

JUDGMENT OF THE COURT (Sixth Chamber)
1 February 1996 *

In Case C-164/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Oberverwaltungsgericht Berlin for a preliminary ruling in the proceedings pending before that court between

Georgios Aranitis

and

Land Berlin

on the interpretation of Articles 1(c) and (d) and 7(1) 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),

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, F. A. Schockweiler, P. J. G. Kapteyn, J. L. Murray (Rapporteur) and H. Ragnemalm, Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: D. Loutermann-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Regierungsrat in the same Ministry, acting as Agents,

- the Greek Government, by Evi Skandalou, legal assistant in the European Communities Legal Department in the Ministry of Foreign Affairs, and Stamatina Vodina, specialist assistant in the same department, acting as Agents,

- the Italian Government, by Umberto Leanza, head of the Legal Department in the Ministry of Foreign Affairs, assisted by Pier Giorgio Ferri, Avvocato dello Stato, acting as Agent,

- the Commission of the European Communities, by Marie-José Jonczy and Jürgen Grunwald, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Aranitis, represented by Uwe Mertens, Rechtsanwalt, Wittenberg, the German Government, represented by Bernd Kloke, the Greek Government, represented by Evi Skandalou and Stamatina Vodina, the

Italian Government, represented by Pier Giorgio Ferri, and the Commission, represented by Jürgen Grunwald, at the hearing on 14 September 1995,

after hearing the Opinion of the Advocate General at the sitting on 26 October 1995,

gives the following

Judgment

- 1 By order of 25 April 1994, received at the Court on 16 June 1994, the Oberverwaltungsgericht (Higher Administrative Court), Berlin referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 1(c) and (d) and 7(1) 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, hereinafter 'the directive').
- 2 Those questions were raised in proceedings brought by Mr Aranitis ('the applicant') against the Land Berlin concerning the latter's refusal to recognize the Greek diploma awarded on the completion of a higher-education geology course as equivalent to the German diploma awarded on completion of a comparable course and consequently to authorize the applicant to use the title attaching to the German diploma, namely 'Diplom-Geologe'.
- 3 The directive sets out the circumstances in which a Member State is required to recognize that higher-education diplomas awarded on the territory of another Member State are equivalent to those awarded on its own territory. In accordance with the second paragraph of Article 2, the directive does not apply to professions

which are the subject of a separate directive establishing arrangements for the mutual recognition of diplomas by Member States.

4 By virtue of the first paragraph of Article 2, the directive 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.

5 Article 1(b) defines the host Member State as one 'in which a national of a Member State applies to pursue a profession subject to regulation in that Member State, other than the State in which he obtained his diploma or first pursued the profession in question'.

6 Under Article 1(c) of the directive, 'regulated profession' is to mean the regulated professional activity or range of activities which constitute that profession in a Member State. Article 1(d) defines 'regulated professional activity' as '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'.

7 The seventh recital in the preamble to the directive makes it clear that the idea of regulated professional activity is not confined to those professional activities to which access in a Member State is subject to the possession of a diploma but applies also to professional activities to which access is unrestricted when they are practised under a professional title reserved to the holders of certain qualifications.

8 Where nationals of Member States fulfil the conditions for the taking up or pursuit of a regulated profession on the territory of a host Member State, Article 7 of the

directive confers the dual right to use the professional title of the host Member State corresponding to that profession (Article 7(1)) and to use their lawful academic title and, where appropriate, the abbreviation thereof deriving from their Member State of origin or the Member State from which they come, in the language of that State (Article 7(2)).

- 9 The applicant is a Greek national. In 1979, after studying geology for four years in a Greek university, he obtained a diploma as 'Ptichiouchos Geologos'. He worked in Greece as a geologist from 1977 to 1990, except for a break of two years' military service.

- 10 In May 1990, he moved to Berlin in order to carry on his profession there. For reasons which remain unclear and for which no justification has been put forward, the Arbeitsamt (Employment Office) classified him as an 'unskilled assistant', a classification described at the hearing as 'unfortunate' by the German Government.

- 11 The applicant then asked the Senatsverwaltung für Wissenschaft und Forschung (City Science and Research Department 'Senatsverwaltung') for a declaration that his Greek diploma was equivalent to the German diploma awarded on completion of a comparable course. The Senatsverwaltung considered that the applicant could not rely on the directive because it applied only to taking up regulated professions, which did not include the profession of geologist in Germany. It authorized him therefore to use the title attaching to his diploma only in its original Greek form and it added, in brackets, on the certificate of authorization the literal translation 'Geologist with a Diploma'.

- 12 The applicant appealed against that decision to the Verwaltungsgericht (Administrative Court), Berlin. In his appeal, he claimed that the profession of 'Diplom-Geologe' was a regulated profession within the meaning of the directive, which

was applicable to all professions, the taking up of which in a Member State is subject to possession of a diploma or which are, in any event, pursued under a professional title reserved to persons possessing certain qualifications.

- 13 By decision of 19 December 1991, the Verwaltungsgericht rejected that appeal. It upheld the decision of the Senatsverwaltung that it was doubtful whether the profession of geologist could be regarded as a regulated profession for the purposes of the directive. It concluded that the title of 'Diplom-Geologe' was not a professional title within the meaning of Article 7(1) of the directive, but a university degree distinguishing a holder of the diploma awarded on completion of an academic course for the purposes of Article 7(2). Consequently, the applicant was entitled only to use the academic title acquired in his country of origin, in the language of that State.
- 14 The applicant appealed against that decision to the Oberverwaltungsgericht Berlin.
- 15 Since it considered that resolution of the case required interpretation of the directive and, in particular, of the concept of 'regulated profession', the Oberverwaltungsgericht Berlin decided to stay the proceedings and refer to the Court of Justice the following questions for a preliminary ruling:
- '1. Is Article 1(c) in conjunction with Article 1(d) 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 to be interpreted as meaning that there is a regulated profession even where, whilst there are no provisions governing the taking up and pursuit of the profession, the only education and

training for the profession are provided by a course of university studies of at least four and a half years leading to a diploma and accordingly it is ultimately only holders of that university diploma who seek employment in that profession and pursue it?

2. If so, is the academic title “Diplom-...” (in the present case, “Geologe”), in the circumstances specified in the second half of Question 1, simultaneously a professional title within the meaning of Article 7(1) of the directive, where there is no other professional title prescribed or protected by a law or regulation?’

The first question

- 16 In order to answer the first question, it must be established whether the main proceedings concern a regulated profession within the meaning of the directive.
- 17 It is apparent from Articles 1(b) and 2 that the directive 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. It is, therefore, the position in the host Member State which determines whether the provisions of the directive apply in the case under consideration.
- 18 Moreover, the effect of Article 1(c) and (d) is that the directive applies only to regulated professions and that where the conditions for taking up or pursuing a professional activity are directly or indirectly governed by legal provisions, whether laws, regulations or administrative provisions, that activity constitutes a regulated profession.

- 19 Access to, or pursuit of, a profession must be regarded as directly governed by legal provisions where the laws, regulations or administrative provisions of the host Member State create a system under which that professional activity is expressly reserved to those who fulfil certain conditions and access to it is prohibited to those who do not fulfil them.
- 20 In this case, the national court makes it clear in its first question that the profession of geologist is not regulated in Germany since 'there are no provisions governing the taking up and pursuit of the profession'. Accordingly, a profession such as that of geologist in Germany cannot be regarded as directly regulated for the purposes of the directive.
- 21 The question whether the taking up or pursuit of such a profession is to be regarded as indirectly regulated within the meaning of Article 1(d) of the directive must next be considered.
- 22 Although there are no provisions in the host State governing the taking up or pursuit of the profession in question, in practice only persons holding the title 'Diplom-Geologe' seek such employment as a rule. Moreover, according to the applicant, German employers seek to recruit only candidates possessing the title 'Diplom-Geologe'. Accordingly, persons pursuing the profession of geologist nearly always possess that diploma.
- 23 That profession cannot be considered to be regulated merely because it is only holders of a specific higher-education diploma who seek employment in the host State. Whether or not a profession is regulated depends on the legal situation in the host Member State and not on the conditions prevailing on the employment market in that Member State.

- 4 It is apparent from the documents before the Court that there are no laws, regulations or administrative provisions in the host Member State indirectly regulating access to the profession of geologist. Consequently, a profession such as that of geologist in Germany cannot be regarded as indirectly regulated within the meaning of the directive.
- 25 The Italian Government considers that the Arbeitsamt's decision to class the applicant as an unskilled assistant provides ample evidence that, with regard to working as a geologist, the German employment market is indirectly subject to laws, regulations or administrative provisions mirrored in the actions of a public body, with the result that any person not possessing a title ('Diplom-Geologe') obtained in Germany is excluded from the profession or, in any event, finds obstacles in the way to taking it up.
- 26 That argument must be rejected.
- 27 A decision such as that of the Arbeitsamt to class the applicant as an unskilled assistant does not constitute grounds for considering the profession in question to be indirectly regulated. Although the reasons for that decision have never been made clear, there is nothing to indicate that it forms part of any indirect legal control of access to or pursuit of that profession in Germany.
- 28 In addition, the decision of the Senatsverwaltung to annul the decision of the Arbeitsamt and to authorize the applicant to use his title in its Greek form, as well as the fact that it added the literal translation 'Diplomierter Geologe' in brackets on the certificate of authorization demonstrate that there is no indirect regulation of the profession of geologist in Germany.

29 Since there are no legal rules to regulate the profession in the host Member State either directly or indirectly, the provisions of the directive cannot be applicable.

30 In order to give the national court a complete answer, it must however be added that, even if the directive is not applicable, Article 6 of the EC Treaty (formerly Article 7 of the EEC Treaty) prohibits any discrimination by Member States on grounds of nationality. Furthermore, the Member States are required by Article 48 of the EC Treaty to secure freedom of movement for workers within the Community and by Article 52 to secure their freedom of establishment.

31 The Court has consistently held that, when the competent authorities of a Member State receive a request to admit a person to a profession to which access, under national law, depends on the possession of a diploma or a professional qualification, they must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State by making a comparison between the specialized knowledge and abilities certified by those diplomas and the knowledge and qualifications required by the national rules (see, in particular, the judgments in Case C-340/89 *Vlassopoulou v Ministerium für Justiz, Bundes-und Europaangelegenheiten Baden-Württemberg* [1991] ECR I-2357, paragraph 16, and Case C-104/91 *Aguirre Borrell and Others* [1992] ECR I-3003, paragraph 11).

32 The same holds true for professional activities which are not subject by virtue of legal provision to the possession of a diploma, so far as concerns the conditions for taking them up or pursuing them. In such circumstances, the competent authorities of the host Member State responsible for classifying the nationals of other Member States, which will affect their chances of finding work on the territory of the host Member State, are required when carrying out that classification to take into

consideration the diplomas, knowledge, qualifications and other evidence of qualifications that the person concerned has obtained in order to pursue a profession in the Member State of origin or from which he comes.

- 33 In the light of all those considerations, Article 1(c) in conjunction with Article 1(d) of the directive must be interpreted as meaning that a profession cannot be described as regulated when there are in the host Member State no laws, regulations or administrative provisions governing the taking up or pursuit of that profession or of one of its modes of pursuit, even though the only education and training leading to it consists of at least four and a half years of higher-education studies on completion of which a diploma is awarded and, consequently, only persons possessing that higher-education diploma as a rule seek employment in, and pursue, that profession.

The second question

- 34 Having regard to the answer given to the first question, there is no need to give a decision on the second.

Costs

- 35 The costs incurred by the German, Greek and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber)

in answer to the questions referred to it by the Oberverwaltungsgericht Berlin by order of 25 April 1994, hereby rules:

Article 1(c) in conjunction with Article 1(d) 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 must be interpreted as meaning that a profession cannot be described as regulated when there are in the host Member State no laws, regulations or administrative provisions governing the taking up or pursuit of that profession or of one of its modes of pursuit, even though the only education and training leading to it consists of at least four and a half years of higher-education studies on completion of which a diploma is awarded and, consequently, only persons possessing that higher-education diploma as a rule seek employment in, and pursue, that profession.

Kakouris

Schockweiler

Kapteyn

Murray

Ragnemalm

Delivered in open court in Luxembourg on 1 February 1996.

R. Grass

C. N. Kakouris

Registrar

President of the Sixth Chamber