JUDGMENT OF THE COURT (Second Chamber)

4 December 2008 *

In Case C-151/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Simvoulio tis Epikratias (Greece), made by decision of 13 March 2007, received at the Court on 19 March 2007, in the proceedings

Theologos-Grigorios Khatzithanasis

v

Ipourgos Igias kai Kinonikis Allilengiis,

Organismos Epangelmatikis Ekpaidefsis kai Katartisis (OEEK),

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J.-C. Bonichot, K. Schiemann (Rapporteur), J. Makarczyk and P. Kūris, Judges,

* Language of the case: Greek.

Advocate General: Y. Bot,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 January 2008,

after considering the observations submitted on behalf of:

— the Greek Government, by E. Skandalou, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Slovak Government, by J. Čorba, acting as Agent,

— the Commission of the European Communities, by G. Zavvos and H. Støvlbæk, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 1(a), 3 and 4 of 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), as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 (OJ 2001 L 206, p. 1) ('Directive 92/51'). It concerns the question whether those provisions can be relied upon for the recognition by one Member State of diplomas awarded by the authorities of another Member State following studies successfully completed on the territory of the first Member State.

2 The reference was made in the course of proceedings between Mr Khatzithanasis and Ipourgos Igias Kinonikis Allilengiis (Minister for Health and Social Solidarity, formerly the Minister for Health and Social Welfare) and the Organismos Epangelmatikis Ekpaidefsis kai Katartisis (Office for Professional Education and Training; 'OEEK'), concerning the rejection by the Simvoulio Epangelmatikis Anagnorisis Titlon Ekpaidefsis kai Katartisis (Council for the Recognition of Professional Education and Training Qualifications; 'Seatek') of the application submitted by Mr Khatzithanasis to obtain authorisation to pursue the profession of optician in Greece.

3 Mr Khatzithanasis had submitted that application relying upon a diploma for opticians awarded by the Vinci Regional Institute for Optical Studies and Optometry (Italy), an institution which is also involved in Case C-84/07 *Commission* v *Greece*, in which judgment is also given today. The principal question of law at issue in the present case is

furthermore analogous to that raised, in relation to 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), as amended by Directive 2001/19 ('Directive 89/48'), in Case C-274/05 *Commission* v *Greece* [2008] ECR I-7969.

Legal context

Community legislation

4 Directive 92/51 establishes a complementary general system for the recognition of professional education and training at levels not covered by the initial general system introduced by Directive 89/48, the scope of which is confined to higher levels of education. In essence, Directive 92/51 covers qualifications acquired following courses of education and training lasting for one to three years and Directive 89/48 concerns education and training which require studies lasting more than three years.

5 According to the fifth recital in the preamble to Directive 92/51, that complementary general system is based on the same principles and contains mutatis mutandis the same rules as the initial general system.

6 Article 1(a) of Directive 92/51 provides:

‘For the purposes of this Directive, the following definitions shall apply:

(a) diploma: any evidence of education and training or any set of such evidence:

— which has been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that State,

— which shows that the holder has successfully completed:

(i) either a post-secondary course other than that referred to in the second indent of Article 1(a) of Directive 89/48/EEC, of at least one year’s duration or of equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education, as well as the professional training which may be required in addition to that post-secondary course;

(ii) or one of the education and training courses in Annex C, and

— which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by this evidence was received mainly in the Community, or outside the Community at teaching establishments which provide education and training in accordance with the laws, regulations or administrative provisions of a Member State, or that the holder thereof has three years' professional experience certified by the Member State which recognised third-country evidence of education and training.

The following shall be treated in the same way as a diploma within the meaning of the first subparagraph: any evidence of education and training or any set of such evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognised by a competent authority in that Member State as being of an equivalent level and if it confers the same rights in respect of the taking up and pursuit of a regulated profession in that Member State.'

7 Point 1 of Annex C to Directive 92/51, entitled 'Paramedical and childcare training courses', includes, on the list of courses having a special structure — referred to in Article 1(a), first subparagraph, second indent, (ii), of that directive — in the second indent of the section on the Italian Republic, optician ('ottico') training.

8 The first paragraph of Article 2 of Directive 92/51 states:

'This Directive shall apply 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.'

9 Article 3 of Directive 92/51 imposes a general obligation of recognition of diplomas awarded by the competent authorities of other Member States. It provides that a host Member State which regulates the taking up of a profession may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up that profession inter alia if the applicant holds the diploma required in another Member State for the taking up of the profession in question in its territory.

10 Article 4 of Directive 92/51 takes account of the fact that considerable differences may exist between the training and education required in the various Member States for taking up the same regulated profession. That provision enables the host Member State to require the applicant to provide evidence of a specific period of professional experience or to complete 'compensatory measures', that is an adaptation period or an aptitude test if there is a substantial difference, in terms of duration or content, between the training which the applicant relies on and that normally required in the host Member State.

National legislation

11 Article 16 of the Greek Constitution provides that university and higher education is to be provided exclusively by establishments governed by public law.

12 According to the Simvoulio tis Epikratias (Supreme Administrative Court), that provision does not, however, require that education be provided exclusively by the State. While the Constitution does not provide individuals with a specific right to set up vocational training establishments, it does not, however, prohibit them from setting up establishments offering that kind of training. Therefore, the Constitution entrusted to the legislature the task of regulating the setting-up by private individuals of establishments in that category and left it the choice of permitting or prohibiting the setting-up of such establishments.

13 There are also privately-run 'independent study centres' ('Ergastiria Eleftheron Spoudon'), the setting-up and operation of which are governed by Legislative Decree 9/1935 of 9 October 1935, amending and supplementing the provisions relating to vocational training (FEK A' 451), and by Law 1966/1991 on, inter alia, provisions relating to the transfer of students from higher education establishments (AEI) and students from technical training colleges (TEI) (FEK A' 147/26.9.1991). Under the Greek legislation, those bodies are not educational establishments and do not provide recognised vocational training of any level whatsoever. They enable students who attend to pursue studies leading to the award of certificates of no official value.

14 In Greece, the profession of optician is regulated. In accordance with the provisions of Presidential Decree 83/1989 on the professional rights of holders of diplomas in … (e) optics from the School for the Health and Welfare Professions within the Technical Training Colleges (TEI) (FEK A' 37/7.2.1989), and the provisions of Law 971/1979 on pursuing the profession of optician and on the points of sale of opticians' goods (FEK A' 223/22.9.1979), access to the profession of optician is subject to the possession of a diploma in 'optics' from a technical training college, that is to say, a diploma as defined in Directive 89/48.

15 Presidential Decree 231/1998 on a second general system for the recognition of professional education and training (FEK A' 178/29.7.1998) is intended to transpose Directive 92/51 into Greek law.

16 Under Article 13 of that Presidential Decree, the competent authority for the receipt of applications from interested persons, and for taking decisions on the recognition of professional education and training, is the ministry competent, ratione materiae, for authorising the pursuit of a regulated profession.

17 Article 14(1) of that Presidential Decree provides for the creation, within the OEEK, of Seatek. The latter is responsible for assessing the file of each applicant, following a report from the competent ministry ratione materiae, and giving a ruling, by way of a decision sent to that ministry, on whether the conditions for recognising the equivalence of the relevant education and training for professional purposes have been met. The competent ministry is bound by that decision for the purpose of granting authorisation to pursue a regulated profession.

The dispute in the main proceedings and the question referred for a preliminary ruling

18 Mr Khatzithanasis completed, in the university years 1997/98 and 1998/99, a two-year course in optical studies leading to a diploma from the Vinci Regional Institute for Optical Studies and Optometry. That diploma authorises him to pursue the profession of optician in Italy.

19 In the university year 1999/2000, Mr Khatzithanasis also completed a one-year course in optometry leading to an educational qualification awarded by the same educational establishment.

20 Mr Khatzithanasis completed those two courses, not at the Vinci Regional Institute for Optical Studies and Optometry in Italy, but in Greece, at the Optometriki AE independent study centre, established in Metamorfosi.

21 The applicant did however attend the seat of that Italian institute to follow a 300-hour advanced course and to take the examinations in order to acquire the authorisation to pursue the profession of optician.

22 Mr Khatzithanasis did not engage in the profession of optician in Italy. As he wished to pursue that profession in Greece, he filed an application for recognition of the equivalence of his Italian optician's diploma with the Ministry of Health and Welfare on 22 February 2002.

23 That ministry compiled a report favourable to Mr Khatzithanasis' application, subject to compensatory measures justified by the fact that there were substantial differences between optician training followed in Greece and that followed in Italy. That ministry sent its report, together with the application file submitted by Mr Khatzithanasis, to the OEEK.

24 Within the OEEK, the Seatak adopted decision No 16, on 23 April 2003, rejecting Mr Khatzithanasis' application. The ground of the rejection was, in essence, that the diploma, relied upon by the applicant, was awarded on completion of studies the greater part of which were followed in an independent study centre which has its seat in Greece, and which is not recognised as an educational establishment by Greek legislation.

25 By an action brought on 5 February 2004 before the Simvoulio tis Epikratias, Mr Khatzithanasis sought the annulment of Seatek's decision.

26 According to the majority opinion in the Simvoulio tis Epikratias, the conditions which are required for the recognition of diplomas under Directive 92/51 were met in the present case and, subject to compensatory measures, the Seatak was not entitled to reject Mr Khatzithanasis' application.

27 By contrast, according to the minority opinion, first, doubts exist as to whether the diploma which Mr Khatzithanasis holds can be considered a 'diploma' within the meaning of Article 1(a) of Directive 92/51 and, second, given that, under Articles 149 EC and 150 EC, the content of teaching and the organisation of vocational training come exclusively within the competence of the Member States, the Hellenic Republic is not required to recognise certificates of studies awarded on completion of studies at independent study centres which are not officially recognised.

28 It is in those circumstances that the Simvoulio tis Epikratias decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'When a national of a Member State, relying upon evidence of a qualification which, according to him, falls within the scope of … Directive 92/51 …, requests the competent authorities of the host Member State to allow him access to a profession regulated in the host Member State or to allow him to pursue that profession, is it open to those authorities — under Articles 1, 2, 3 and 4 of Directive 92/51, interpreted in the light of Articles 149 [EC] and 150 [EC] — to reject his application (and thus to exclude entirely access by him to that profession or pursuit thereof in the host Member State) solely on the ground that, while the qualification in question was awarded by an authority of the Member State from which he comes, that followed studies the greater part of which were carried out in the host Member State, at a body which operates freely in that State but, pursuant to the relevant general provision in its legislation, is not recognised as an educational establishment there?'

The question referred for a preliminary ruling

29 By its question, the referring court asks, in essence, whether the competent authorities of a host Member State are required, under Article 3 of Directive 92/51, subject to the application of Article 4 of that directive, to recognise a diploma awarded by a competent authority in another Member State even though that diploma attests to education and training received, in whole or in part, at an establishment located in the host Member State which, according to the legislation of that State, is not recognised as an educational establishment.

30 It should be borne in mind, in that regard, that it has been held, in relation to Directive 89/48, first, that it does not contain any limitation as regards the Member State in which an applicant must have acquired his professional qualifications and, second, that it is for the competent authorities awarding diplomas giving access to a regulated profession alone to verify, in the light of the rules applicable within the framework of their professional education and training system, whether the conditions necessary for their award are fulfilled, inter alia, those relating to the educational establishment in which the holder received his education and training (see, to that effect, Case C-274/05 *Commission* v *Greece*, paragraphs 28, 31 and 32).

31 It is also clear from the case-law that that interpretation of Directive 89/48 does not cast doubt on the responsibility of the Hellenic Republic for the content of teaching and the organisation of the education system, since the diploma in question is covered, in the context of Directive 89/48, not by the Greek education system but rather the education system of the Member State to which the competent authority which awarded the diploma belongs. It is, therefore, for that latter authority to ensure the quality of the training and education at issue (see, to that effect, Case C-274/05 *Commission* v *Greece*, paragraphs 36 and 40).

32 Furthermore, it has been held that the fact that a national of a Member State who wishes to pursue a regulated profession chooses to take up that profession in his preferred Member State cannot of itself constitute an abuse of the general system of recognition laid down by Directive 89/48, and that the rights of nationals of a Member State to choose the Member State in which they wish to acquire their professional qualifications is inherent in the exercise, in a single market, of the fundamental freedoms guaranteed by the EC Treaty (see Case C-286/06 *Commission* v *Spain* [2008] ECR I-8025, paragraph 72).

33 Given that the relevant provisions of Directive 92/51 are, in essence, identical to those of Directive 89/48 and that, under the fifth recital in the preamble to Directive 92/51, the complementary system established by that directive is explicitly based on the same principles and contains mutatis mutandis the same rules as the initial general system established by Directive 89/48, the same reasoning can be applied in relation to Directive 92/51.

34 Having regard to all of the foregoing considerations, the reply to the question referred must be that Articles 1(a), 3 and 4 of Directive 92/51 must be interpreted as meaning that the competent authorities of a host Member State are required, under Article 3 of that directive, subject to the application of Article 4 of that directive, to recognise a diploma awarded by a competent authority in another Member State even though that diploma attests to education and training received, in whole or in part, at an establishment located in the host Member State which, according to the legislation of that State, is not recognised as an educational establishment.

Costs

35 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 (Second Chamber) hereby rules:

Articles 1(a), 3 and 4 of 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, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001, must be interpreted as meaning that the competent authorities of a host Member State are required, under Article 3 of that directive, subject to the application of Article 4 of that directive, to recognise a diploma awarded by a competent authority in another Member State even though that diploma attests to education and training received, in whole or in part, at an establishment located in the host Member State which, according to the legislation of that State, is not recognised as an educational establishment.

[Signatures]