OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 18 June 1987 *

Mr President,
Members of the Court,

1. In connection with criminal proceedings concerning unlawfully practising the occupation of football trainer, the tribunal de grande instance (Regional Court), Lille, has asked the Court whether under Articles 48 to 51 of the EEC Treaty national administrative measures affecting the freedoms and rights guaranteed by those articles must fulfil specific minimum requirements and in particular whether they must include an express statement of reasons.

Mr Georges Heylens, a Belgian national, holds a Belgian football trainer's diploma issued on 18 June 1977 by the Ecole des entraîneurs de l'union royale belge de sociétés de football association. During the 1984-85 football season he was taken on by the Lille Olympic Sporting Club ('the Club'), whose team is in the French first division. The Club took immediate steps to regularize Mr Heylen's position, but the Minister for Youth and Sport, by a letter dated 8 January 1985, informed him that the national Equivalence Committee had recommended that his diploma should not be recognized as equivalent to the corresponding French certificate, and asked him to refrain from carrying out any form of tuition for gain in France.

However, Mr Heylens did not give up training the Lille team and neither did he comply with the notice which was subsequently served upon him by the Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef). Consequently the latter summoned him and the management of the Club to appear before the tribunal de grande instance, Lille, to face charges under Article 43 of Law tribunal de grande instance 84-610 of 16 July 1984 (*Journal officiel de la République française* of 17.7.1984, p. 2288) and Article 259 of the Criminal Code with regard to the wrongful assumption of titles.

By order of 4 July 1986 the tribunal de grande instance suspended the proceedings and requested the Court of Justice to deliver a preliminary ruling under Article 177 of the EEC Treaty on the following question:

'Does the requirement that a person wishing to exercise a gainful occupation as a trainer with a sports team (Article 43 of the Law of 16 July 1984) must hold a French diploma or a foreign diploma recognized as equivalent thereto by a committee whose rulings do not state the reasons on which they are based and against whose decisions no specific legal remedy is available constitute a restriction on freedom of movement for workers as defined by Articles 48 to 51 of the EEC Treaty, in the absence of any directive applicable to that occupation?'

In the course of the proceedings before the Court of Justice, written observations have been submitted by Unectef, the defendants

* Translated from the Italian.

in the main proceedings, the French Republic, the Kingdom of Denmark and the Commission of the European Communities. With the exception of the French Government those parties also took part in the hearing before the Court.

2. For a better appreciation of the issue before the Court it is useful to adumbrate the French rules with regard to the recognition of the 'equivalence' of foreign football trainers' diplomas. They are set out in the first place in the Order of 30 July 1965 of the State Secretary for Youth and Sport listing the diplomas which give entitlement to practise the occupation of physical education or sports master (*Journal officiel de la République française* of 26.10.1965, p. 9457). Article 6 of that order sets up a national committee to consider applications from holders of foreign diplomas; however, the power of decision with regard to such applications is vested in the State Secretary himself, who is to take individual decisions 'until such time as relevant agreements have been concluded with the countries concerned'.

A person who practises the occupation of trainer unlawfully is liable to a fine (of FF 6 000 to FF 50 000) or a term of imprisonment (six months to one year) or both under Article 43 of Law No 84-610 of 16 July 1984. The first paragraph of that article provides as follows: 'It shall be unlawful for any person, save for the officials of the State in the performance of their duties, to teach physical or sporting activities for gain, as a principal or second occupation, in full-time or seasonal employment, or to assume the title of teacher, trainer, instructor or master, or any other similar title, unless he holds a diploma certifying that he has the qualifications and aptitude for such employment. That diploma shall be a French diploma drawn up and delivered, or delivered for a qualification deemed to be equivalent, by the State, ... or a foreign diploma recognized as equivalent thereto'.

3. Before going any further, it should be observed that by letters dated 13 June and 19 August 1985 the Minister for Youth and Sport notified Mr Heylens that he had decided to recognize his diploma as equivalent following reassessment by the Equivalence Committee. The French Government, to which the Court owes that information, admitted, however, that since that recognition is effective *ex nunc* it is without effect on the existence of the criminal offence; the problem raised by the tribunal de grande instance — to which it falls, in any event, to assess whether the interpretation which the Court of Justice has been requested to give is still pertinent for the purposes of the judgment — therefore remains completely relevant.

But in order to provide the national court with an answer which is truly useful its question must be rephrased somewhat, for applications for the recognition of the equivalence of foreign diplomas are not in fact decided on by the Equivalence Committee. On the contrary, Article 6 of the Order of 30 July 1965 (cited above) provides that following examination of such applications by the Equivalence Committee the decisions thereupon are to be taken by the State Secretary for Youth and Sport. Since the Committee's recommendation takes the form of a mere preparatory measure for the final decision, it therefore has no external relevance and hence cannot affect the situation of the parties concerned.

If that is the position and it is true that the applicant is entitled to have recourse, as against the Minister's decision, to the normal remedies available under the French legal system, it is certainly not contrary to Community law that an action will not lie

against the Committee's non-binding opinion. Hence by stressing that aspect the tribunal de grande instance has placed a non-existent problem before the Court; consequently the scope of its question must be extended by rephrasing it as I did at the beginning of this Opinion. That is to say, the question must be understood as seeking to establish whether, as a result of the Community rules on the movement of persons, national decisions affecting the rights given to migrants must comply with a number of minimum requirements, including the duty to give an express statement of reasons.

4. The relevant Community rules are laid down by Articles 48 to 58 of the EEC Treaty and, specifically as regards migrant workers, by Regulation No 1612/68 of the Council of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 475). Article 45 of Regulation No 1612/68 provides that the Commission is to submit to the Council 'proposals aimed at abolishing, in accordance with the conditions of the Treaty, restrictions on eligibility for employment of workers who are nationals of Member States, where the absence of mutual recognition of diplomas, certificates or other evidence of formal qualifications may prevent freedom of movement for workers'. In this sector, as in others, no directive — the directive being the instrument by which the Council is to abolish the restrictions in question — has yet seen the light of day. Can it be inferred therefrom that the restrictions in the various national legal systems are unlawful? More specifically, is each Member State entitled to lay down a requirement for a diploma issued by its national authorities, thereby excluding the validity of qualifications obtained in the country of origin or in another country albeit still a Member State of the Community?

The only possible answer, it seems to me, must be in the negative as a result of three principles expressly laid down in the Treaty or inferred by the case-law interpreting the Treaty:

(a) the Treaty requirement that Member States must abstain from any measure which could jeopardize the attainment of the objectives of the Treaty (second paragraph of Article 5);

(b) the blanket prohibition of discrimination laid down by Article 7; and

(c) the direct effect of provisions which, pursuant to that rule, provide for the abolition of restrictions on the movement of persons and services.

The Court's pronouncements on (b) and (c) are now numerous: see in particular the judgments of 21 June 1974 in Case 2/74 *Reyners* v *Belgian State* [1974] ECR 631, paragraph 32; 3 December 1974 in Case 33/74 *Van Binsbergen* [1974] ECR 1299, paragraphs 24 to 27; 24 October 1974 in Case 36/74 *Walrave and Koch* [1974] ECR 1405, paragraphs 4, 5 and 6; 28 June 1977 in Case 11/77 *Patrick* [1977] ECR 1199, paragraphs 9 to 13; 7 February 1979 in Case 136/78 *Auer* [1979] ECR 437, paragraph 24; and 12 July 1984 in Case 107/83 *Klopp* [1984] ECR 2971, paragraph 11.

Consequently the existence of a straightforward power to negate the validity of certificates obtained outside the national territory but within the Community must be ruled out. On the contrary, even today the Member States must recognize that such certificates are valid, at least in as much as they certify that the holders are in possession of qualifications equivalent to the competence certified by the corresponding national documents (see, moreover, the

judgment of 28 April 1977 in Case 71/76 *Thieffry* [1977] ECR 765, paragraph 19). As the French and Danish Governments observe, the absence of directives on the mutual recognition of diplomas will hence have one effect only; it will leave the Member States the power independently to lay down rules governing the recognition procedures. However, there is no doubt that that power constitutes objective discrimination against holders of foreign diplomas. It follows that in order not to increase their disadvantages and hence in order not to infringe Community law, the rules laid down by the Member State must fulfil a two-fold requirement: they must stipulate no more than is absolutely necessary, that is to say they must introduce machinery designed simply to ascertain whether the applicant's knowledge is comparable to that certified by the national certificate, and they must hedge that machinery about with every safeguard to enable the applicant to exercise his freedom of movement.

5. Having said that, let us return to the national court's question as we have seen fit to rephrase it; can it be said that rules which are such that measures of the kind of the contested decision can be adopted remain within the limits of the power still vested in the Member States? The question arises above all as regards a particular characteristic of the decision in question: the complete absence of a statement of reasons. The letter of 8 January 1985 refers to an 'unfavourable opinion' delivered by the Equivalence Committee, but does not set out — indeed does not even refer to — the reasons why the Committee came out with an adverse recommendation. Neither can it be told whether the reasons were given in a document submitted to the State Secretary for his use in drawing up the final decision.

The views of the parties are manifestly at odds with each other. Mr Heylens argues that the procedure laid down by the Order of 30 July 1965 is incompatible with Community law in so far as it allows the French authorities to disregard — without stating why — the equivalence of sports diplomas granted by other Member States. That the decision is arbitrary even from the technical point of view is shown, he states, — and I leave full responsibility for his words with him — by the fact that 'high quality Belgian football is at least as good as French football of the highest quality'. Lastly, he suspects that the absence of a requirement to state reasons is a 'corporatist' expedient designed to protect French trainers from 'foreign competition'.

For its part, the French Government emphasizes that Mr Heylens has the benefit of a specific safeguard: he can challenge the decision before the competent court or contest its legality by way of interlocutory objection lodged before the criminal court, which could either decide on the legality of the decision itself or refer the matter for a preliminary ruling to the administrative court. The Danish Government is more cautious. While conceding that the absence of reasons certainly does not facilitate judicial review of the lawfulness of the measure, it considers that that defect, although open to criticism, does not go so far as to infringe the Community rules on the free movement of persons.

Finally, the Commission points out that when, as in this case, what is in question is a fundamental freedom guaranteed by the Treaty the national rules must fulfil at least two requirements: they must enable the

person concerned to ascertain the reasons for the refusal in his case and to bring an action against the administrative authorities before the courts.

6. Personally, I doubt whether under French law a measure refusing to recognize the equivalence of a foreign sports diploma is in fact exempt from the duty to state reasons (see Law No 79/587 of 21 July 1979 and the circulars of 31 August 1979 and 10 January 1980 of the Prime Minister, *Journal officiel de la République française* 1979, pp. 1711 and 2146, and JORF 1980, p. 465, respectively). However, whether that impression is correct or not and, if so, whether an unlawful practice is involved is for the tribunal de grande instance to determine. As has been made clear above, the Court's role is different: it has to establish whether or not national rules which do not require but authorize the administration to state reasons for decisions of refusal conflict with Community law.

In my view, there is a conflict: it is sufficient in fact to have regard to what is actually involved before one gets to the stage of the 'specific safeguard' invoked by the French Government. That the assessment as to the equivalence of a diploma can be handed down without any reasons being given faces the person concerned with a difficult choice: should he bring the matter before the competent court in the country to which he has moved, if only to find out the reasons (possibly the most commonplace and avoidable ones) which caused him to be refused recognition, or, since it is impossible for him to assess the justification of the measure, should he forgo any attempt to utilize the legal remedies conferred on him, thus avoiding the risk of legal proceedings which are expensive and, as far as he is concerned, of absolutely unpredictable outcome.

Indeed, that dilemma indubitably constitutes an unwarranted aggravation of a situation which is in itself discriminatory, and in this case inevitably so, as between national and foreign trainers as a result of the absence of a directive. However, its most serious consequence is that for the foreigner involved it alters the ordinary assessments — let us say the ordinary cost/benefit analysis — which the beneficiaries of safeguards in the shape of legal remedies carry out before deciding to press ahead with those remedies. To state — as the French Government does — that in the event that an action is brought the administration must divulge the reasons for its refusal is correct, but it is also misleading, since if he is not aware what those reasons are a national of another Member State is not free to decide whether he should avail himself of his right to bring an action.

Furthermore, the alteration and the additional discrimination which I have just identified inevitably affect the foreign trainer's freedom of movement (if he decides not to bring an action, he decides in effect to leave the host country); and if that is correct it seems obvious to me that there is an implied obligation on the part of the Member States under Articles 48 to 51 of the EEC Treaty to obviate those consequences by requiring the national authorities to state reasons for the decisions by which they refuse to recognize the validity of foreign certificates.

Confirmation of the above reasoning — in particular as regards the insufficiency of the protection afforded by the mere possibility of legal redress — is provided by Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of

foreign nationals which are justified on grounds of public policy, public security or public health (Official Journal, English Special Edition 1963-64, p. 117). Article 8 thereof requires the Member States to guarantee all Community citizens access to the legal remedies available to nationals; nevertheless Article 6 provides that 'the person concerned shall be informed of the grounds of public policy, public security, or public health upon which the (unfavourable) decision taken . . . (in the case of a Community national) is based, unless this is contrary to the interests of the security of the State involved'. It is also significant that the 'dual safeguard' called for by those provisions is stressed by the judgments of 28 October 1975 in Case 36/75 *Rutili* [1975] ECR 1219, paragraphs 36 to 39; 22 May 1980 in Case 131/79 *Santillo* [1980] ECR 1585, paragraphs 14 and 19; and 18 May 1982 in Joined Cases 115 and 116/81 *Adoui and Cournuaille* [1982] ECR 1665, paragraph 13.

In the course of the oral proceedings, the representative of the Danish Government argued on the basis of Article 6 of Directive 64/221/EEC that the Community legislature *dixit ubi voluit* and hence a duty to give reasons did not exist where, as in this case, there was no express provision for such a requirement. However, there is no merit in that argument — and not only because it basically denies the very possibility of interpreting the provisions systematically. For such an argument to hold good it would have to be backed by counter evidence; but since there is no directive on football trainers there is no basis from which it might be possible to infer that *ubi tacuit* the legislature *noluit* or that a lack of intention can be inferred from the absence of a relevant provision.

7. In the light of all the foregoing considerations I propose that the Court should answer the question on which the tribunal de grande instance, Lille, asked the Court to give a preliminary ruling by order of 4 July 1986 in connection with criminal proceedings brought against Georges Heylens and others in the following terms:

'Articles 7 and 48 to 51 of the EEC Treaty must be interpreted as follows: a national law or administrative practice whereby recognition of the equivalence of a football trainer's diploma issued by another Member State may be refused without any reasons being required to be given, thus preventing its holder from practising as a football trainer, must be deemed to be incompatible with the aforementioned Treaty provisions.'