JUDGMENT OF THE COURT

8 July 1999 *

In Case C-234/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Juzgado de lo Social No 4 de Madrid, Spain, for a preliminary ruling in the proceedings pending before that court between

Teresa Fernández de Bobadilla

and

Museo Nacional del Prado,

Comité de Empresa del Museo Nacional del Prado,

Ministerio Fiscal

on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC),

* Language of the case: Spanish.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), C. Gulmann, J.L. Murray, D.A.O. Edward (Rapporteur), H. Ragnemalm and L. Sevón, Judges,

Advocate General: N. Fennelly,

Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Ms Fernández de Bobadilla, by José Maria Villalvilla Muñoz, of the Madrid Bar,

— the Ministerio Fiscal, by Joaquín Sánchez-Covisa Villa, Teniente Fiscal at the High Court of Justice of the Madrid Community,

— the Spanish Government, by Santiago Ortiz Vaamonde, Abogado del Estado, acting as Agent,

— the Finnish Government, by Holger Rotkirch, Ambassador, Head of the Legal Service in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by Pieter Jan Kuijper, Legal Adviser, and Isabel Martínez del Peral, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Fernández de Bobadilla, the Spanish Government and the Commission at the hearing on 14 July 1998,

after hearing the Opinion of the Advocate General at the sitting on 15 October 1998,

gives the following

Judgment

1 By order of 30 May 1997, received at the Court on 26 June 1997, the Juzgado de lo Social No 4 de Madrid (Social Court No 4, Madrid) referred to the Court under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC).

2 That question was raised in proceedings between Ms Fernández de Bobadilla, on the one hand, and the Museo Nacional del Prado (hereinafter 'the Prado'), the Comité de Empresa del Museo Nacional del Prado and the Ministerio Fiscal, on the other.

3 Ms Fernández de Bobadilla is a Spanish national resident in Madrid. After obtaining her Bachelor of Arts degree in History of Art at the University of Boston, USA, she undertook — with the help of a grant from the Prado — post-graduate studies in fine arts restoration at Newcastle upon Tyne Polytechnic in the United Kingdom, obtaining a Master of Arts degree in 1989.

4 From 1989 to 1992, Ms Fernández de Bobadilla worked for the Prado as a restorer of works of art on paper under a temporary contract. She also worked for various other studios and museums including the Paolo Crisistomi Studio, Rome, the Lázaro Galdiano museum, the Spanish Natural Sciences Museum, the National Institute for Chalcography, the San Fernando Royal Academy of Fine Arts and the Focus Foundation, Seville.

5 By virtue of Article 1(1) of Royal Decree No 1432/85 of 1 August 1985, as amended by Royal Decrees Nos 1142/96 and 2461/96, the Prado is an autonomous administrative body attached to the Ministry of Culture for which the Minister is directly responsible. The Prado has legal personality and capacity to act. At the material time it was governed, *inter alia*, by the law on the legal regime applicable to autonomous official bodies and by the legislation on State museums.

6 One of the terms of the collective agreement entered into in 1988 by the Prado and staff representatives provides that the post of restorer is to be reserved to persons who possess the qualification awarded by the restoration department of the Faculty of Fine Arts or by the School of Arts as applied to the restoration of works of art, or any other foreign qualification officially recognised by the competent body.

7 On 9 October 1992, Ms Fernández de Bobadilla applied to have the degree awarded to her by Newcastle upon Tyne Polytechnic officially recognised as equivalent to the Spanish degree in the conservation and restoration of cultural assets. Having considered her request, the relevant department of the Ministry of Education informed her by notice of 9 December 1993 that, in order to obtain official recognition, she would have to demonstrate, through examinations arranged in two parts, sufficient knowledge of the 24 subjects listed in the notice. Those examinations have not so far taken place.

8 In the meantime, on 17 November 1992, the Prado organised a competition to fill a vacancy for a permanent post as restorer of works of art on paper. Ms

Fernández de Bobadilla's application was rejected on the ground that she did not fulfil the requirements laid down in the collective agreement.

9 Ms Fernández de Bobadilla viewed the imposition of such requirements as amounting to a violation of the Spanish Constitution and a barrier to the right to freedom of movement for workers protected by Article 48 of the Treaty. Accordingly, in 1996, she brought an action before the national court for annulment of the provision in question.

10 Uncertain as to the manner in which Article 48 of the Treaty was to be interpreted, the Juzgado de lo Social No 4 de Madrid decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does the provision contained in the Collective Agreement of an Autonomous Organisation of the Spanish State which requires, for pursuit of the profession of restorer (a non-regulated profession), prior validation of the academic qualification obtained in another Community country — such validation involving a comparison of the study programmes in Spain and in the other country and the passing of theoretical and practical tests in the subjects in the Spanish programme of studies which do not appear in the programme of studies of the other Community country in question — infringe the right to freedom of movement for workers?'

11 Community law does not preclude a public body such as the Prado from making the assignment of a post conditional on a candidate's possessing one or more qualifications to demonstrate his suitability for the post, provided, however, that that requirement does not constitute an unjustified barrier to the effective exercise of the fundamental freedoms guaranteed by Article 48 of the Treaty.

12 Public bodies must also comply with 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) and 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 (OJ 1992 L 209, p. 25).

13 According to the national court, the profession of restorer of cultural assets is not regulated in Spain for two reasons. First, it does not appear on the list of professions covered by the Spanish legislation implementing Directives 89/48 and 92/51 and, second, there is no directive specifically governing that profession. Furthermore, according to a judgment of the Spanish Constitutional Court of 6 July 1989 (Case 122/89), the fact that entry to a particular profession is subject to certain requirements or conditions is not sufficient to make it a regulated profession.

14 It must, however, be borne in mind that the definition of a regulated profession for the purposes of Directives 89/48 and 92/51 is a matter of Community law.

15 It must therefore be determined first of all whether, if a public body in a Member State through a collective agreement restricts the right to practice a given profession within that body to candidates who possess a qualification awarded by an educational establishment situated in that Member State or a foreign qualification recognised as equivalent by the competent national body, that profession must be deemed to be regulated for the purposes of Directives 89/48 and 92/51.

16 The effect of Article 1(d) of Directive 89/48 and Article 1(f) of Directive 92/51 is that, where the conditions for taking up or pursuing a professional activity are directly or indirectly governed by legal provisions, whether laws, regulations or

administrative provisions, that activity constitutes a regulated profession (see Case C-164/94 *Aranitis* [1996] ECR I-135, paragraph 18).

17 The right to take up or pursue a profession must be regarded as directly governed by legal provisions where the laws, regulations or administrative provisions of the Member State concerned create a system under which that professional activity is expressly restricted to those who fulfil certain conditions and entry to it is denied to those who do not (see *Aranitis*, cited above, paragraph 19).

18 As the Advocate General has pointed out at paragraph 23 of his Opinion, in the legal systems of many Member States, social partners conclude collective agreements regarding working conditions, including conditions of access to employment, which are not only binding on the parties and the employers and workers whom they represent, but are also binding, or produce effects, on third parties.

19 The Court has already held that a Member State may leave the implementation of the objectives pursued by Community directives to social partners through collective agreements, but the State is still responsible for fulfilling its obligation to ensure that the directives are fully implemented by adopting such provisions as may be appropriate (Case 143/83 *Commission* v *Denmark* [1985] ECR 427, paragraphs 8 and 9).

20 Thus, the terms of a collective agreement which, in a general way, governs the right to take up or pursue a profession may constitute 'laws, regulations or administrative provisions' for the purposes of Article 1(d) of Directive 89/48 and Article 1(f) of Directive 92/51, particularly where that is the result of a single administrative policy laid down at national level.

21 Furthermore, as the Finnish Government has pointed out, the effectiveness of Directives 89/48 and 92/51 would be impaired if they did not apply to areas governed by collective agreements.

22 Next, consideration must be given to the question whether a collective agreement does, in a general way, govern the right to take up or pursue a profession. If the terms of an agreement entered into by a public body such as the Prado and its staff representatives are common to other collective agreements entered into on an individual basis by other public bodies of the same kind and, furthermore, are the result of a single administrative policy laid down at national level, then those agreements may be sufficiently general in scope for their terms to be classified as rules regulating a professional activity for the purposes of Directives 89/48 and 92/51.

23 In contrast, where the terms of a collective agreement govern relations only between the employer and the employees within a single public body, they will in most cases not be sufficiently general in scope for the relevant professional activities to be classified as a regulated profession for the purposes of Directives 89/48 and 92/51.

24 It follows from the foregoing that it is for the national court to determine the scope of the rule which requires applicants for a post of restorer of cultural assets to possess Spanish diplomas or foreign qualifications recognised as equivalent by the competent national body in order to establish whether or not in Spain the right to take up or pursue that profession is regulated for the purposes of Directives 89/48 and 92/51.

25 If the national court finds that the profession is regulated in Spain, it will also have to conclude that one or other of Directives 89/48 and 92/51 applies to the proceedings before it.

26 If the national court considers that either of those two directives applies, it must then go on to examine whether Ms Fernández de Bobadilla fulfils the conditions laid down in the directive concerned so as to establish whether she may apply for a permanent post as restorer of cultural assets.

27 Finally, where one or other of Directives 89/48 or 92/51 is applicable, a public body in a Member State which is bound to comply with the rules laid down in the relevant directive can no longer require that a candidate's qualifications be granted official recognition by the competent national authorities.

28 If the profession in question is not regulated for the purposes of Directives 89/48 and 92/51, Community law does not in principle preclude a public body in a Member State from restricting access to a post to candidates holding a qualification awarded by an educational establishment in that Member State or any other foreign qualification officially recognised by the competent authorities of that Member State. However, where the qualification was awarded in another Member State, the procedure for granting it official recognition must comply with the requirements of Community law.

29 The Court has already had occasion to set out, *inter alia* in Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, the conditions with which the competent authorities of a Member State must comply when they receive a request to admit a person to a profession to which entry under national law depends on the possession of a diploma or professional qualification.

30 In contrast to *Vlassopoulou*, this case concerns a Spanish national seeking to practice her profession in Spain. However, if a national of a Member State, owing to the fact that he has lawfully resided on the territory of another Member State and has acquired a professional qualification there, finds himself with regard to his State of origin in a situation which may be assimilated to that of a migrant worker, he must also be entitled to enjoy the rights and freedoms guaranteed by

the Treaty (see, to that effect, Case C-19/92 *Kraus* [1993] ECR I-1663, paragraphs 15 and 16).

31 It is clear from paragraph 16 of the judgment in *Vlassopoulou* that the competent authorities of the host Member State must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to practice that profession in another Member State by comparing the specialised knowledge and abilities certified by those diplomas with the knowledge and qualifications required by the national rules.

32 If that comparative examination of diplomas results in the finding that the knowledge and qualifications certified by the diploma awarded in another Member State correspond to those required by the national provisions, the competent authorities of the host Member State must recognise that diploma as fulfilling the requirements laid down by its national provisions. If, on the other hand, the comparison reveals that the knowledge and qualifications certified by the foreign diploma and those required by the national provisions correspond only partially, the competent authorities are entitled to require the person concerned to show that he has acquired the knowledge and qualifications which are lacking (judgment in *Vlassopoulou*, cited above, paragraph 19).

33 In that regard, the competent national authorities must assess whether the knowledge acquired by the candidate, either during a course of study or by way of practical experience, is sufficient to show possession of knowledge which is lacking (see, to that effect, the judgment in *Vlassopoulou*, cited above, paragraph 20).

34 Where no general procedure for official recognition has been laid down at national level by the host Member State, or where that procedure does not comply with the requirements of Community law as set out in paragraphs 29 to 33 of this judgment, it is for the public body seeking to fill the post itself to investigate whether the diploma obtained by the candidate in another Member State, together, where appropriate, with practical experience, is to be regarded as equivalent to the qualification required.

35 Such an obligation is all the more necessary where, as in this case, the public body in question has made a grant to the candidate to enable him to pursue his studies in another Member State and has already employed him on a temporary basis in the post to be filled. Where that is the case, the public body is in fact ideally placed to assess the candidate's actual knowledge and abilities compared to the knowledge and abilities of holders of the national diploma, as indeed the Prado was to assess Ms Fernández de Bobadilla's suitability for the post of restorer of cultural assets.

36 It follows from all of the foregoing considerations that the answer to the question referred by the national court must be that, on a proper construction, Article 48 of the Treaty:

— does not preclude the terms of a collective agreement which applies to a public body in a Member State and restricts the right to practice within that body a particular profession which is not regulated for the purposes of Directives 89/48 and 92/51 solely to those in possession of a qualification awarded by an educational establishment in that Member State or of any other foreign qualification which has been officially recognised by the competent authorities of that Member State,

— none the less requires the authorities of the host Member State which are competent to grant official recognition to foreign diplomas or to validate them — or, where no general procedure for granting official recognition has been established or where the existing procedure is incompatible with the requirements of Community law, the public body itself — to consider, in the case of diplomas awarded in another Member State, the extent to which the knowledge and qualifications certified by the diploma awarded to the person concerned correspond to the knowledge and qualifications required under the legislation of the host Member State. Where they correspond only in part, it is also for the competent national authorities — or, where appropriate, the public body itself — to assess whether the knowledge acquired by the person concerned during a course of study or by way of practical experience is sufficient to show possession of knowledge to which the foreign diploma does not attest.

Costs

37 The costs incurred by the Finnish and Spanish Governments and by the Commission, 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 action 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 Juzgado de lo Social No 4 de Madrid by order of 30 May 1997, hereby rules:

On a proper construction, Article 48 of the EC Treaty (now, after amendment, Article 39 EC):

— **does not preclude the terms of a collective agreement which applies to a public body in a Member State and restricts the right to practice within that body a particular profession which is not regulated for the purposes of Council Directives 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 and 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 solely to those in possession of a qualification awarded by an educational**

establishment in that Member State or of any other foreign qualification which has been officially recognised by the competent authorities of that Member State,

— none the less requires the authorities of the host Member State which are competent to grant official recognition to foreign diplomas or to validate them — or, where no general procedure for granting official recognition has been established or where the existing procedure is incompatible with the requirements of Community law, the public body itself — to consider, in the case of diplomas awarded in another Member State, the extent to which the knowledge and qualifications certified by the diploma awarded to the person concerned correspond to the knowledge and qualifications required under the legislation of the host Member State. Where they correspond only in part, it is also for the competent national authorities — or, where appropriate, the public body itself — to assess whether the knowledge acquired by the person concerned during a course of study or by way of practical experience is sufficient to show possession of knowledge to which the foreign diploma does not attest.

Rodríguez Iglesias	Puissochet	Hirsch
Jann	Gulmann	Murray
Edward	Ragnemalm	Sevón

Delivered in open court in Luxembourg on 8 July 1999.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President