JUDGMENT OF THE COURT (First Chamber)

19 January 2006 *

In Case C-330/03,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal Supremo (Spain), made by decision of 21 July 2003, received at the Court on 29 July 2003, in the proceedings

Colegio de Ingenieros de Caminos, Canales y Puertos

v

Administración del Estado,

intervening party:

Giuliano Mauro Imo,

* Language of the case: Spanish.

THE COURT (First Chamber),

composed of P. Jann, President of Chamber, K. Schiemann, N. Colneric, E. Juhász and E. Levits (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Colegio de Ingenieros de Caminos, Canales y Puertos, by A. González Salinas, abogado,

— the Spanish Government, by N. Díaz Abad, acting as Agent,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by A. Cingolo, avvocato dello Stato,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Swedish Government, by A. Kruse, acting as Agent,

— the Commission of the European Communities, by H. Støvlbæk and F. Castillo de la Torre, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2005,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Articles 3(a) and 4(1) of 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) ('the Directive') and Articles 39 EC and 43 EC.

2 The reference was made in the context of proceedings between the Colegio de Ingenieros de Caminos, Canales y Puertos (Institution of Civil Engineers) ('the Colegio') and the Administración del Estado (State Administration) relating to an application by Mr Imo, an Italian national and holder of a civil engineering diploma, with a specialisation in hydraulic engineering, awarded in Italy, for the purpose of allowing him to carry on the profession of civil engineer in Spain.

Legal framework

Community legislation

3 The Directive aims to put in place a method of recognition of diplomas so as to enable Community nationals to pursue all those professional activities which in a host Member State are dependent on the completion of post-secondary education and training, provided they hold such a diploma preparing them for those activities awarded on completion of a course of studies lasting at least three years and awarded in another Member State.

4 According to Article 1(c) of the Directive, 'regulated profession' means 'the regulated professional activity or range of activities which constitute this profession in a Member State'.

5 The first paragraph of Article 3 of the Directive provides:

'Where, in a host Member State, the taking-up or pursuit of a regulated profession is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

(a) if the applicant holds the diploma required in another Member State for the taking-up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State, ...

... .'

6 Article 4(1) of the Directive provides:

'Notwithstanding Article 3, the host Member State may also require the applicant:

(a) to provide evidence of professional experience, where the duration of the education and training adduced in support of his application, as laid down in Article 3(a) and (b), is at least one year less than that required in the host Member State. ...

...

...

(b) to complete an adaptation period not exceeding three years or take an aptitude test:

— where the matters covered by the education and training he has received as laid down in Article 3(a) and (b), differ substantially from those covered by the diploma required in the host Member State, or

— where, in the case referred to in Article 3(a), the profession regulated in the host Member State comprises one or more regulated professional activities which are not in the profession regulated in the Member State from which

the applicant originates or comes and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the diploma adduced by the applicant ...

— ...

... .'

7 Article 7 of the Directive regulates the right of persons benefiting from the Community system for recognition of diplomas to use their professional titles and academic titles. Article 7(1) and (2) provide as follows:

'1. The competent authorities of host Member States shall recognise the right of nationals of Member States who fulfil the conditions for the taking-up and pursuit of a regulated profession in their territory to use the professional title of the host Member State corresponding to that profession.

2. The competent authorities of host Member States shall recognise the right of nationals of Member States who fulfil the conditions for the taking-up and pursuit of a regulated profession in their territory 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 State[s] may require this title to be followed by the name and location of the establishment or examining board which awarded it.'

National legislation

8 The Directive was transposed into Spanish law by Royal Decree No 1665/1991 of 25 October 1991 governing the general system for recognition of higher education diplomas awarded in Member States of the European Union requiring a course of studies lasting at least three years (BOE No 280 of 22 November 1991, p. 37916). Articles 4 and 5 of that decree reproduce essentially the provisions of Articles 3 and 4 of the Directive.

9 Under Spanish legislation, the profession of civil engineer ('ingeniero de caminos, canales y puertos') covers a broad range of activities, such as the design and construction of hydraulic installations, land, sea and inland waterway transport infrastructures, conservation of beaches and town and country planning, including town planning. The order for reference indicates that the profession is a regulated one, with the taking-up and pursuit thereof being subject to the possession of either a Spanish diploma awarded following six years of specific post-secondary education and training or an equivalent background acquired in another Member State and recognised by the Ministry of Development. Anyone wishing to pursue the profession of civil engineer in Spain must first become a member of the Colegio, for which the applicant must have the aforementioned education and training.

The main proceedings and the questions referred for a preliminary ruling

10 Mr Imo holds the diploma of laurea in ingegneria civile idraulica (civil engineer specialising in hydraulics), awarded in Italy and conferring the right, in Italy, to pursue the profession of civil engineer specialising in hydraulics. On 27 June 1996, he filed an application with the Spanish Ministry of Development for recognition of his diploma in order to take up the profession of civil engineer in Spain.

11 By order of 4 November 1996, the Ministry of Development recognised Mr Imo's diploma and granted him unconditional permission to take up the profession of civil engineer.

12 The Colegio brought an action for annulment of that order before the Audiencia Nacional (National High Court). During the proceedings, it emphasised the fundamental difference between the profession of civil engineer in Spain and that of civil engineer specialising in hydraulics in Italy, in terms of both the education and training and the scope of activities included in each of those professions.

13 By judgment of 1 April 1998, the Audiencia Nacional dismissed the action, on the grounds inter alia that the diploma of civil engineer specialising in hydraulics conferred, in Italy, the right to take up the same profession as that of civil engineer in Spain. That court also noted that the education and training received by the holder of the diploma in civil engineering included the core subjects required in Spain for the branch of the engineering profession in question.

14 The Colegio brought an appeal against that judgment before the Tribunal Supremo. That court found at the outset that there were important material differences between the two courses of education and training and that the assessment done by the Audiencia Nacional was therefore incorrect.

15 In those circumstances, the Tribunal Supremo decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Can Article 3(a), [read] in conjunction with Article 4(1), of Directive 89/48 ... be construed in such a way as to permit restricted recognition by a host Member

State of the professional qualifications of an applicant who possesses the diploma of Ingegnere civile idraulico (civil engineer specialising in hydraulics) (awarded in Italy) and who wishes to pursue that profession in another Member State whose legislation regulates the profession of Ingeniero de Caminos, Canales y Puertos (civil engineer)? The question is based on the assumption that, in the host Member State, the latter profession includes activities that do not always correspond to the applicant's diploma and that the education and training attested by that diploma does not include certain core subjects which are generally required in order to obtain the qualification of Ingeniero de Caminos, Canales y Puertos (civil engineer) in the host Member State.

2. Should the reply to the first question be in the affirmative, is it compatible with Articles 39 EC and 43 EC to restrict the right of applicants who seek to pursue their professions, in a self-employed or employed capacity, in a Member State other than the one in which they were awarded their professional qualification, in such a way that the host Member State is entitled to exclude, under its national legislation, restricted recognition of professional qualifications where such a decision, which in principle implements Article 4 of Directive 89/48 ..., entails the imposition of certain additional, disproportionate requirements as regards pursuit of the profession?

For these purposes, "restricted recognition" is understood to mean recognition which authorises an applicant to work as an engineer only in the equivalent sector (hydraulics) of the more general profession of Ingeniero de Caminos, Canales y Puertos (civil engineer) regulated in the host Member State, without requiring him to fulfil the additional requirements laid down in Article 4(1)(b) of Directive 89/48 ... .'

The questions referred for a preliminary ruling

The first question

16 By its first question, the national court asks essentially whether, when the holder of a diploma awarded in one Member State applies for permission to take up a regulated profession in another Member State, the competent authorities of that Member State are precluded by the Directive from partly allowing that application, subject to certain conditions, by limiting the scope of the permission to the activities which that diploma allows to be taken up in the Member State in which it was obtained.

17 In order to answer that question, it is appropriate to examine, first, the wording of the provisions of the Directive, second, the system and overall scheme thereof and, third, the objectives pursued by it.

18 First of all, it should be borne in mind that the wording of the Directive does not explicitly authorise or prohibit partial recognition of professional qualifications as referred to in the order for reference. The prohibition laid down in Article 3(a) of the Directive does not preclude such partial recognition, since a decision taken following an application by a party concerned, allowing him to take up only part of the range of activities covered by the regulated profession in the host State, cannot be equated with a 'refusal to allow the taking-up' of that profession.

19 Next, regarding the scheme of the Directive, the system of mutual recognition of diplomas established by the Directive does not imply that diplomas awarded by the other Member States certify that the education and training are similar or comparable to that required in the host Member State. According to the system

established by the Directive, a diploma is not recognised on the basis of the intrinsic value of the education and training to which it attests, but because it gives the right to take up a regulated profession in the Member State where it was awarded or recognised. Differences in the organisation or content of education and training acquired in the Member State of origin by comparison with that provided in the host Member State are not sufficient to justify a refusal to recognise the professional qualification concerned. At most, where those differences are substantial, they may justify the host Member State's requiring that the applicant satisfy one or other of the compensatory measures set out in Article 4 of that directive (see, to that effect, Case C-102/02 *Beuttenmüller* [2004] ECR I-5405, paragraph 52).

20 It follows that, as rightly pointed out by the Advocate General in points 40 to 43 of his Opinion, the expression 'the profession in question', employed in Article 3(a) of the Directive, must be construed as covering professions which, in the Member State of origin and the host Member State, are identical or analogous or, in some cases, simply equivalent in terms of the activities they cover. This interpretation is corroborated by the second indent of Article 4(1)(b) of the Directive. In the cases to which that provision refers, the competent national authorities are required to take account of each of the activities covered by the profession in question in both Member States concerned, in order to determine whether it is 'the profession in question' and, if so, whether one of the compensatory measures provided for by that provision should be applied. That means that, although the Directive treats a regulated profession as a whole, it nevertheless recognises that there are, in reality, separate professional activities and corresponding education and training. It follows that a case-by-case approach, tailored to each of the professional activities covered by a regulated profession, is not contrary to or beyond the scope of the general scheme of the Directive.

21 The opposite position, advocated in this respect by the Spanish and the Swedish Governments, cannot be accepted. Although the first paragraph of Article 3 of the Directive lays down the right of a national of a Member State who holds a diploma referred to by the Directive 'to take up or pursue [the] profession [covered by that diploma] on the same conditions as apply to its own nationals', that provision cannot be interpreted as leading, in every case and without exception, to an authorisation of unfettered taking-up of all the activities covered by that profession

in the host Member State. As stated essentially by the Advocate General in points 48 to 53 of his Opinion, that expression merely reflects the fundamental principles of non-discrimination and mutual trust, inherent in the Community system for recognising diplomas.

22 Article 7(1) of the Directive provides that the competent authorities of the host Member State are to recognise the right of nationals of other Member States who fulfil the conditions for the taking-up and pursuit of a regulated profession in their territory to use the professional title of the host Member State corresponding to that profession. That provision, which covers the practical consequences of the application of the rules provided for in Articles 3 and 4 of that same directive, is intended to facilitate the placing of nationals of other Member States who have obtained their diplomas there on an equal footing with nationals of the host Member State who have acquired their professional qualifications in the latter State. However, the recognition of the right to use that professional title provided for in Article 7(1) is possible only when the parties concerned fulfil all of the conditions for the taking-up and pursuit of the profession in question.

23 Lastly, the foregoing reasoning is fully supported by a teleological interpretation of the Directive. It is apparent from the 3rd and 13th recitals in the preamble to the Directive that its primary objective is to make it easier for persons holding diplomas awarded in a Member State to take up corresponding professional activities in the other Member States and to strengthen the right of European nationals to utilise their professional expertise in any Member State. The Court also notes that the Directive was adopted on the basis of Article 57(1) of the EC Treaty (now, after amendment, Article 47(1) EC). It is apparent from the wording of the latter provision that the purpose of directives such as the one at issue in the present proceedings is to facilitate the mutual recognition of diplomas, certificates and other evidence of formal qualifications by laying down rules and common criteria which result, as far as possible, in automatic recognition of those diplomas, certificates and other evidence of formal qualifications. However, it is not the purpose of those

directives to make recognition of such diplomas, certificates and other evidence of formal qualifications more difficult in situations falling outside their scope, nor may they have such an effect (Case C-31/00 *Dreessen* [2002] ECR I-663, paragraph 26).

24 The Court notes that the scope of Article 4(1) of the Directive, which expressly authorises compensatory measures, must be restricted to those cases where they are proportionate to the objective pursued. In other words, although those measures are expressly authorised, they may, in certain cases, be a highly dissuasive factor for a national of a Member State exercising his rights under the Directive. An adaptation period and an aptitude test both call for considerable time and effort on the part of the party concerned. A non-application of those measures might be significant, and even decisive, for a national of one Member State wishing to take up a regulated profession in another Member State. In cases such as those at issue in the main proceedings, partial taking-up of the profession in question, granted at the request of the party concerned, dispensing that party from having to comply with the compensatory measures and allowing him to take up immediately professional activities for which he is already qualified, would be in keeping with the objectives pursued by the Directive.

25 It therefore follows that the wording, scheme and objectives of the Directive do not preclude the possibility of partial taking-up of a regulated profession as described in the order for reference. It could of course be argued, as the Spanish and Swedish Governments have done, that such partial taking-up could entail a risk of multiplication of the professional activities pursued independently by nationals of other Member States, thereby giving rise also to a certain degree of confusion in the minds of consumers. However, that potential risk does not lead to a finding that partial recognition of professional qualifications is incompatible with the Directive. There are sufficient ways of remedying that problem, such as the possibility of requiring the persons concerned to mention the names and locations of the establishments or examining boards which awarded their academic titles. Likewise, the host Member State can always require the persons concerned to use, in all of their legal and commercial dealings in its territory, the respective academic title or professional title in the original language and form, as well as the translation into the

language of the host Member State, in order to ensure that it is understood and to avoid all risk of confusion.

26 In the light of all the foregoing, the answer to the first question must be that when the holder of a diploma awarded in one Member State applies for permission to take up a regulated profession in another Member State, the authorities of that Member State are not precluded by the Directive from partly allowing that application, if the holder of the diploma so requests, by limiting the scope of the permission to those activities which that diploma allows to be taken up in the Member State in which it was obtained.

The second question

27 By its second question, the national court asks essentially whether, in the circumstances which gave rise to the main proceedings, Articles 39 EC and 43 EC prevent the host Member State from excluding the possibility of partial taking-up of a regulated profession, restricted to the pursuit of one or more activities covered by that profession.

28 It should be borne in mind that the second paragraph of Article 43 EC provides that freedom of establishment is to be exercised under the conditions which the legislation of the country of establishment lays down for its own nationals. It follows that, where the taking-up or pursuit of a specific activity is regulated in the host Member State, a national of another Member State intending to pursue that activity must in principle comply with those conditions (Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 36; and Case C-108/96 *Mac Quen and Others* [2001] ECR I-837, paragraph 25).

29 The conditions for taking up the profession of civil engineer have not thus far been the subject of harmonisation at Community level. That being so, the Member States retain the power to define those conditions, as the Directive does not restrict their powers on this point. They must, however, exercise their powers in this area in a manner which respects the basic freedoms guaranteed by the EC Treaty (see Joined Cases C-193/97 and C-194/97 *De Castro Freitas and Escallier* [1998] ECR I-6747, paragraph 23; Case C-58/98 *Corsten* [2000] ECR I-7919, paragraph 31; and *Mac Quen*, paragraph 24).

30 It is settled case-law that national measures liable to hinder or make less attractive the exercise of those freedoms can be justified only if they fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by overriding reasons based on the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain that objective (see, inter alia, Case C-19/92 *Kraus* [1993] ECR I-1663, paragraph 32; *Gebhard*, paragraph 37; Case C-424/97 *Haim* [2000] ECR I-5123, paragraph 57; and *Mac Quen*, paragraph 26).

31 In cases such as the present one, legislation of a host Member State which precludes any possibility for the authorities of that State to allow partial taking-up of a profession is liable to hinder or make less attractive the exercise of both the freedom of movement of persons and the freedom of establishment, even though that legislation is applicable without distinction to the nationals of the host Member State and those of other Member States.

32 Regarding the objective of the legislation at issue in the main proceedings, the Court acknowledges that, as pointed out by the Spanish and the Swedish Governments,

partial recognition of professional qualifications could, theoretically, have the effect of fragmenting the professions regulated in a Member State into various activities. That would lead essentially to a risk of confusion in the minds of the recipients of services, who might well be misled as to the scope of those qualifications. The protection of the recipients of services, and consumers in general, has already been held by the Court to be capable of justifying restrictions on the freedom of establishment and the freedom to provide services (Case 220/83 *Commission* v *France* [1986] ECR 3663, paragraph 20; Case C-124/97 *Läärä and Others* [1999] ECR I-6067, paragraph 33; and Case C-6/01 *Anomar and Others* [2003] ECR I-8621, paragraph 73).

33 It is also necessary that measures based on such an objective must not go beyond what is necessary in order to attain that objective. As pointed out by the Commission of the European Communities, it is appropriate to draw a distinction between two different situations which are likely to arise when the authorities of a Member State are presented with an application for recognition of a professional qualification awarded in another Member State and when the difference in content of the education or training or in the activities covered by the profession in question in the two States prevents full and immediate recognition. It is appropriate to distinguish between cases which may be resolved using the means provided for by the Directive and those which cannot.

34 The first scenario concerns cases where, in the Member State of origin and the host Member State, the degree of similarity between the two professions is such that they both may be regarded as 'the profession in question' within the meaning of Article 3(a) of the Directive. In such a case, any shortcomings in the applicant's education or training in relation to that required in the host Member State may be effectively made up for through the application of the compensatory measures provided for in Article 4(1) of the Directive, thereby ensuring full integration of the party concerned into the professional system in the host Member State.

35 The second scenario, by contrast, concerns cases which, as rightly pointed out by the Commission, are not covered by the Directive because the differences between the fields of activity are so great that in reality the full programme of education and training is required. Viewed objectively, this is a factor which is liable to discourage the party concerned from pursuing, in another Member State, one or more activities for which he is qualified.

36 It is for the authorities and, in particular, the competent courts in the host Member State to determine, in each specific case, to what extent the content of the education and training obtained by the party concerned is different from that required in that State. In the present case, the Tribunal Supremo found that the content of the education and training required, respectively, for the profession of civil engineer specialising in hydraulics in Italy and the profession of civil engineer in Spain involves differences which are so great that the application of a compensatory measure or adaptation requirement would in effect amount to requiring the party concerned to complete a fresh, complete programme of education and training.

37 Moreover, in specific cases such as the present, one of the decisive issues is whether the professional activity which the party concerned wishes to pursue in the host Member State may, objectively, be separated from the rest of the activities covered by the corresponding profession in that State. It is first and foremost up to the national authorities to answer that question. However, as noted by the Advocate General in points 86 and 87 of his Opinion, one of the decisive criteria in this respect is the issue of whether that activity may be pursued, independently or autonomously, in the Member State where the professional qualification in question was obtained.

38 When the activity in question may objectively be separated from the rest of the activities covered by the profession in question in the host Member State, the

conclusion is that the dissuasive effect caused by the preclusion of any possibility of partial recognition of the professional qualification in question is too serious to be offset by the fear of potential harm to recipients of services. In such a case, the legitimate objective of protection of consumers and other recipients of services may be achieved through less restrictive means, particularly the obligation to use the professional title of origin or the academic title both in the language in which it was awarded and in its original form, and in the official language of the host Member State.

39 Accordingly, the answer to the second question must be that Articles 39 EC and 43 EC do not preclude a Member State from not allowing partial taking-up of a profession, where shortcomings in the education or training of the party concerned in relation to that required in the host Member State may be effectively made up for through the application of the compensatory measures provided for in Article 4(1) of the Directive. However, Articles 39 EC and 43 EC do preclude a Member State from not allowing that partial taking-up when the party concerned so requests and the differences between the fields of activity are so great that in reality a full programme of education and training is required, unless the refusal for that partial taking-up is justified by overriding reasons based on the general interest, suitable for securing the attainment of the objective which they pursue and not going beyond what is necessary in order to attain that objective.

Costs

40 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 (First Chamber) hereby rules:

1. **When the holder of a diploma awarded in one Member State applies for permission to take up a regulated profession in another Member State, the competent authorities of that Member State are not precluded by 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 from partly allowing that application, if the holder of the diploma so requests, by limiting the scope of the permission to those activities which that diploma allows to be taken up in the Member State in which it was obtained.**

2. **Articles 39 EC and 43 EC do not preclude a Member State from not allowing partial taking-up of a profession, where shortcomings in the education or training of the party concerned in relation to that required in the host Member State may be effectively made up for through the application of the compensatory measures provided for in Article 4(1) of Directive 89/48. However, Articles 39 EC and 43 EC do preclude a Member State from not allowing that partial taking-up when the party concerned so requests and the differences between the fields of activity are so great that in reality a full programme of education and training is required, unless the refusal for that partial taking-up is justified by overriding reasons based on the general interest, suitable for securing the attainment of the objective which they pursue and not going beyond what is necessary in order to attain that objective.**

[Signatures]