meaning of Article 1(e) of Directive 89/48.
- 60 That expression, as is apparent from the definition in Article 1(e), read in conjunction with Article 1(a), (c) and (d) of that directive, refers to the pursuit of a regulated professional activity, in so far as the taking-up or pursuit of such activity is usually subject, by virtue of laws, regulations or administrative provisions, to the possession of a diploma within the meaning of Article 1(a).
- 61 The experience acquired by the applicants in the main proceedings prior to obtaining the diploma granting them entitlement to pursue the profession in question in a Member State cannot include the pursuit of such regulated professional activities. That is true, in particular, of the experience acquired by Ms Vandorou in Elf Oil and Pricewaterhouse Coopers prior to becoming a member of the ACCA and the experience acquired by Mr Giankoulis at Elliniki Viomichania Aluminiou before he became a member of the United Kingdom Institute of Mechanical Engineers.

- 62 Nor, moreover, in principle, can work carried out in one Member State in which authorisation to pursue that profession has not yet been acquired, even after obtaining the diploma granting entitlement to pursue the profession in question in another Member State, be regarded as the pursuit of regulated professional activities.
- 63 Thus the experience acquired by Ms Vandorou at Pricewaterhouse Coopers after becoming a member of the ACCA, when she worked in Greece, cannot constitute 'professional experience' within the meaning of Article 1(e) of Directive 89/48. The same applies to the experience acquired by Mr Giankoulis at Elliniki Viomichania Aluminiou after becoming a member of the United Kingdom Institute of Mechanical Engineers, and the experience acquired by Mr Askoxilakis at ITE.
- 64 Consequently no obligation ensues from the second subparagraph of Article 4(1)(b) of Directive 89/48 to take into account practical experience, such as that acquired by the applicants in the main proceedings, which does not amount to 'professional experience' within the meaning of Article 1(e) of that directive.
- 65 It must nevertheless be emphasised that measures adopted pursuant to European Union law must comply with the general principles of that law, specifically the principle of proportionality. According to the Court's settled case-law, the scope of Article 4(1) of Directive 89/48, which expressly authorises compensatory measures, must be restricted to those cases where they are proportionate to the objective pursued (see Case C-330/03 *Colegio* [2006] ECR I-801, paragraph 24, and Case C-197/06 *Van Leuken* [2008] ECR I-2627, paragraph 39).

- 66 In addition, as the Court has already explained, the effective exercise of the fundamental freedoms guaranteed by Articles 39 EC and 43 EC can be unjustifiably hindered if the competent national authorities responsible for recognition of professional titles acquired in another Member State disregard relevant knowledge and qualifications already acquired by an applicant seeking entitlement to pursue, in that Member State, a profession which according to national legislation is subject to holding a diploma or professional qualification (see, to that effect, Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, paragraph 15, and Case C-234/97 *Fernández de Bobadilla* [1999] ECR I-4773, paragraph 33).
- 67 Before imposing supplementary requirements to cover differences between the education and training provided in the Member State of origin and that provided in an applicant's host Member State, the competent national authorities must therefore assess whether the knowledge acquired by an applicant, including knowledge acquired in the host Member State, in the course of practical experience can be taken into account for the purpose of proving possession of the knowledge required by the latter (see, to that effect, *Vlassopoulou*, paragraph 20; *Fernández de Bobadilla*, paragraph 33; Case C-313/01 *Morgenbesser* [2003] ECR I-13467, paragraph 62; and Case C-345/08 *Pešla* [2009] ECR I-11677, paragraph 41).
- 68 It is true that the experience acquired in the course of the pursuit of the regulated profession in question in the Member State of origin will, in most cases, be the most relevant to that assessment, which wholly justifies the express imposition of the obligation, in the second subparagraph of Article 4(1)(b) of Directive 89/48, on the competent authorities in a host Member State, to take such experience into consideration.
- 69 However, in so far as all practical experience in the pursuit of related activities can increase an applicant's knowledge, it is incumbent on the competent national authorities to take into consideration all practical experience of use in the pursuit of the

profession to which access is sought. The precise value to attach to such experience will be for the competent national authority to determine in the light of the specific functions carried out, knowledge acquired and applied in pursuit of those functions, responsibilities assumed and the level of independence accorded to the person concerned.

70 In that regard, in most cases, pursuit of activities relating to a regulated profession under the control and responsibility of a duly qualified professional in the host Member State, whilst not in itself amounting to pursuit of the regulated profession in question in that Member State, confers on the person concerned relevant knowledge of considerable value. Whilst, as the European Commission submits, lawful and non-lawful experience cannot be considered to be of equal worth, nonetheless, contrary to the fears expressed by the Greek Government during the hearing, the pursuit of a professional activity supervised in that way should not be regarded as unlawful since the person concerned is not himself pursuing the regulated profession in such circumstances.

71 It should be added that the obligation to take into account all the applicant's relevant experience does not cease to exist as a result of the adoption of directives on mutual recognition of diplomas (see, to that effect, *Case C-238/98 Hocsmán* [2000] ECR I-6623, paragraphs 23 and 31; *Case C-232/99 Commission v Spain* [2002] ECR I-4235, paragraph 22; and *Morgenbesser*, paragraph 58).

72 In the light of all those considerations, the answer to the questions referred must be that a national authority responsible for recognition of professional qualifications acquired in another Member State is bound, pursuant to Articles 39 EC and 43 EC, to take into account, when setting any supplementary requirements to compensate for substantial differences between the education and training undertaken by an appli-

cant and the education and training required in the host Member State, all practical experience which, in whole or in part, covers those differences.

## Costs

- <sup>73</sup> 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

**A national authority responsible for recognition of professional qualifications acquired in another Member State is bound, pursuant to Articles 39 EC and 43 EC, to take into account, when setting any supplementary requirements to compensate for substantial differences between the education and training undertaken by an applicant and the education and training required in the host Member State, all practical experience which, in whole or in part, covers those differences.**

[Signatures]