JUDGMENT OF THE COURT (Second Chamber)

29 January 2009 *

In Case C-311/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Consiglio di Stato (Italy), made by decision of 28 February 2006, received at the Court on 17 July 2006, in the proceedings

Consiglio Nazionale degli Ingegneri

v

Ministero della Giustizia,

Marco Cavallera,

THE COURT (Second Chamber),

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

* Language of the case: Italian.

Advocate General: M. Poiares Maduro,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 September 2007,

after considering the observations submitted on behalf of:

— the Consiglio Nazionale degli Ingegneri, by A. Romei, avvocato,

— the Italian Government, by I.M. Braguglia, acting as Agent, and S. Fiorentino, avvocato dello Stato,

— the Belgian Government, by L. Van den Broeck, acting as Agent,

— the Czech Government, initially by T. Boček, and subsequently by M. Smolek, acting as Agents,

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

— the Cypriot Government, by C. Lycourgos and I. Neofitou, acting as Agents,

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

— the Swedish Government, by A. Falk and A. Kruse, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 28 February 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation 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).

2 The reference has been made in the course of proceedings between the Consiglio Nazionale degli Ingegneri (National Council of Engineers) and the Ministero della Giustizia (Ministry of Justice) concerning the recognition by the latter, for the benefit of Mr Cavallera, an Italian national, of a Spanish engineering diploma acquired by homologation of an Italian educational qualification for the purpose of Mr Cavallera's registration in the Register of Engineers in Italy.

Legal background

Community legislation

3 The first recital in the preamble to Directive 89/48 is worded as follows:

'… pursuant to Article 3(c) of the Treaty the abolition, as between Member States, of obstacles to freedom of movement for persons and services constitutes one of the objectives of the Community; … for nationals of the Member States, this means in particular the possibility of pursuing a profession, whether in a self-employed or employed capacity, in a Member State other than that in which they acquired their professional qualifications'.

4 The third recital in the preamble to that directive states:

'… in order to provide a rapid response to the expectations of nationals of Community countries who hold higher-education diplomas awarded on completion of professional education and training issued in a Member State other than that in which they wish to pursue their profession, another method of recognition of such diplomas should also be put in place such as to enable those concerned 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 issued in another Member State'.

5 The fifth recital in the preamble to Directive 89/48 reads:

'… for those professions for the pursuit of which the Community has not laid down the necessary minimum level of qualification, Member States reserve the option of fixing such a level with a view to guaranteeing the quality of services provided in their territory; … however, they may not, without infringing their obligations laid down in Article 5 of the Treaty, require a national of a Member State to obtain those qualifications which in general they determine only by reference to diplomas issued under their own national education systems, where the person concerned has already acquired all or part of those qualifications in another Member State; … as a result, any host Member State in which a profession is regulated is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires'.

6 Article 1(a) and (b) of Directive 89/48 provides:

'For the purposes of this Directive the following definitions shall apply:

(a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:

— which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;

— which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, 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 the diploma, certificate or other evidence of formal qualifications were received mainly in the Community, or the holder thereof has three years' professional experience certified by the Member State which recognised a third-country diploma, certificate or other evidence of formal qualifications.

The following shall be treated in the same way as a diploma, within the meaning of the first subparagraph: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other 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;

(b) host Member State: any Member State in which a national of a Member State applies to pursue a profession subject to regulation in that Member State, other

than the State in which he obtained his diploma or first pursued the profession in question'.

7 In the Italian and Hungarian versions only, Article 1(b) of Directive 89/48 refers to a national 'of another Member State' ('di un altro Stato membro'/'egy másik tagállam'), instead of a national 'of a Member State'.

8 The first paragraph of Article 2 of Directive 89/48 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 In the German and Hungarian versions only, the first paragraph of Article 2 of the directive refers to the pursuit of a regulated profession 'in another Member State' ('in einem anderen Mitgliedstaat'/'egy másik tagállamban'), instead of the pursuit of a regulated profession 'in a host Member State'.

10 Point (a) of the first paragraph of Article 3 of Directive 89/48 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 …'.

11 In the Italian, Spanish and Slovene versions only, the first paragraph of Article 3 of that directive refers to a refusal directed against a national of 'another Member State' ('di un altro Stato membro'/'de otro Estado miembro'/'druge države članice'), rather than a refusal directed against a national of 'a Member State'.

12 Furthermore, in the Italian and Slovene versions only, point (a) of the first paragraph of Article 3 of that directive refers to a diploma which was awarded 'in another Member State' ('in un altro Stato membro'/'drugi državi članici'), instead of a diploma which was awarded 'in a Member State'.

13 Notwithstanding Article 3 of Directive 89/48, Article 4 thereof enables a host Member State to require an applicant, under certain conditions, to provide evidence of professional experience of a certain length, to complete an adaptation period not exceeding three years, or to take an aptitude test. Article 4 also lays down a number of rules and conditions applicable to the compensatory measures which may be required in order to remedy insufficiencies in the education and training relied on by the applicant.

National legislation

Regulation of the engineering profession in Spain and Italy

14 The engineering profession is a regulated profession in both Spain and Italy.

— The education and training systems and the conditions governing access to the engineering profession

15 The Italian and Spanish education and training systems are similar as regards qualifications in the field of engineering. In both those Member States such qualifications may be obtained after a post-secondary course of three or five years.

16 In Italy, university diplomas obtained after three years of study ('laurea triennale') are awarded on completion of junior engineer ('ingegnere junior') education and training.

17 The taking-up of the profession of junior engineer is conditional on possession of the requisite university diploma and on success in the State examination ('esame di Stato') corresponding to the profession concerned (Article 4 of Royal Decree No 2537 of 23 October 1925 (*Gazzetta ufficiale* No 37 of 15 February 1926)). According to Articles 47 and 48 of Decree No 328 of the President of the Republic of 5 June 2001 (Ordinary Supplement to the GURI No 190 of 17 August 2001), this State examination must include at least two written tests, an oral test and a practical test. Candidates who

have been successful in the State examination are granted entitlement to pursue the profession of engineer ('abilitazione all'esercizio della professione di ingegnere').

18 In Spain, university diplomas awarded after three years of studies lead to the qualification of technical engineer ('ingeniero técnico').

19 Spanish legislation on university diplomas draws a distinction between two types of diplomas, namely 'official diplomas', the validity of which is recognised throughout the national territory and which give access to the regulated professions, and 'own diplomas', which the various universities have the option of awarding but which, in particular, do not give access to the regulated professions. This matter is governed by Framework Law 6/2001 of 21 December 2001 relating to universities (BOE No 307 of 24 December 2001, p. 49400).

20 In Spain, access to the profession of technical engineer is in principle subject to the possession of an official university diploma, within the meaning of Framework Law 6/2001, corresponding to the profession concerned.

21 Both in Italy and in Spain, pursuit of the profession of engineer also requires registration in the register of a professional body. In Italy, a register of engineers is maintained in each province by the Consiglio dell'Ordine degli Ingegneri (Council of the Order of Engineers). That register is divided into two sections, Section B being reserved for junior engineers. In Spain, depending on the specialisations and regions, different 'colegios de ingenieros' (associations of engineers) are competent. In both Member States, registration in the register of an association of engineers constitutes a simple administrative step which does not of itself provide evidence as to the professional qualifications of the persons concerned, but is designed to ensure that the pursuit of the profession observes certain ethical standards.

— The profession of mechanical engineer in Italy

22 Persons wishing to pursue the profession of mechanical engineer in Italy must normally hold a university diploma of mechanical engineering ('laurea in ingegneria meccanica'), awarded on completion of three years' education and training, and entitlement to pursue the profession of engineer awarded after they have passed the State examination. Furthermore, such persons must be registered in the register of engineers in a province, in Section B, Industrial Sector.

— The profession of industrial technical engineer, specialising in mechanical engineering, in Spain

23 In Spain, persons wishing to pursue the profession of industrial technical engineer, specialising in mechanical engineering ('ingeniero técnico industrial, especialidad mecánica') must normally hold an official university diploma, within the meaning of Framework Law 6/2001, of industrial technical engineer, specialising in mechanical engineering. The technical engineering diploma is awarded after three years' studies. Furthermore, such persons must be registered in the register of the 'Colegio de ingenieros técnicos industriales' (Professional Association of technical industrial engineers).

The recognition procedure in Italy

24 In Italy, Legislative Decree No 115 of 27 January 1992 (GURI No 40 of 18 February 1992) ('Legislative Decree No 115/1992') is intended to transpose Directive 89/48 into national law.

25 Article 1 of Legislative Decree No 115/1992, entitled 'Recognition of educational qualifications obtained in the European Community', provides:

'1. Qualifications awarded by a Member State of the European Community as evidence of professional training, the possession of which is a condition for the pursuit of a profession under the legislation of that State, shall be recognised in Italy subject to the conditions laid down in this decree.

2. Recognition is granted to Community nationals for the purpose of pursuing in Italy, in a self-employed capacity or as an employed person, the profession corresponding to that which they are authorised to pursue in the country that awarded the qualifications referred to in the preceding paragraph.

3. Qualifications are eligible for recognition if they include a statement that the applicant has successfully completed a post-secondary course of at least three years' duration (or of an equivalent duration part-time) at a university or establishment of higher education or another establishment of similar level.'

26 According to the Consiglio di Stato (Council of State), Legislative Decree No 115/1992 does not authorise recognition of a diploma awarded in another Member State on the basis of an Italian educational qualification. That court states that, pursuant to Article 1(3) of that legislative decree, the foreign diploma must attest that the applicant has completed a course of study, which means that there must be an immediate relationship between the qualification and the course of study, and that the latter must be directly attested by the diploma. Moreover, that provision cannot apply to a diploma from another Member State which attests, in reality, to the existence of an Italian educational qualification.

The homologation procedure in Spain

27 Under Spanish law, the procedure for homologation of university diplomas must be distinguished from the procedure governing the recognition of professional qualifications laid down by Royal Decree 1665/1991 of 25 October 1991 regulating the general system for the recognition of higher education diplomas issued in the Member States of the European Union which require at least three years' education and training (BOE No 208 of 22 November 1991, p. 37916), intended to transpose Directive 89/48 into the Spanish legal system. Homologation is an examination of the academic content, in terms of knowledge, of the studies undertaken in order to obtain a diploma.

28 Until 4 September 2004, the procedure governing homologation of foreign university qualifications was governed in Spain by Royal Decree 86/1987 of 16 January 1987 (BOE No 20 of 23 January 1987) and by the legislation adopted pursuant to the latter.

29 The concept of homologation was defined in Article 1 of Royal Decree 86/1987. According to that provision, homologation involves recognition in Spain of the official validity, for academic purposes, of higher education diplomas acquired abroad.

30 It is clear from Article 2 of Royal Decree 86/1987 that, even if the homologation of foreign diplomas does not necessarily require additional examinations to be passed in cases where the education and training evidenced by the foreign diploma is not equivalent to that evidenced by the corresponding Spanish diploma, homologation may be conditional on the successful completion of tests on the knowledge required in Spain in order to obtain the diploma.

31 Under Article 3 of Royal Decree 86/1987, the homologation procedure applies only to official studies. Other education which is provided by universities and does not have that characteristic is therefore excluded from the scope of Royal Decree 86/1987.

32 If granted, homologation confers on a foreign diploma the same effects as those attached to the equivalent Spanish diploma or university degree.

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

33 Mr Cavallera, an Italian national, is the holder of a mechanical engineering qualification awarded on 9 March 1999 by the University of Turin (Italy) after three years' education and training.

34 Mr Cavallera applied in Spain for homologation of his Italian qualification by the Ministry for Education and Sciences, with a view to having that Italian qualification treated as equivalent to the corresponding Spanish university title pursuant to the provisions of Royal Decree 86/1987. On 17 October 2001, that ministry accredited Mr Cavallera's Italian qualification in order that that qualification might be treated as equivalent to that of a Spanish industrial technical engineer, specialising in mechanical engineering.

35 Mr Cavallera is therefore entitled to pursue the regulated profession of industrial technical engineer, specialising in mechanical engineering, in Spain. On the basis of the

certificate attesting homologation of his Italian qualification, Mr Cavallera enrolled in the register of one of the 'colegios de ingenieros técnicos industriales' in Catalonia.

36 It is, however, common ground that Mr Cavallera has not worked outside Italy and that he has not followed any course of study or taken any examinations under the Spanish education system. Likewise, it is common ground that he has not taken the State examination provided for under Italian legislation for the purpose of being entitled to pursue the profession of engineer.

37 By application of 6 March 2002 Mr Cavallera sought from the Ministero della Giustizia (Ministry of Justice) in Italy recognition of his Spanish certificate pursuant to Legislative Decree No 115/1992, in order to enable him to enrol in Italy in the Register of Engineers.

38 In accordance with Italian law, that application was subject to the opinion of a board of enquiry, which decided by a majority to grant the application, although the representative of the Consiglio Nazionale degli Ingegneri (National Council of Engineers), a member of that board, voted against it.

39 By decree of 23 October 2002, the Ministero della Giustizia recognised the validity of Mr Cavallera's Spanish certificate for the purpose of his enrolment in the register of engineers (Section B, industrial sector). On the basis of that decree, Mr Cavallera was enrolled in the register of the association of engineers in the city of Alessandria (Italy), where he resides.

40 The Consiglio Nazionale degli Ingegneri challenged that ministerial decree before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court for the Region of Lazio) (Italy), submitting that, under Directive 89/48 and the relevant national legislation, the Italian authorities could not recognise Mr Cavallera's Spanish certificate, since such recognition would have the effect of dispensing him from the State examination required under Italian law.

41 By judgment of 5 October 2004, that court dismissed the action brought by the Consiglio Nazionale degli Ingegneri, holding that the Ministero della Giustizia had acted lawfully. The Consiglio Nazionale degli Ingegneri then appealed against that judgment to the Consiglio di Stato (Italy).

42 The Consiglio di Stato takes the view that Directive 89/48 does not apply to Mr Cavallera's situation because he has not obtained a diploma, within the meaning of Article 1(a) of Directive 89/48, in Spain and bases his application entirely on Italian qualifications. The Consiglio di Stato nevertheless has doubts in that respect.

43 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) Does Directive 89/48/EEC apply to an Italian national who:

— obtained a three-year degree in engineering in Italy;

— obtained recognition of the Italian qualification as being equivalent to the corresponding Spanish qualification;

— obtained registration in the Spanish register of engineers but never pursued that profession in Spain; [and]

— applied, on the basis of the Spanish recognition of equivalence, for registration in the register of engineers in Italy?

(2) If the answer to the first question is in the affirmative, is a domestic provision (Article 1 of Legislative Decree [No 115 of 1992]) that does not permit recognition in Italy of a qualification of a Member State which in turn is exclusively the result of recognition of a previous Italian qualification compatible with Directive 89/48/EEC?'

The questions referred for a preliminary ruling

44 By its first question, the referring court asks essentially whether the provisions of Directive 89/48 may be relied on, for the purpose of gaining entry to a regulated profession in a host Member State, by the holder of a certificate issued by an authority of another Member State which does not attest any education and training covered by the education system of that Member State and is not based on either an examination or professional experience acquired in the latter.

45 In order to answer that question it is necessary to examine whether the recognition of a certificate such as that at issue in the main proceedings comes within the scope of Directive 89/48.

46 Subject to the provisions of Article 4 of Directive 89/48, point (a) of the first subparagraph of Article 3 thereof gives any applicant who holds a 'diploma', within the meaning of that directive, enabling him to pursue a regulated profession in a Member State, the right to pursue that profession in any other Member State. The concept of 'diploma', defined in Article 1(a) of Directive 89/48, is thus the cornerstone of the general system governing the recognition of higher-education diplomas laid down by that directive.

47 With regard to the qualifications relied on by Mr Cavallera, it must be recalled, first of all, that a 'diploma', within the meaning of Article 1(a) of Directive 89/48, may consist of a set of qualifications.

48 Next, the condition laid down in the first indent of Article 1(a) of Directive 89/48 is satisfied, so far as concerns the qualifications relied on by Mr Cavallera, in that each of those qualifications was awarded by a competent authority, designated respectively in accordance with Italian and Spanish legislation.

49 So far as concerns the condition laid down in the second indent of Article 1(a) of Directive 89/48, it is evident from the file sent to the Court that Mr Cavallera satisfies the condition that the holder must have successfully completed a post-secondary course of at least three years' duration at a university. That fact is expressly evidenced by the degree certificate which was awarded to him by the University of Turin.

50 Furthermore, as regards the condition laid down in the third indent of Article 1(a) of Directive 89/48, it follows from the homologation certificate issued by the Spanish Ministry of Education and Science that Mr Cavallera has the professional qualifications required to take up a regulated profession in Spain. Even if it were to be assumed that that does not follow expressly from the certificate, it is clearly established by Mr Cavallera's enrolment in the register of the competent professional body in Spain.

51 It remains to be determined whether, given that the homologation certificate which Mr Cavallera relies on was not awarded in respect of any education or training covered by the Spanish education system and is not based on either an examination taken or professional experience acquired in Spain, the set of qualifications which he possesses may nevertheless be regarded as a 'diploma' within the meaning of Directive 89/48 or may be treated in the same way as such a diploma under the second paragraph of Article 1(a) of Directive 89/48.

52 In that context, the arguments relied on by the Consiglio Nazionale degli Ingegneri and by the Italian and Austrian Governments, based on the wording of certain language versions of Directive 89/48, which differ in places, as has been noted in paragraphs 7, 9, 11 and 12 of this judgment, from other language versions by mentioning the words 'another Member State' whereas the large majority of language versions simply contain the words 'Member State' or 'host Member State', cannot be accepted.

53 In that connection, it is clear from settled case-law that the need for an application, and hence a uniform interpretation, of the provisions of Community law makes it impossible, in cases of doubt, for the text of a provision to be considered in isolation in one of its versions, but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (Case 29/69 *Stauder* [1969] ECR 419, paragraph 3; Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 36; and Case C-174/05 *Zuid-Hollandse Milieufederatie and Natuur en Milieu* [2006] ECR I-2443, paragraph 20).

54 Furthermore, while it has been held that Directive 89/48 does not contain any limitation as regards the Member State in which an applicant must have acquired his professional qualifications (Case C-274/05 *Commission* v *Greece* [2008] ECR I-7969, paragraph 28, and Case C-286/06 *Commission* v *Spain* [2008] ECR I-8025, paragraph 62), that case-law nonetheless establishes a distinction between the geographical place in which education and training take place and the education system to which these belong. In those judgments, the parties concerned had pursued education and training covered by an education system other than that of the Member State in which they sought to rely on their professional qualifications.

55 Directive 89/48 seeks to remove obstacles to the pursuit of a profession in a Member State other than that which issued the diploma establishing the professional qualifications concerned. It is clear from the first, third and fifth recitals in the preamble to that directive that a certificate attesting professional qualifications cannot be treated in the same way as a 'diploma' for the purposes of that directive unless those qualifications were acquired, wholly or in part, under the education system of the Member State which issued the certificate in question. The Court has also stated that a diploma facilitates the taking-up or pursuit of a profession in so far as it proves the possession of an additional qualification (see, to that effect, Case C-19/92 *Kraus* [1993] ECR I-1663, paragraphs 18 to 23, and Case C-285/01 *Burbaud* [2003] ECR I-8219, paragraphs 47 to 53).

56 The Spanish homologation does not provide evidence of any additional qualification. In that connection, neither homologation nor enrolment in the register of one of the 'colegios de ingenieros técnicos industriales' in Catalonia was based on an examination of the qualifications or professional experience acquired by Mr Cavallera.

57 To accept, in such circumstances, that Directive 89/48 may be relied on in order to secure access to the regulated profession at issue in the main proceedings in Italy would be tantamount to allowing a person who has merely obtained a qualification awarded by that Member State which does not in itself provide access to that regulated profession none the less to gain access to that profession, without the homologation certificate obtained in Spain providing evidence that the holder has acquired an additional

qualification or professional experience. Such a result would be contrary to the principle enshrined by Directive 89/48 and set out in the fifth recital in its preamble, according to which Member States reserve the option of fixing the minimum level of qualification necessary to guarantee the quality of services provided in their territory.

58 It follows from all of the foregoing that Article 1(a) of Directive 89/48 must be interpreted as meaning that the definition of the concept of 'diploma' set out therein does not include a certificate issued by a Member State which does not attest any education or training covered by the education system of that Member State and is not based on either an examination taken or professional experience acquired in that Member State.

59 Accordingly, the answer to the first question is that the provisions of Directive 89/48 cannot be relied on, for the purpose of gaining access to a regulated profession in a host Member State, by the holder of a certificate issued by an authority of another Member State which does not attest any education or training covered by the education system of that Member State and is not based on either an examination taken or professional experience acquired in that Member State.

60 In the light of the answer to the first question, there is no need to answer the second question.

Costs

61 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:

The provisions 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 cannot be relied on, for the purpose of gaining access to a regulated profession in a host Member State, by the holder of a certificate issued by an authority of another Member State which does not attest any education or training covered by the education system of that Member State and is not based on either an examination taken or professional experience acquired in that Member State.

[Signatures]