

JUDGMENT OF THE COURT  
15 October 1987 \*

In Case 222/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal de grande instance (Regional Court), Lille, (Eighth Criminal Chamber) for a preliminary ruling in the proceedings pending before that court between

**Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef)**, a trade union having its registered office in Paris, on the one hand,

and

**Georges Heylens**, a football trainer, residing at La Madeleine (France),

**Jacques Dewailly**, President and Managing Director of the Lille Olympic Sporting Club, a société anonyme d'économie mixte, residing at Villeneuve-d'Ascq (France),

**Jacques Amyot**, also a director of the Lille Olympic Sporting Club, residing at Templemars (France), and

**Roger Deschod**, also a director of the Lille Olympic Sporting Club, residing at Faches-Thumesnil (France), on the other hand,

on the interpretation of Article 48 of the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: G. F. Mancini

Registrar: J. A. Pompe, Deputy Registrar

\* Language of the Case: French.

after considering the observations submitted on behalf of

Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef), the private prosecutor in the main proceedings, by J. J. Bertrand in the written and in the oral proceedings;

Georges Heylens, Jacques Dewailly, Jacques Amyot and Roger Deschodt, the defendants in the main proceedings, by G. Doussot in the written and in the oral proceedings;

the Government of the French Republic, by G. Guillaume in the written proceedings;

the Government of the Kingdom of Denmark, by L. Mikaelson in the written proceedings and Joergen Molde, Legal Adviser in the Ministry for Foreign Affairs, in the oral proceedings;

the Commission of the European Communities, by J. Griesmar in the written proceedings and in the oral proceedings;

having regard to the Report for the Hearing as supplemented further to the hearing on 31 March 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 18 June 1987,

gives the following

### Judgment

1 By judgment of 4 July 1986, lodged at the Court Registry on 18 August 1986, the tribunal de grande instance (Regional Court), Lille, referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty a question on the interpretation of Article 48 of the EEC Treaty.

- 2 That question was raised in the criminal proceedings following the private prosecution brought by Union nationale des entraîneurs et cadres techniques professionnels du football against Georges Heylens, a football trainer, and Jacques Dewailly, Jacques Amyot and Roger Deschodt, directors of the Lille Olympic Sporting Club, a société anonyme d'économie mixte, as principal and accessories, respectively, for having infringed the provisions of French Law No 84-610 of 16 July 1984 on the organization and promotion of physical and sporting activities (*Journal officiel de la République française* of 17.7.1984) and Article 259 of the Criminal Code with regard to the wrongful assumption of a title.
- 3 It appears from the documents before the Court that in order to practise the occupation of football trainer in France a person must be the holder of a French football-trainer's diploma or a foreign diploma which has been recognized as equivalent by decision of the competent member of the Government after consulting a special committee.
- 4 The defendant in the main proceedings, Georges Heylens, is a Belgian national and the holder of a Belgian football-trainer's diploma and was engaged by the Lille Olympic Sporting Club as trainer of the club's professional football team. An application for recognition of the equivalence of the Belgian diploma was rejected by decision of the competent member of the Government, which referred, by way of statement of reasons, to an adverse opinion of the special committee, which itself contained no statement of reasons. Since Mr Heylens continued to practise as a football trainer, the French football-trainers' trade union summoned him and the directors of the football club which had engaged him before the Lille criminal court.
- 5 Since it had doubts about the compatibility of the French legislation with the rules on the free movement of workers, the tribunal de grande instance de Lille (Eighth Criminal Chamber) suspended the proceedings until the Court had delivered a preliminary ruling on the following question:

'Does the requirement that a person wishing to pursue a gainful occupation as trainer of a sports team (Article 43 of the Law of 16 July 1984) must hold a French diploma or a foreign diploma recognized as equivalent thereto by a committee

whose rulings do not state the reasons on which they are based and against whose decisions no specific legal remedy is available constitute a restriction on freedom of movement for workers as defined by Articles 48 to 51 of the EEC Treaty, in the absence of any directive applicable to that occupation?’

- 6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 7 The question put by the national court essentially seeks to establish whether, where in a Member State access to an occupation as an employed person is dependent upon the possession of a national diploma or a foreign diploma recognized as equivalent thereto, the principle of the free movement of workers laid down in Article 48 of the Treaty requires that it must be possible for a decision refusing to recognize the equivalence of a diploma granted to a worker who is a national of another Member State by that Member State to be made the subject of judicial proceedings, and that the decision must state the reasons on which it is based.
- 8 In order to answer that question it must be borne in mind that Article 48 of the Treaty implements, with regard to workers, a fundamental principle contained in Article 3 (c) of the Treaty, which states that, for the purposes set out in Article 2, the activities of the Community are to include the abolition, as between Member States, of obstacles to freedom of movement for persons and services (see the judgment of 7 July 1976 in Case 118/75 *Watson and Belmann* [1976] ECR 1185).
- 9 In application of the general principle set out in Article 7 of the Treaty under which discrimination on grounds of nationality is prohibited, Article 48 aims to eliminate in the legislation of the Member States provisions as regards employment, remuneration and other conditions of work and employment under which a worker who is a national of another Member State is subject to more severe treatment or is placed in an unfavourable situation in law or in fact as

compared with the situation of a national in the same circumstances (see the judgment of 28 March 1979 in Case 175/78 *Saunders* [1979] ECR 1129).

- 10 In the absence of harmonization of the conditions of access to a particular occupation, the Member States are entitled to lay down the knowledge and qualifications needed in order to pursue it and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications.
- 11 However, as the Court held in its judgment of 28 June 1977 in Case 11/77 *Patrick v Ministre des Affaires culturelles* [1977] ECR 1199, the lawful requirement, in the various Member States, relating to the possession of diplomas for admission to certain occupations constitutes a restriction on the effective exercise of the freedom of establishment guaranteed by the Treaty the abolition of which is to be made easier by directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications. As the Court also held in that judgment, the fact that such directives have not yet been issued does not entitle a Member State to deny the practical benefit of that freedom to a person subject to Community law when that freedom can be ensured in that Member State, in particular because it is possible under its laws and regulations for equivalent foreign diplomas to be recognized.
- 12 Since freedom of movement for workers is one of the fundamental objectives of the Treaty, the requirement to secure free movement under existing national laws and regulations stems, as the Court held in its judgment of 28 April 1977 in Case 71/76 *Thieffry* [1977] ECR 765, from Article 5 of the Treaty, under which the Member States are bound to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty and to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty.
- 13 Since it has to reconcile the requirement as to the qualifications necessary in order to pursue a particular occupation with the requirements of the free movement of workers, the procedure for the recognition of equivalence must enable the national authorities to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. That

assessment of the equivalence of the foreign diploma must be effected exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training which the diploma certifies that he has carried out.

- 14 Since free access to employment is a fundamental right which the Treaty confers individually on each worker in the Community, the existence of a remedy of a judicial nature against any decision of a national authority refusing the benefit of that right is essential in order to secure for the individual effective protection for his right. As the Court held in its judgment of 15 May 1986 in Case 222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, at p. 1663, that requirement reflects a general principle of Community law which underlies the constitutional traditions common to the Member States and has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 15 Effective judicial review, which must be able to cover the legality of the reasons for the contested decision, presupposes in general that the court to which the matter is referred may require the competent authority to notify its reasons. But where, as in this case, it is more particularly a question of securing the effective protection of a fundamental right conferred by the Treaty on Community workers, the latter must also be able to defend that right under the best possible conditions and have the possibility of deciding, with a full knowledge of the relevant facts, whether there is any point in their applying to the courts. Consequently, in such circumstances the competent national authority is under a duty to inform them of the reasons on which its refusal is based, either in the decision itself or in a subsequent communication made at their request.
- 16 In view of their aims those requirements of Community law, that is to say, the existence of a judicial remedy and the duty to state reasons, are however limited only to final decisions refusing to recognize equivalence and do not extend to opinions and other measures occurring in the preparation and investigation stage.
- 17 Consequently, the answer to the question put by the tribunal de grande instance, Lille, must be that where in a Member State access to an occupation as an

employed person is dependent upon the possession of a national diploma or a foreign diploma recognized as equivalent thereto, the principle of the free movement of workers laid down in Article 48 of the Treaty requires that it must be possible for a decision refusing to recognize the equivalence of a diploma granted to a worker who is a national of another Member State by that Member State to be made the subject of judicial proceedings in which its legality under Community law can be reviewed, and for the person concerned to ascertain the reasons for the decision.

### Costs

- 18 The costs incurred by the Government of the French Republic, the Government of the Kingdom of Denmark and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

### THE COURT,

in answer to the question referred to it by the tribunal de grande instance, Lille, by judgment of 4 July 1986, hereby rules:

Where in a Member State access to an occupation as an employed person is dependent upon the possession of a national diploma or a foreign diploma recognized as equivalent thereto, the principle of the free movement of workers laid down in Article 48 of the Treaty requires that it must be possible for a decision refusing to recognize the equivalence of a diploma granted to a worker who is a national of another Member State by the Member State to be made the subject of

judicial proceedings in which its legality under Community law can be reviewed, and for the person concerned to ascertain the reasons for the decision.

Mackenzie Stuart    Bosco    Due    Moitinho de Almeida    Rodríguez Iglesias

Koopmans

Everling

Bahlmann

Galmot

Kakouris

Joliet

O'Higgins

Schockweiler

Delivered in open court in Luxembourg on 15 October 1987.

P. Heim

Registrar

G. Bosco

President of Chamber  
acting as President