JUDGMENT OF THE COURT

9 February 1994 *

In Case C-154/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the French Conseil d'État for a preliminary ruling in the proceedings pending before that court between

Abdullah Tawil-Albertini

and

Ministre des Affaires Sociales

on the interpretation of Article 7 of Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (Official Journal 1978 L 233, p. 1),

* Language of the case: French.

THE COURT,

composed of: O. Due, President, M. Díez de Velasco and D. A. O. Edward (Rapporteur), (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler and M. Zuleeg, Judges,

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted:

—by Mr A. Tawil-Albertini

and on behalf of:

— the French Government, by Edwige Belliard, Deputy Director of Legal Affairs at the Ministère des Affaires Étrangères (Ministry of Foreign Affairs), and Claude Chavance, Principal Attaché for Central Administration, acting as Agents,

— the Commission of the European Communities, by Marie-José Jonczy, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the French Government and the Commission at the hearing on 19 October 1993,

after hearing the Opinion of the Advocate General at the sitting on 17 November 1993,

gives the following

Judgment

1 By a decision of 15 February 1993, which was received at the Court on 14 April 1993, the French Conseil d'État referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 7 of Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (Official Journal 1978 L 233, p. 1).

2 That question arose in proceedings between Abdullah Tawil-Albertini, a French national, and the French Ministre des Affaires Sociales (Minister for Social Security and Employment) with regard to the latter's refusal to authorize him to practise dentistry in France.

3 The object of Directive 78/686/EEC is the mutual recognition by Member States of qualifications in dentistry which are exhaustively listed in Article 3 and awarded by those States. The coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners is ensured by Council Directive 78/687/EEC of 25 July 1978 (Official Journal 1978 L 233, p. 10) . According to Article 2 of Directive 78/686/EEC, qualifications awarded by a Member State in accordance with the minimum criteria as regards theoretical and practical training defined by Directive 78/687/EEC are automatically recognized in the other Member States.

4 As regards recognition of qualifications awarded by Member States before the entry into force of that system, Article 7 (1) of Directive 78/686/EEC provides that:

'In the case of nationals of Member States whose diplomas, certificates and other evidence of formal qualifications do not satisfy all the minimum training requirements laid down in Article 1 of Directive 78/687/EEC, each Member State shall recognize as being sufficient proof the diplomas, certificates and other evidence of formal qualifications in dentistry awarded by those Member States before the implementation of Directive 78/687/EEC, accompanied by a certificate stating that those nationals have effectively and lawfully been engaged in the activities in question for at least three consecutive years during the five years prior to the date of issue of the certificate.'

5 As regards diplomas, certificates and other evidence of formal qualifications obtained in a Member State, Article 1 (4) of Directive 78/687/EEC provides that:

'Nothing in this directive shall prejudice any facility which may be granted in accordance with their own rules by Member States in respect of their own territory to authorize holders of diplomas, certificates and other evidence of formal qualifications which have not been obtained in a Member State to take up and pursue the activities of a dental practitioner.'

6 Articles L 356-1 and L 356-2 of the Code de la Santé Publique (Public Health Code), which transpose into French law Directive 78/686/EEC, entitle nationals of the other Member States who hold a qualification from one of those States to practise dentistry in France.

7 Tawil-Albertini obtained a diploma of doctor of dental surgery in Beirut, Lebanon, in 1968. On 20 July 1979, that is to say, before the entry into force of Directive 78/686/EEC, the Belgian Minister for National Education and French Culture recognized his Lebanese qualification as equivalent to the Belgian

'diplôme légal de licencié en science dentaire' (official diploma of graduate in dental science), which authorized him to practise in Belgium. In December 1980 he was authorized to practise dentistry in the United Kingdom and in February 1986 in Ireland. The information in the case-file is not sufficient to establish the basis on which those authorizations were granted.

8 Relying on the fact that his qualification had been recognized as equivalent in another Member State, Tawil-Albertini applied to the French Ministre des Affaires Sociales to be allowed to benefit from the provisions of Directive 78/686/EEC, which had been implemented in France since 1980, in order to be able to practise his profession in the territory of that State. That application was refused by decision of 2 May 1986.

9 By a judgment of 28 October 1987, the Tribunal Administratif (Administrative Court), Paris, dismissed an application for annulment of that decision brought by Tawil-Albertini on the ground that he could not rely on a Belgian diploma of graduate in dental science but only on the recognition that his Lebanese diploma was equivalent to it.

10 Tawil-Albertini then brought an appeal against that decision before the French Conseil d'État claiming that, by virtue of Article 7 of Directive 78/686/EEC, he was entitled to practise dentistry in France. Since it was uncertain as to the interpretation to give that provision, the French Conseil d'État decided to stay the proceedings and seek a preliminary ruling from the Court of Justice on whether

'Article 7 of Directive 78/686/EEC excludes from its scope qualifications obtained by virtue of equivalence which therefore do not testify to dental training acquired in one of the Member States of the Community'.

11 It should be noted that Article 2 of Directive 78/686/EEC provides for the mutual recognition by Member States of qualifications in dentistry exhaustively listed in Article 3 and awarded by those States. That recognition has been automatic since the implementation of the directive because, concurrently, Directive 78/687/EEC

defined the minimum criteria which dental training in the various States of the Community must satisfy. The mutual recognition of qualifications in dentistry awarded by the Member States, mentioned in Directive 78/686/EEC, is based on the guarantees provided by the application of minimum criteria for training imposed by Directive 78/687/EEC.

12 In relations with non-member States, such coordination of legislation on training can be established only by agreements concluded between the States concerned. Thus, by virtue of Article 1 (4) of Directive 78/687/EEC, Member States remain free, in accordance with their own rules in respect of their own territory, to authorize holders of qualifications obtained in non-Community States to take up and pursue the activities of a dental practitioner.

13 Accordingly, recognition by a Member State of qualifications awarded by non-member States does not bind the other Member States.

14 Article 7 concerns only qualifications awarded by the Member States.

15 The answer to the question referred to the Court for a preliminary ruling should therefore be that Article 7 of Directive 78/686/EEC does not require Member States to recognize diplomas, certificates and other evidence of formal qualifications which do not testify to dental training acquired in one of the Member States of the Community.

Costs

16 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings 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 referred to it by the French Conseil d'Etat by decision of 15 February 1993, hereby rules:

Article 7 of Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, does not require Member States to recognize diplomas, certificates and other evidence of formal qualifications which do not testify to dental training acquired in one of the Member States of the Community.

Due Díez de Velasco Edward

Kakouris Joliet

Schockweiler Zuleeg

Delivered in open court in Luxembourg on 9 February 1994.

J.-G. Giraud

Registrar

O. Due

President