

Action brought on 8 November 2002 by the Commission of the European Communities against the Portuguese Republic

(Case C-393/02)

(2002/C 323/39)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 8 November 2002 by the Commission of the European Communities, represented by C. Tufvesson and M. França, acting as Agents.

The applicant claims that the Court should :

- Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications⁽¹⁾, the Portuguese Republic has failed to fulfil its obligations under that directive; and
- Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 31 July 2001.

⁽¹⁾ OJ 1999 L 201, p. 77.

Action brought on 11 November 2002 by the Commission of the European Communities against the Kingdom of Spain

(Case C-398/02)

(2002/C 323/40)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 11 November 2002 by the Commission of the European Communities, represented by G. Valero Jordana and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should :

1. Declare that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Articles 4, 9 and 13 of Council Directive 75/442/EEC⁽¹⁾ of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991⁽²⁾, the Kingdom of Spain has failed to fulfil its obligations under that directive;
2. Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

- Infringement of Article 9 of Directive 75/442/EEC: Although the Spanish authorities in their reply to the formal notice and the reasoned opinion respectively claimed that the disposal site at La Bañeza had been authorised in 1979 to 1980 and that it complied with the requisite conditions, they have not forwarded any copies of such authorisation. Accordingly, the Commission takes the view that, in the absence of any such information, there was no authorisation or, if it exists, that it cannot be in conformity with the requirements of Article 9 of Directive 75/442/EEC.

Moreover, the obligation to obtain authorisation is discharged only when the waste disposal site is finally closed or sealed, but when the period prescribed by the reasoned opinion expired the disposal site at La Bañeza was still open pending the construction of the Centro de Tratamiento de Residuos (waste disposal processing centre) at San Román de la Vega.

- Infringement of Article 4 of Directive 75/442/EEC: Although the Spanish authorities claim to have carried out a range of work to 'improve' the deficient conditions at the waste disposal site in question, it continues to operate and it is still in its deficient state, entailing a steady deterioration in the environment and causing serious problems for the local population.
- Infringement of Article 13 of Directive 75/442/EEC: Although, according to Article 14 of Directive 1999/31/EC⁽³⁾, Annex II to that directive is not immediately applicable to existing waste disposal sites, its provisions make clear the type of regular inspections to which Article 13 of Directive 75/442/EEC refers. The Spanish authorities have not responded to the request for detailed information on the inspections carried out nor have they

provided evidence in that respect, so much so that in their reply to the reasoned opinion they make no mention whatever of that matter.

(¹) OJ 1975 L 194, p. 39.

(²) OJ 1991 L 78, p. 32.

(³) OJ 1999 L 182, p. 1.

Action brought on 12 November 2002 by the Commission of the European Communities against the French Republic

(Case C-402/02)

(2002/C 323/41)

An action against the French Republic was brought before the Court of Justice of the European Communities on 12 November 2002 by the Commission of the European Communities, represented by M. Patakia and D. Martin, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should :

- Declare that, by failing to bring into force, in order to grant access to the profession of teacher specialising in the hospital public service or, on the other hand, in the national public service, a procedure for the mutual recognition of diplomas and by retaining national legislation and practice of the committee for the assimilation of diplomas which takes no account of the professional experience of migrant workers, the French Republic has failed to fulfil its obligations under Directives 89/48/EEC (¹) and 92/51/EEC (²) and Article 39 EC Treaty; and
- Order the French Republic to pay the costs.

Pleas in law and main arguments

A profession is a regulated profession in a Member State within the meaning of Directives 89/48 and 92/51 where it is authorised in that Member State and access thereto or the pursuit thereof is reserved to persons who, directly or indirectly, meet the statutory conditions governing the rules of that profession. The fact that access to a similar profession in the private or associative sector is not subject to the same condition is irrelevant in that regard. Likewise, the statement made by the French authorities in their reply to the reasoned opinion that a profession is not 'regulated' unless it is subjected to a condition regarding the conferment of a diploma arising from a legislative provision of general application is erroneous in law. Since Directives 89/48 and 92/51 are applicable inasmuch as they concern access to the regulated profession of teachers specialising in the hospital public service and in the national civil service, it is incumbent on the French authorities to provide for a procedure for the mutual recog-

inition of diplomas obtained in other Member States, as provided by those two directives.

The arrangements for assimilation under decrees, which do not take account of Directives 89/48 and 92/51, rely only on the examination of diplomas submitted by candidates who are holders of such diplomas and make no provision for the taking into account of any experience acquired in the course of pursuing the profession to make up for any difference with respect to duration or content of training leading to the award of such diplomas. However, Member States are obliged to take into account any professional experience which candidates may possess for the purposes of assimilating a diploma obtained in another Member State and access to the regulated profession in question.

(¹) 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 1988 L 19, p. 16) .

(²) Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25) .

Action brought on 12 November 2002 by the Commission of the European Communities against the United Kingdom

(Case C-405/02)

(2002/C 323/42)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 12 November 2002 by the Commission of the European Communities, represented by Maria Patakia and Karen Banks, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

- (1) declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 on the establishment of a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications (¹), or in any event by failing to communicate them to the Commission, the United Kingdom has failed to fulfil its obligations under the Directive;
- (2) order the United Kingdom to pay the costs of this action.