JUDGMENT OF THE COURT
7 May 1991 *

In Case C-340/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesgerichtshof for a preliminary ruling in the action pending before that court between

Irene Vlassopoulou

and

Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg

on the interpretation of Article 52 of the EEC Treaty,

THE COURT

composed of: O. Due, President, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: W. Van Gerven
Registrar: Mrs D. Louterman, Principal Administrator

after considering the written observations submitted by:

— Mrs Vlassopoulou, of the Athens Bar,

* Language of the case: German.

— the Ministerium für Justiz, Bundes- und Europaangelegenheiten (Ministry of Justice and Federal and European Affairs) of the Land Baden-Württemberg, by M. Schmolz, acting as Agent,

— the Government of the Federal Republic of Germany, by Ernst Röder, Executive Director at the Federal Ministry of Economic Affairs, and Horst Teske, Ministerial Adviser at the Federal Ministry of Justice, both acting as Agents,

— the Italian Government, by Pier Georgio Ferri, Avvocato dello Stato, acting as Agent,

— the Commission of the European Communities, by Friedrich-Wilhelm Albrecht and Étienne Lasnet, Legal Advisers, both acting as Agents,

having regard to the Report for the Hearing,

after hearing oral argument presented on behalf of Mrs Vlassopoulou, represented by Professor Wolfgang Oehler, the Ministerium für Justiz, Bundes- und Europa-angelegenheiten of the Land Baden-Württemberg, represented by Mr Schmolz and Mr Storz, the German Government, the Italian Government, represented by Ivo M. Braguglia, Avvocato dello Stato, acting as Agent, and the Commission of the European Communities, represented by Étienne Lasnet, Legal Adviser, and Bernd Langeheine, a member of its Legal Department, both acting as Agents, at the hearing on 10 October 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 28 November 1990,

gives the following

Judgment

1 By an order of 18 September 1989, which was received at the Court of Justice on 3 November 1989, the Bundesgerichtshof referred to the Court under Article 177 of the EEC Treaty a question concerning the interpretation of Article 52 of the EEC Treaty.

2 The question arose in legal proceedings between Mrs Vlassopoulou, a Greek lawyer registered with the Athens Bar, and the Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg (Ministry for Justice, Federal and European Affairs of the Land Baden-Württemberg, hereinafter referred to as 'the Ministry'), which refused to grant her admission as a Rechtsanwältin (lawyer) to the Amtsgericht (Local Court) Mannheim and the Landgerichte (Regional Courts) at Mannheim and Heidelberg.

3 Besides her Greek diplomas, Mrs Vlassopoulou has a doctorate in law from the University of Tübingen (Germany). Since July 1983 she has been working with a firm of German lawyers at Mannheim and in November 1984 she received permission to deal with foreign legal affairs concerning Greek law and Community law, in accordance with the Rechtsberatungsgesetz (Law on legal advice) (Bundesgesetzblatt III, p. 303). As far as German law is concerned, Mrs Vlassopoulou practises under the responsibility of one of her German colleagues in the firm.

4 On 13 May 1988, Mrs Vlassopoulou applied to the Ministry for admission as a Rechtsanwältin. The Ministry refused her application on the ground that she did not have the qualifications, laid down by Paragraph 4 of the Bundesrechtsanwaltordnung (Federal regulation on the profession of Rechtsanwalt) (Bundesgesezblatt 1959 I, p. 565), for the holding of judicial office, which are necessary for admission to the profession of Rechtsanwalt. Basically, those qualifications are acquired by studying law at a German university, passing the First State Examination, completing a preparatory training period and then passing the Second State Examination. The Ministry also stated that Article 52 of the EEC Treaty did not give the applicant the right to exercise her profession in the Federal Republic of Germany on the basis of her professional qualification obtained in Greece.

5 Mrs Vlassopoulou's appeal against the Ministry's decision was dismissed by the Ehrengerichtshof (Lawyers' Disciplinary Council). She then appealed against the decision of that body to the Bundesgerichtshof (Federal Supreme Court), which, taking the view that the dispute raised a question concerning the interpretation of Article 52 of the EEC Treaty, referred the following question to the Court of Justice for a preliminary ruling:

'Is freedom of establishment within the meaning of Article 52 of the EEC Treaty infringed if a Community national who is already admitted and practising as a lawyer in her country of origin and for five years has been admitted in the host country as a legal adviser (Rechtsbeistand) and also practises in a law firm established there can be admitted as a lawyer in the host country only in accordance with the statutory rules of that country?'

6 Reference is made to the Report for the Hearing for a full account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 The second paragraph of Article 52 of the EEC Treaty provides that '[f]reedom of establishment shall include the right to take up and pursue activities as self-employed persons . . . under the conditions laid down for its own nationals by the law of the country where such establishment is effected . . . '.

8 According to the Italian and German Governments, it is clear from that provision that in the absence of Community rules for coordinating conditions of access to, and the pursuit of, self-employed activities as a lawyer and in the absence of directives on the mutual recognition of diplomas a Member State is entitled to make admission to a bar dependent on the fulfilment of non-discriminatory conditions laid down by national law.

9 In this regard, it must be stated first of all that 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 (see the judgment in Case 222/86 *Union Nationale des Entraineurs et Cadres Techniques Professionnels du Football (Unectef)* v *Heylens and Others* [1987] ECR 4097, paragraph 10).

10 It is established that no measure has yet been adopted under Article 57(2) of the EEC Treaty concerning the harmonization of the conditions of access to a lawyer's activities.

11 Furthermore, when Mrs Vlassopoulou made her application on 13 May 1988, no directive on the mutual recognition of diplomas giving access to the profession of lawyer had been adopted under Article 57(1) of the EEC Treaty.

12 Directive 89/48/EEC 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 (Official Journal 1989 L 19, p. 16), which was adopted by the Council on 21 December 1988 and which the Member States had to implement by 4 January 1991, does not apply to the facts of this case.

13 However, in laying down that freedom of establishment is to be attained by the end of the transitional period, Article 52 of the Treaty thus imposes an obligation to attain a precise result, the fulfilment of which had to be made easier by, but not made dependent on, the implementation of a programme of progressive measures (see the judgment in Case 11/77 *Patrick* v *Ministre des Affaires Culturelles* [1977] ECR 1199, paragraph 10).

14 Moreover, it is also clear from the judgment in Case 71/76 *Thieffry* v *Conseil de l'Ordre des Avocats à la Cour de Paris* [1977] ECR 765, at paragraph 16, that, in so far as Community law makes no special provision, the objectives of the Treaty, and in particular freedom of establishment, may be achieved by measures enacted by the Member States, which, under Article 5 of the Treaty, must take 'all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community' and abstain from 'any measure which could jeopardize the attainment of the objectives of this Treaty'.

15 It must be stated in this regard that, even if applied without any discrimination on the basis of nationality, national requirements concerning qualifications may have the effect of hindering nationals of the other Member States in the exercise of their right of establishment guaranteed to them by Article 52 of the EEC Treaty. That could be the case if the national rules in question took no account of the knowledge and qualifications already acquired by the person concerned in another Member State.

16 Consequently, a Member State which receives a request to admit a person to a profession to which access, under national law, depends upon the possession of a diploma or a professional qualification 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.

17 That examination procedure must enable the authorities of the host Member State 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 carried out 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 to which the diploma relates (see the judgment in Case 222/86 *Unectef* v *Heylens*, cited above, paragraph 13).

18 In the course of that examination, a Member State may, however, take into consideration objective differences relating to both the legal framework of the profession in question in the Member State of origin and to its field of activity. In the case of the profession of lawyer, a Member State may therefore carry out a comparative examination of diplomas, taking account of the differences identified between the national legal systems concerned.

19 If that comparative examination of diplomas results in the finding that the knowledge and qualifications certified by the foreign diploma correspond to those required by the national provisions, the Member State must recognize that diploma as fulfilling the requirements laid down by its national provisions. If, on the other hand, the comparison reveals that the knowledge and qualifications certified by the foreign diploma and those required by the national provisions correspond only partially, the host Member State is entitled to require the person concerned to show that he has acquired the knowledge and qualifications which are lacking.

20 In this regard, the competent national authorities must assess whether the knowledge acquired in the host Member State, either during a course of study or by way of practical experience, is sufficient in order to prove possession of the knowledge which is lacking.

21 If completion of a period of preparation or training for entry into the profession is required by the rules applying in the host Member State, those national authorities must determine whether professional experience acquired in the Member State of origin or in the host Member State may be regarded as satisfying that requirement in full or in part.

22 Finally, it must be pointed out that the examination made to determine whether the knowledge and qualifications certified by the foreign diploma and those required by the legislation of the host Member State correspond must be carried out by the national authorities in accordance with a procedure which is in conformity with the requirements of Community law concerning the effective protection of the fundamental rights conferred by the Treaty on Community subjects. It follows that any decision taken must be capable of being made the subject of judicial proceedings in which its legality under Community law can be reviewed and that the person concerned must be able to ascertain the reasons for the decision taken in his regard (see the judgment in Case 222/86 *Unectef* v *Heylens*, cited above, paragraph 17).

23 Consequently, the answer to the question submitted by the Bundesgerichtshof must be that Article 52 of the EEC Treaty must be interpreted as requiring the national authorities of a Member State to which an application for admission to the profession of lawyer is made by a Community subject who is already admitted to practise as a lawyer in his country of origin and who practises as a legal adviser in the first-mentioned Member State to examine to what extent the knowledge and qualifications attested by the diploma obtained by the person concerned in his country of origin correspond to those required by the rules of the host State; if those diplomas correspond only partially, the national authorities in question are entitled to require the person concerned to prove that he has acquired the knowledge and qualifications which are lacking.

Costs

24 The costs incurred by the Government of the Federal Republic of Germany and the Government of the Italian Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since 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 submitted to it by the Bundesgerichtshof, by order of 18 September 1989, hereby rules:

Article 52 of the EEC Treaty must be interpreted as requiring the national authorities of a Member State to which an application for admission to the profession of lawyer is made by a Community subject who is already admitted to practise as a lawyer in his country of origin and who practises as a legal adviser in the first-mentioned Member State to examine to what extent the knowledge and qualifications attested by the diploma obtained by the person concerned in his country of origin correspond to those required by the rules of the host State; if those diplomas correspond only partially, the national authorities in question are entitled to require the person concerned to prove that he has acquired the knowledge and qualifications which are lacking.

Due Rodríguez Iglesías Díez de Velasco Slynn

Kakouris Joliet Grévisse Zuleeg Kapteyn

Delivered in open court in Luxembourg on 7 May 1991.

J.-G. Giraud
Registrar

O. Due
President