JUDGMENT OF THE COURT (Fifth Chamber)
14 September 2000 *

In Case C-238/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal Administratif de Châlons-en-Champagne, France, for a preliminary ruling in the proceedings pending before that court between

Hugo Fernando Hocsman

and

Ministre de l'Emploi et de la Solidarité,

on the interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC),

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward (Rapporteur), President of the Chamber, J.C. Moitinho de Almeida, C. Gulmann, J.-P. Puissochet and P. Jann, Judges,

Advocate General: F.G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Dr Hocsman, by G. Chemla, of the Châlons-en-Champagne Bar,

— the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in that directorate, acting as Agents,

— the Spanish Government, by M. López-Monís Gallego, Abogado del Estado, acting as Agent,

— the Italian Government, by Professor U. Leanza, Head of the Legal Affairs Department, Ministry of Foreign Affairs, acting as Agent, assisted by D. Del Gaizo, Avvocato dello Stato,

— the Finnish Government, by H. Rotkirch and T. Pynnä, Valtionasiamiehet, acting as Agents,

— the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, and R. Thompson, Barrister,

— the Commission of the European Communities, by A. Caeiro, Principal Legal Adviser, and B. Mongin, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Dr Hocsman, represented by G. Chemla; the French Government, represented by C. Bergeot, Chargé de Mission in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent; the Spanish Government, represented by M. López-Monís Gallego; the Italian Government, represented by D. Del Gaizo; the Netherlands Government, represented by M.A. Fierstra, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; and the Commission, represented by B. Mongin, at the hearing on 17 June 1999,

after hearing the Opinion of the Advocate General at the sitting on 16 September 1999,

gives the following

Judgment

1 By judgment of 23 June 1998, received at the Court on 7 July 1998, the Tribunal Administratif (Administrative Court), Châlons-en-Champagne, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC).

2 That question was raised in proceedings between Dr Hocsman and the French Ministre de l'Emploi et de la Solidarité (Minister for Employment and Solidarity) concerning a decision not to authorise him to practise medicine in France.

Community law

3 Article 52 of the EC Treaty provides:

'Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period....

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons... under the conditions laid down for its own nationals by the law of the country where such establishment is effected...'.

4 Article 57(1) and (3) of the EC Treaty (now, after amendment, Article 47(1) and (3) EC) provides:

'1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, acting in accordance with the procedure referred to in Article 189b, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

...

3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.'

5 Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1) applies, as stated in Article 1, to the activities of doctors working in a self-employed or employed capacity who are nationals of the Member States.

6 Under Article 2 of Directive 93/16:

'Each Member State shall recognise the diplomas, certificates and other evidence of formal qualifications awarded to nationals of Member States by the other Member States in accordance with Article 23 and which are listed in Article 3, by giving such qualifications, as far as the right to take up and pursue the activities of a doctor is concerned, the same effect in its territory as those which the Member State itself awards.'

7 Articles 23 and 24 of Directive 93/16, which appear in Title III, 'Coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors', deal with the requirements which medical training must meet for the diploma, certificate or other evidence of formal qualifications awarded following that training to be recognised in the other Member States. Article 23 concerns diplomas, certificates or other evidence of formal qualifications in medicine awarded following basic training, while Article 24 concerns diplomas, certificates or other evidence of formal qualifications in specialised medicine.

8 Article 23 provides:

'1. The Member States shall require persons wishing to take up and pursue a medical profession to hold a diploma, certificate or other evidence of formal qualifications in medicine referred to in Article 3 which guarantees that during his complete training period the person concerned has acquired:

(a) adequate knowledge of the sciences on which medicine is based and a good understanding of the scientific methods including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data;

(b) sufficient understanding of the structure, functions and behaviour of healthy and sick persons, as well as relations between the state of health and physical and social surroundings of the human being;

(c) adequate knowledge of clinical disciplines and practices, providing him with a coherent picture of mental and physical diseases, of medicine from the points of view of prophylaxis, diagnosis and therapy and of human reproduction;

(d) suitable clinical experience in hospitals under appropriate supervision.

2. A complete period of medical training of this kind shall comprise at least a six-year course or 5 500 hours of theoretical and practical instruction given in a university or under the supervision of a university.

3. In order to be accepted for this training, the candidate must have a diploma or a certificate which entitles him to be admitted to the universities of a Member State for the course of study concerned.

4. In the case of persons who started their training before 1 January 1972, the training referred to in paragraph 2 may include six months' full-time practical training at university level under the supervision of the competent authorities.

5. 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 authorise holders of diplomas, certificates or other evidence of formal qualifications which have not been obtained in a Member State to take up and pursue the activities of a doctor.'

9 Article 24 provides:

'1. Member States shall ensure that the training leading to a diploma, certificate or other evidence of formal qualifications in specialised medicine meets the following requirements at least:

(a) it shall entail the successful completion of six years' study within the framework of the training course referred to in Article 23; the training leading to the award of the diploma, certificate or other evidence of specialisation in dental, oral and maxillo-facial surgery (basic medical and dental training) also entails the successful completion of the training course

as a dental practitioner referred to in Article 1 of Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners;

(b) it shall comprise theoretical and practical instruction;

(c) it shall be a full-time course supervised by the competent authorities or bodies pursuant to point 1 of Annex I;

(d) it shall be in a university centre, in a teaching hospital or, where appropriate, in a health establishment approved for this purpose by the competent authorities or bodies;

(e) it shall involve the personal participation of the doctor training to be a specialist in the activity and in the responsibilities of the establishments concerned.

2. Member States shall make the award of a diploma, certificate or other evidence of formal qualifications in specialised medicine subject to the possession of one of the diplomas, certificates or other evidence of formal qualifications in medicine referred to in Article 23. Issue of the diploma, certificate or other evidence of specialisation in dental, oral and maxillo-facial surgery (basic medical and dental training) is also subject to possession of one of the diplomas, certificates or other evidence of qualifications as a dental practitioner referred to in Article 1 of Directive 78/687/EEC.'

National law

10 Article L.356 of the Code de la Santé Publique (Code of Public Health) provides:

'No one may exercise the profession of doctor, dental surgeon or midwife in France unless he is:

1. the holder of a diploma, certificate or other evidence of formal qualifications referred to in Article L.356-2...

2. a French national or a national of one of the Member States of the European Economic Community or one of the other States parties to the Agreement on the European Economic Area...

...'.

11 Under Article L.352-2 of that code, the diplomas, certificates and other evidence of formal qualifications required in order to practise the profession of doctor are either the French State diploma of *docteur en médecine* (doctor of medicine) or, where the person concerned is a national of a Member State of the European

Community or one of the other States party to the Agreement on the European Economic Area, a diploma, certificate or other evidence of formal qualifications in medicine awarded by one of those States and included in a list drawn up, in accordance with Community requirements or with those deriving from the Agreement on the European Economic Area, by a joint decree of the Minister of Health and the Minister responsible for universities.

The main proceedings

12 It appears from the documents in the case that Dr Hocsman holds a diploma of doctor of medicine awarded in 1976 by the University of Buenos Aires, Argentina, and a diploma of specialist in urology awarded in 1982 by the University of Barcelona, Spain.

13 Dr Hocsman, who is of Argentine origin, acquired Spanish nationality in 1986, and then became a French citizen in 1998.

14 In 1980 the Spanish authorities recognised Dr Hocsman's Argentine diploma as equivalent to the Spanish university degree in medicine and surgery, so allowing him to practise medicine in Spain and train there as a specialist.

15 As he was not a Spanish national at the time of his specialised studies, the qualification of specialist in urology awarded to Dr Hocsman in 1982 was an

academic title. On acquiring Spanish nationality, Dr Hocsman in 1986 obtained authorisation to practise as a specialist in urology in Spain.

16 As attested in various documents, Dr Hocsman worked in Spain for some years. After entering France in 1990, he held posts as assistant or associate specialising in urology in a number of French hospitals, including, from November 1991, the Centre Hospitalier in Laon.

17 Dr Hocsman approached the French authorities on several occasions with a view to being registered with the Ordre National des Médecins in order to practise in France.

18 By letter of 27 June 1997 the Minister for Employment and Solidarity refused to grant Dr Hocsman authorisation to practise medicine in France on the ground that he did not satisfy the conditions laid down in Article L.356 of the Code de la Santé Publique, since the Argentine diploma he held did not entitle him to practise medicine in France.

19 An action to annul that decision was brought before the Tribunal Administratif de Châlons-en-Champagne. That court considered that an interpretation of Community law was needed for it to decide the case, so it stayed proceedings and referred the following question to the Court for a preliminary ruling:

'[Does] an equivalence accorded by one Member State [mean] that another Member State is required to verify, on the basis of Article 52 of the Treaty of Rome, whether the experience and qualifications evidenced thereby correspond to those required for the award of national diplomas and other formal qualifications, in particular where the person benefiting from such equivalence

holds a diploma providing evidence of specialist training acquired in a Member State and included in the scope of a directive concerning the mutual recognition of diplomas[?]'

The question referred for a preliminary ruling

20 Dr Hocsman sees a contradiction in the fact that he has lawfully worked for some years as a specialist in urology in various hospitals in France, while at the same time his application to be registered with the Ordre National des Médecins has been rejected. In reliance on the Court's case-law on Article 52 of the Treaty, in particular Case C-340/89 *Vlassopoulou* v *Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg* [1991] ECR I-2357 and Case C-319/92 *Haim* v *Kassenzahnärztliche Vereinigung Nordrhein* [1994] ECR I-425, he submits that the French authorities' refusal to recognise his Argentine diploma in medicine is contrary to both the spirit and the letter of that article.

21 In *Vlassopoulou*, paragraph 16, the Court held that Article 52 of the Treaty must be interpreted as meaning that a Member State seised of an application for authorisation to practise a profession access to which, under national law, depends on the possession of a diploma or professional qualification must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to practise 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.

22 Applying the same principle, the Court held in *Haim*, paragraph 28, that in order to verify whether a training period requirement prescribed by the national rules is satisfied, the competent national authorities must take into account the

professional experience of the person concerned, including that which he has acquired in another Member State.

23 Since those decisions have been confirmed on several occasions (see, most recently, Case C-234/97 *Fernández de Bobadilla* v *Museo Nacional del Prado* [1999] ECR I-4773, paragraphs 29 to 31), it is settled that the authorities of a Member State to whom an application has been made by a Community national for authorisation to practise a profession access to which depends, under national law, on the possession of a diploma or professional qualification, or on periods of practical experience, must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities so certified and that experience with the knowledge and qualifications required by the national rules.

24 Those judgments are merely the expression in individual cases of a principle which is inherent in the fundamental freedoms of the Treaty.

25 The Spanish and Italian Governments, supported at the hearing by the French Government, submit that this principle does not apply to the present case. Where there is a directive on mutual recognition of diplomas, such as Directive 93/16, and the qualification held by the person concerned does not satisfy the requirements of that directive, that person may not rely directly on the Treaty provisions on fundamental Community freedoms.

26 Those Governments consider that Article 57(3) of the Treaty subjects freedom of movement of those practising the medical and allied and pharmaceutical professions to conditions specified in secondary legislation, and conclude that those persons may exercise that right only in accordance with the procedure and

conditions laid down by the secondary legislation, that is, as regards the main proceedings, by Directive 93/16.

27 They observe that the Court's case-law on the point concerned professions such as that of lawyer (at issue in *Vlassopoulou*) or estate agent (see Case C-104/91 *Colegio Nacional de Agentes de la Propiedad Inmobiliaria* v *Aguirre Borrell and Others* [1992] ECR I-3003) which at the time when those judgments were delivered were not the subject of any directive on the coordination or mutual recognition of diplomas. Those cases are therefore of no relevance to the freedom of movement of doctors, which is regulated exhaustively by Directive 93/16 as regards the determination of those who are entitled to that freedom and those who are not.

28 They add that the purpose of the restriction for the medical and allied and pharmaceutical professions introduced by Article 57(3) of the Treaty is to guarantee a high level of health protection, which is one of the objectives expressly given to the Community by Article 3(o) of the EC Treaty (now, after amendment, Article 3(p) EC). Attainment of that objective would be compromised if it were accepted that the medical or allied professions could be practised without complying with the conditions laid down by the relevant directives.

29 The Finnish and United Kingdom Governments and the Commission, on the other hand, consider that the obligations concerning mutual recognition of diplomas imposed on Member States by Article 52 of the Treaty subsist whether or not there is a Community directive in this field. The Commission observes that it would be paradoxical if the existence of a directive aimed at mutual recognition of diplomas had the effect of restricting freedom of establishment by depriving Community nationals whose diplomas did not satisfy the requirements of that directive of the possibility of relying on the principle stated in paragraphs 23 and 24 above, when they would certainly have been able to do so in the absence of such a directive.

30 In view of those observations, the scope of the principle stated in paragraphs 23 and 24 above should be clarified.

31 While that principle was indeed applied in cases concerning professions for the practice of which there were no harmonisation or coordination measures in existence at the time, its legal ambit cannot be reduced as a result of the adoption of directives on mutual recognition of diplomas.

32 The object of such directives is, as appears from Article 57(1) of the Treaty, to make it easier for persons to take up and pursue activities as self-employed persons, and hence to make the existing possibilities of taking up those activities easier for nationals of other Member States. In that context the Court has held that, if the freedom of establishment provided for by Article 52 can be ensured in a Member State either under the laws and regulations in force or by virtue of the practices of the public administration or professional associations, a person subject to Community law cannot be denied the practical benefit of that freedom solely because, for a particular profession, the directives provided for by Article 57 of the Treaty have not yet been adopted (see Case 71/76 *Thieffry* v *Conseil de l'Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraph 17).

33 The function of directives which lay down common rules and criteria for mutual recognition of diplomas is thus to introduce a system in which Member States are obliged to accept the equivalence of certain diplomas and cannot require the persons concerned to comply with requirements other than those laid down by the relevant directives.

34 Where the requirements such as those set out in Directive 93/16 are satisfied, mutual recognition of the diplomas in question renders superfluous their

recognition under the principle referred to in paragraphs 23 and 24 above. However, that principle unquestionably remains relevant in situations not covered by such directives, as in Dr Hocsman's case.

35 In such a situation, as stated in paragraph 23 above, the authorities of a Member State to whom an application has been made by a Community national for authorisation to practise a profession access to which depends, under national law, on the possession of a diploma or professional qualification, or on periods of practical experience, must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities so certified and that experience with the knowledge and qualifications required by the national rules.

36 If that comparative examination of diplomas and professional experience results in the finding that the knowledge and qualifications certified by the diploma awarded abroad correspond to those required by the national provisions, the competent authorities of the host Member State must recognise that diploma, and if appropriate also the professional experience, as fulfilling the requirements laid down by its national provisions. If, on the other hand, the comparison reveals that the knowledge and qualifications correspond only partially, those authorities are entitled to require the person concerned to show that he has acquired the knowledge and qualifications not attested (see, to that effect, *Vlassopoulou*, paragraphs 19 and 20, and *Fernández de Bobadilla*, paragraphs 32 and 33).

37 The main proceedings concern a doctor whose diploma in basic medicine from Argentina was recognised in a Member State as equivalent to the national diploma, thus allowing him to pursue specialist studies in urology in that State and obtain there a diploma of specialist in urology which, according to the documents before the Court, would have been recognised under Community law

as equivalent in all the Member States if the basic diploma had also been awarded in a Member State.

38 Dr Hocsman then also lawfully practised for several years in the host Member State precisely the same medical specialisation which he wishes to practise there in future in a self-employed capacity, which requires registration with the professional medical association of the host Member State and possession of a diploma in basic medicine awarded by the competent national authorities or recognised as equivalent to that diploma.

39 It is for the national court, or if appropriate the competent national authorities, to assess in the light of all the evidence in the case and the above considerations, whether Dr Hocsman's diploma is to be accepted as equivalent to the corresponding French diploma. In particular, it will be necessary to verify whether recognition in Spain of Dr Hocsman's diploma from Argentina as equivalent to the Spanish university degree in medicine and surgery was given on the basis of criteria comparable to those whose purpose, in the context of Directive 93/16, is to ensure that Member States may rely on the quality of the diplomas in medicine awarded by the other Member States.

40 Accordingly, the answer to be given to the national court's question must be that Article 52 of the Treaty is to be interpreted as meaning that where, in a situation not regulated by a directive on mutual recognition of diplomas, a Community national applies for authorisation to practise a profession access to which depends, under national law, on the possession of a diploma or professional qualification, or on periods of practical experience, the competent authorities of the Member State concerned must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities

certified by those diplomas and that experience with the knowledge and qualifications required by the national rules.

Costs

41 The costs incurred by the French, Spanish, Italian, Netherlands, Finnish and United Kingdom 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 (Fifth Chamber),

in answer to the question referred to it by the Tribunal Administratif de Châlons-en-Champagne by judgment of 23 June 1998, hereby rules:

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) is to be interpreted as meaning that where, in a situation not regulated by a directive on

mutual recognition of diplomas, a Community national applies for authorisation to practise a profession access to which depends, under national law, on the possession of a diploma or professional qualification, or on periods of practical experience, the competent authorities of the Member State concerned must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities certified by those diplomas and that experience with the knowledge and qualifications required by the national rules.

Edward Moitinho de Almeida Gulmann

Puissochet Jann

Delivered in open court in Luxembourg on 14 September 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber