Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

21 February 2013 *

(Directive 85/384/EEC — Mutual recognition of qualifications in the field of architecture — Articles 10 and 11(g) — National legislation recognising equivalence of qualifications in architecture and civil engineering, but reserving work on classified heritage buildings to architects — Principle of equal treatment — Situation purely internal to a Member State)

In Case C-111/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 6 December 2011, received at the Court on 29 February 2012, in the proceedings

Ministero per i beni e le attività culturali,

Ordine degli Ingegneri della Provincia di Venezia,

Ordine degli Ingegneri della Provincia di Padova,

Ordine degli Ingegneri della Provincia di Treviso,

Ordine degli Ingegneri della Provincia di Vicenza,

Ordine degli Ingegneri della Provincia di Verona,

Ordine degli Ingegneri della Provincia di Rovigo,

Ordine degli Ingegneri della Provincia di Belluno

v

Ordine degli Ingegneri di Verona e Provincia,

Consiglio Nazionale degli Ingegneri,

Consiglio Nazionale degli Architetti, Pianificatori, Paesaggisti e Conservatori,

Ordine degli Architetti, Pianificatori, Paesaggisti e Conservatori della Provincia di Verona,

Alessandro Mosconi,

Comune di San Martino Buon Albergo,

Istituzione di Ricovero e di Educazione di Venezia (IRE),

* Language of the case: Italian.

Ordine degli Architetti della Provincia di Venezia,

intervening party:

Faccio Engineering Srl,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, A. Rosas, E. Juhász, D. Šváby and C. Vajda, Judges

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Ordine degli Ingegneri di Verona e Provincia and A. Mosconi, by L. Manzi, G. Sardos Albertini and P. Piva, avvocati,

— the Consiglio Nazionale degli Ingegneri, by B. Nascimbene, avvocato,

— the Consiglio Nazionale degli Architetti, Pianificatori, Paesaggisti e Conservatori and l'Ordine degli Architetti, Pianificatori, Paesaggisti e Conservatori della Provincia di Verona, by F. Vanni, avvocato,

— the Czech Government, by M. Smolek, acting as Agent,

— the Spanish Government, by S. Centeno Huerta, acting as Agent,

— the Austrian Government, by A. Posch, acting as Agent,

— the European Commission, by H. Støvlbæk and E. Montaguti, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ L 223, p. 15).

2 The request has been made in two sets of appeals concerning the possible entitlement of civil engineers to be appointed as project managers with respect to historic and artistic buildings.

Legal context

European Union law

3 Recital 10 in the preamble to Directive 85/384 states:

'Whereas, in most Member States, activities in the field of architecture are pursued, in law or in fact, by persons who hold the title of architect, whether alone or together with another title, without those persons having a monopoly in pursuing those activities save where there are laws to the contrary; whereas the aforementioned activities, or some of them, may also be pursued by members of other professions, in particular by engineers who have received special training in construction engineering or building.'

4 Under Article 1 of that directive:

'1. This Directive shall apply to activities in the field of architecture.

2. For the purposes of this Directive, activities in the field of architecture shall be those activities usually pursued under the professional title of architect.'

5 Articles 2 to 9 of that directive constitute Chapter II thereof, entitled 'Diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture under the professional title of architect.'

6 Article 2 of that directive provides therefore that '[e]ach Member State shall recognize the diplomas, certificates and other evidence of formal qualifications acquired as a result of education and training fulfilling the requirements of Articles 3 and 4 and awarded to nationals of Member States by other Member States.'

7 In accordance with the procedure laid down in Article 7 of that directive, diplomas, certificates and other evidence of formal qualifications which meet the criteria laid down in Articles 3 and 4 thereof are included on lists and amendments published by the Commission of the European Communities for information in the *Official Journal of the European Communities*.

8 Articles 10 to 15 of that directive comprise Chapter III thereof, entitled 'Diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture by virtue of established rights or existing national provisions.'

9 Under Article 10 of Directive 85/384, '[e]ach Member State shall recognise the diplomas, certificates and other evidence of formal qualifications set out in Article 11, awarded by other Member States to nationals of the Member States, where such nationals already possess these qualifications at the time of notification of this Directive or their studies leading to such diplomas, certificates and other evidence of formal qualifications commences during the third academic year at the latest following such notification, even if those qualifications do not fulfil the minimum requirements laid down in Chapter II.'

10 With regard to the Italian Republic, Article 11(g) of that directive lists some of the qualifications subject to the transitional arrangements:

'…

— "laurea in architettura" diplomas awarded by universities, polytechnic institutes and the higher institutes of architecture of Venice and Reggio Calabria, accompanied by the diploma entitling the holder to pursue independently the profession of architect, awarded by the Minister for Education after the candidate has passed, before a competent board, the State examination entitling him to pursue independently the profession of architect (dott. Architetto);

— "laurea in ingegneria" diplomas in building construction ("sezione costenzione civile") awarded by universities and polytechnic institutes, accompanied by the diploma entitling the holder to pursue independently a profession in the field of architecture, awarded by the Minister for Education after the candidate has passed, before a competent board, the State examination entitling him to pursue the profession independently (dott. Ing. Architetto or dott. Ing. in ingegneria civile).'

11 Article 16 of that directive, which comprises Chapter IV thereof, entitled 'Use of academic title', provides:

'1. Without prejudice to Article 23, host Member States shall ensure that the nationals of Member States who fulfil the conditions laid down in Chapter II or Chapter III have the right 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. Host Member States may require this title to be followed by the name and location of the establishment or examining board which awarded it.

2. If the academic title used in the Member State of origin, or in the Member State from which a foreign national comes, can be confused in the host Member State with a title requiring, in that State, additional education or training which the person concerned has not undergone, the host Member State may require such a person to use the title employed in the Member State of origin or the Member State from which he comes in a suitable form to be specified by the host Member State.'

Italian legislation

12 Directive 85/384 was transposed into Italian law by Legislative Decree No 129 of 27 January 1992 (GURI No 41 of 19 February 1992, p. 18).

13 Article 1(2) of that legislative decree provided:

'The provisions which govern the pursuit of activities in Italy [in the field of architecture] by persons in possession of suitable professional qualifications remain applicable, in accordance with the rules existing at the date the present decree entered into force.'

14 Article 51 of Royal Decree No 2537 of 23 October 1925 approving the rules relating to the engineering and architecture professions (GURI No 37 of 15 February 1925) ('Royal Decree No 2537/25') provides:

'The planning, performance and evaluation of works for the extraction, processing and use of materials directly or indirectly necessary for construction and industry, works relating to roads and means of transport, drainage and communication, to all types of construction, machinery and industrial installations and, in general, to applications of physics, land surveys and evaluations fall within the ambit of the engineering profession.'

15 Under Article 52 of Royal Decree No 2537/25:

'Works of civil construction, land surveying and evaluations relating thereto come within the ambit of both the engineering and the architecture professions.

None the less, works of civil construction of significantly artistic character, and the restoration and renovation of the structures referred to in Law No 364 of 20 June 1909 concerning antiquities and the fine arts, fall within the ambit of the architecture profession; however, the technical part may be carried out by either an architect or an engineer.'

The actions in the main proceedings and the questions referred for a preliminary ruling

16 The main proceedings arise from a rule of Italian law, namely, the second subparagraph of Article 52 of Royal Decree No 2537/25, according to which civil engineers who have obtained their qualifications in Italy are excluded from civil construction projects which have a notable artistic character or are concerned with the restoration and repair of structures of cultural importance.

17 For a long time, civil engineers who have obtained their qualifications in Italy have challenged that restriction of their field of activity by relying on, in particular, Directive 85/384.

18 In this case, two appeals against two conflicting judgments of the Tribunale amministrativo regionale del Veneto are pending before the Consiglio di Stato.

19 The first appeal is based on the implied decision of the Soprintendenza per i beni ambientali e architettonici di Verona (the Environmental and Architectural Heritage Directorate, Verona) refusing to allow Mr Mosconi to act as project manager with respect to works on a historically and artistically important building. Mr Mosconi and the Ordine degli Ingegneri di Verona e Provincia brought an action before the Tribunale amministrativo regionale del Veneto, claiming that the exclusion of civil engineers from such projects is contrary to Directive 85/384.

20 In 2002, that court made a reference to the Court of Justice for a preliminary ruling seeking to ascertain whether European Union law, and in particular Directive 85/384, must be interpreted as precluding such national legislation.

21 The Court replied by Order of 5 April 2004 in Case C-3/02 *Mosconi and Ordine degli Ingegneri di Verona e Provincia* that, in a purely internal situation, neither Directive 85/384, nor the principle of equal treatment, precludes national legislation which recognises in principle the equivalence of qualifications in architecture and civil engineering, but reserving work on, inter alia, classified heritage buildings to architects only.

22 In that order, the Court held that reverse discrimination may be caused by the fact that civil engineers who obtained their qualifications in Italy do not have access in that Member State to the activity referred to in the second subparagraph of Article 52 of Royal Decree No 2537/25, although that access may not be refused to persons holding a civil engineering diploma issued in another Member State, included in the list established in accordance with Article 7 of Directive 85/384 or on that referred to in Article 11 of that directive. However, the Court has held that, with respect to a purely internal situation, the principle of equal treatment under European Union law cannot be invoked, but that it is for the referring court to determine whether there is discrimination prohibited by national law and, where necessary, establish how that discrimination should be removed.

23 In response to that order, the Tribunale amministrativo regionale del Veneto referred the question of the constitutional lawfulness of the second subparagraph of Article 52 of Royal Decree No 2537/25 to the Corte costituzionale. By Order No 130 of 16 to 19 April 2007, the Corte costituzionale held that the question was manifestly inadmissible since the contested provisions were regulatory, and not legislative.

24 By judgment No 3630 of 15 November 2007, the Tribunale amministrativo regionale del Veneto upheld the appeal, holding that it is necessary to disapply the second subparagraph of Article 52 of Royal Decree No 2537/25 on the ground that that provision is inconsistent with the principle of equal treatment as interpreted by the Corte costituzionale, on account of the fact that national professionals may not be discriminated against vis-à-vis professionals from other Member States.

25 An action against that judgment was brought before the referring court by the Ministero per i beni e le attività culturali.

26 The second action brought before the Consiglio di Stato is based on a notice of invitation to tender drafted by the Istituzioni di Ricovero e di Educazione di Venezia for the award of a project management and security coordination contract relating to the restoration and repair of the Palazzo Contarini del Bovolo in Venice.

27 The provincial professional associations of engineers of the Veneto contested that notice of invitation to tender and the tender contracts before the Tribunale amministrativo regionale del Veneto, in so far as the contracting authority reserved the professional activities under the tender contract to architects only.

28 By judgment No 3651 of 25 November 2008, the Tribunale amministrativo regionale del Veneto dismissed the action, holding that, according to the Court's interpretation, Directive 85/384 relates to the mutual recognition of training courses and not to the conditions of access to various professions, therefore implying that the title 'laurea in ingegneria' is not fully equivalent to that of 'laurea in architettura'.

29 The provincial professional associations of engineers brought an action against that judgment before the Consiglio di Stato.

30 The Consiglio di Stato relies on the fact that it would infringe principles of national law, as confirmed by constitutional case-law, to authorise civil engineers who have obtained their qualifications in Member States other than the Italian Republic to exercise, in that Member State, their professional activities in the context of operations relating to buildings of cultural interest without so authorising civil engineers who have obtained their qualifications in Italy.

31 It seeks to ascertain whether the mutual recognition mechanism established by Directive 85/384 must, in fact, be understood as meaning that civil engineers who obtained their qualifications in Member States other than the Italian Republic may exercise in that Member State activities reserved by Royal Decree No 2537/25 to architects only or whether the Italian Republic may require persons holding a qualification allowing them to practise in the architectural sector to be subject, with respect to the activities reserved by that royal decree to architects only, to a specific examination of their professional suitability.

32 In those circumstances, the Consiglio di Stato decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Do Articles 10 and 11 of … Directive 85/384 … , which for a transitional period allow nationals of other Member States holding qualifications specifically mentioned to practise in the architectural sector, preclude Italy from lawfully operating an administrative practice having as its legal basis Article 52, second indent, first part, of Royal Decree No 2537 of 1925, which specifically reserves certain operations relating to buildings of artistic interest exclusively to persons holding the qualification of "architect" or to persons who demonstrate that they have completed courses in the specific field of cultural assets, in addition to the requirements authorising general access to the provision of architectural services within the terms of Directive 85/384 … ?

2. In particular, may that administrative practice consist in subjecting professionals from Member States other than the Italian Republic, even where they possess qualifications which in general make them suitable for practising as architects, to a specific examination of professional suitability, that is to say, to the authorisation to practise as an architect, which applies also to Italian professionals in the examination to establish their suitability to practise as architects, for the sole purposes of obtaining access to the professional activities referred to in Article 52, second indent, first part, of Royal Decree No 2537 of 1925?'

The jurisdiction of the Court

33 The Spanish Government maintains, in essence, that, in light of the fact that the main proceedings concern purely internal situations, the Court does not have jurisdiction to answer the questions referred for a preliminary ruling.

34 However, while it is not contested that the main proceedings concern purely internal situations, which are beyond the scope of Directive 85/384 (see, to that effect, the Order in *Mosconi and Ordine degli Ingegneri di Verona e Provincia*, paragraph 51), it is apparent from the order for reference that the referring court considers that it would infringe principles of national law, as confirmed by constitutional case-law, to enable reverse discrimination by authorising civil engineers who have obtained their qualifications in Member States other than the Italian Republic to exercise, in that Member State, their professional activities in the context of operations relating to buildings of cultural interest without so authorising civil engineers who have obtained their qualifications in Italy.

35 In that regard, it should be noted that the Court has indeed declined jurisdiction where it was obvious that the provision of European Union law referred to the Court for interpretation was incapable of applying, as, for example, in purely internal situations. However, even in such situations, the Court may carry out the requested interpretation where national law requires the referring court, in cases such as those at issue in the main proceedings, to grant the same rights to a national as those which a national of another Member State in the same situation would derive from European Union law (see, to that effect, inter alia, Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* [2010] ECR I-4629, paragraph 39; Case C-245/09 *Omalet* [2010] ECR I-13771, paragraph 15; and Case C-84/11 *Susisalo and Others* [2011] ECR, paragraphs 17 and 20). Therefore, it is clearly in the European Union's interest that the Court interpret the provision of European Union law at issue.

36 Therefore, it must be held that the Court has jurisdiction to answer the questions referred for a preliminary ruling.

The questions referred for a preliminary ruling

37 By its questions, which should be examined together, the referring court asks, in essence, whether Articles 10 and 11 of Directive 85/384 must be interpreted as precluding a national provision in accordance with which persons holding a qualification issued by a Member State other than the host Member State enabling the holder to take up activities in the field of architecture and expressly referred to in Article 11 thereof, may exercise, in that latter Member State, activities in the context of operations relating to buildings of artistic interest only in so far as they show, where necessary by way of a specific examination of their professional suitability, that they have special qualifications in the field of cultural assets.

38 In the light of provisions of domestic law which ensure that persons holding relevant qualifications in the field of architecture issued by the Italian Republic, and who exercise their profession in Italy, do not suffer reverse discrimination in relation to persons holding such qualifications issued by another

Member State, it is necessary, in order to provide the referring court with a useful answer, to determine the meaning of the obligations under Articles 10 and 11 of Directive 85/384 for the recognition, by the host Member State, of those qualifications.

39 In the context of that determination, it should be noted that Directive 85/384 provides for automatic mutual recognition of diplomas, certificates and other formal qualifications in the field of architecture which comply with the training requirements laid down in that directive (Case C-43/06 *Commission* v *Portugal* [2007] ECR I-0073, paragraph 24).

40 The essential purpose of this mutual recognition is expressed in Article 2 of Directive 85/384, which requires Member States to recognise the diplomas, certificates and other evidence of formal qualifications acquired as a result of education and training fulfilling the requirements of Articles 3 and 4 of that directive and awarded to nationals of Member States by other Member States and to give them, as regards access to the activities usually pursued under the professional title of architect, the same effect in their territory as those diplomas, certificates and other evidence of formal qualifications which they themselves award. Article 10 of that directive extends, for a transitional period, that recognition to certain other qualifications which do not meet the requirements set out in Chapter II of that directive, including those specified in Articles 3 and 4 (*Commission* v *Portugal*, paragraph 25 and the case-law cited).

41 The questions submitted therefore concern the scope of the obligation of mutual recognition of diplomas set out in Article 10 of Directive 85/384 and the right of the host Member State to require persons holding diplomas issued by another Member State and included on the list established in Article 11 of Directive 85/384 to show that they possess specific qualifications in the field of cultural assets so as to be able to exercise activities relating to buildings of artistic interest.

42 In that respect, Directive 85/384 admittedly does not seek to regulate the conditions of access to the architecture profession or to define the nature of activities to be exercised by architects. It follows from recital 9 in the preamble to that directive that Article 1(2) thereof does not purport to give a legal definition of activities in the field of architecture. It is therefore for the domestic law of the host Member State to define the activities falling within the scope of that field (Order in *Mosconi and Ordine degli Ingegneri di Verona e Provincia*, paragraph 45).

43 However, contrary to the position expressed by the Consiglio Nazionale degli Architetti, Pianificatori, Paesaggisti e Conservatori and the Ordine degli Architetti Pianificatori, Paesaggisti e Conservatori della Provincia di Verona, it cannot be inferred from that competence of the host Member State that Directive 85/384 authorises that Member State to subject the exercise of activities relating to buildings of artistic interest to an examination of the qualifications of the persons concerned in that field.

44 First, to acknowledge that the host Member State has such a power would amount to authorising it to require additional tests, which would therefore undermine the automatic recognition of diplomas and would, therefore, as the Court pointed out in paragraph 28 of *Commission* v *Portugal*, infringe Directive 85/384.

45 Secondly, as is apparent from paragraph 37 of Case C-421/98 *Commission* v *Spain* [2000] ECR I-10375, according to Articles 2 and 10 of Directive 85/384, when an activity is usually pursued by architects holding a qualification awarded by the host Member State, a migrant architect holding a diploma, certificate or other evidence of formal qualifications coming within the scope of the directive must also be able to pursue such an activity, even if his diploma, certificate or other evidence of formal qualifications is not necessarily substantively equivalent in terms of the training received.

46 In this case, Directive 85/384 provides for the measures to be taken where there is no substantive equivalence between, on the one hand, the training received in the Member State of origin or from which the person concerned comes and, on the other, that provided in the host Member State.

47 According to Article 16(2) of Directive 85/384, if the academic title used in the Member State of origin, or in the Member State from which a foreign national comes, can be confused in the host Member State with a title requiring, in that State, additional education or training which the person concerned has not undergone, the host Member State may require such a person to use the title employed in the Member State of origin or the Member State from which he comes in a suitable form to be specified by the host Member State.

48 Therefore, while it is true that it is for the national legislation of the host Member State to define the field of activities covered by the profession of architect, once an activity is considered by a Member State as coming within that field, the requirement of mutual recognition means that migrant architects must also be able to pursue that activity (*Commission* v *Spain*, paragraph 38).

49 However, in the present case, it is not disputed that activities relating to buildings of artistic interest are covered by the profession of architect and therefore are within the scope of Directive 85/384.

50 Last, the claim that the host Member State may not, in the context of the mechanism for mutual recognition established by Article 11 of Directive 85/384, impose additional conditions, such as those at issue in the main proceedings, for the exercise of activities relating to the profession of architect, is furthermore corroborated by the Court's finding in paragraph 52 of the Order in *Mosconi and Ordine degli Ingegneri di Verona e Provincia*.

51 According to that paragraph, access to the activities referred to in the second subparagraph of Article 52 of Royal Decree No 2537/25, namely, activities relating to buildings of artistic importance, may not be refused to persons holding a civil engineering diploma or similar qualification issued in a Member State other the Italian Republic, where it is included on the list drawn up in accordance with Article 7 of Directive 85/384 or on that set out in Article 11 of that directive.

52 In the light of the foregoing, the answer to the questions referred is that Articles 10 and 11 of Directive 85/384 must be interpreted as precluding a national provision in accordance with which persons holding a qualification issued by a Member State other than the host Member State enabling the holder to take up activities in the field of architecture and expressly referred to in Article 11 thereof, may exercise, in that latter Member State, activities relating to buildings of artistic interest only in so far as they show, where necessary by way of a specific examination of their professional suitability, that they have special qualifications in the field of cultural assets.

Costs

53 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 (Fifth Chamber) hereby rules:

Articles 10 and 11 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services must be interpreted as precluding a national provision in accordance with which persons holding a qualification issued by a Member State other than the host Member State enabling the holder to take up activities in the field of architecture and expressly referred to in Article 11 thereof, may exercise, in that latter Member State, activities relating to buildings of artistic interest only in so far as they show, where necessary by way of a specific examination of their professional suitability, that they have special qualifications in the field of cultural assets.

[Signatures]