JUDGMENT OF THE COURT (Second Chamber)

23 October 2008 *

In Case C-274/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 4 July 2005,

Commission of the European Communities, represented by G. Zavvos and H. Støvlbæk, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by E. Skandalou, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Greek.

THE COURT (Second Chamber),

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

Advocate General: Y. Bot,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 January 2007,

after hearing the Opinion of the Advocate General at the sitting on 19 April 2007

gives the following

Judgment

1 By its application the Commission of the European Communities seeks a declaration from the Court that:

— by failing to recognise the diplomas awarded by the competent authorities of another Member State in the context of franchised education and training;

— by providing for the application of compensatory measures in more cases than those allowed by the directive;

— by entrusting to the Council Responsible for Recognising Professional Equivalence of Higher Education Qualifications (Symvoulio Anagnoriseos Epangelmatikis Isotimias Titlon Tritovathmias Ekpaidefsis; 'the Saeitte') the power to assess whether 'the educational establishment in which the applicant completed his education and training belongs to the higher education sector' and whether 'the applicant has the necessary professional experience, in a case where the duration of the education and training falls short by at least one year of that required in Greece in order to pursue that profession';

— by failing to take into account the professional recognition of qualifications as regards employment in the public sector and registration in the Technical Chamber of Greece, and

— by requiring, for registration in that technical chamber, the submission of supporting documents validated by a Greek consular authority and translated by the Ministry for Foreign Affairs or by a lawyer,

the Hellenic Republic has failed to fulfil its obligations under Articles 1, 3, 4, 7, 8 and 10 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), as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 (OJ 2001 L 206, p. 1; 'Directive 89/48').

2 The principal question of law raised in this case is analogous to that in the case which gave rise to today's judgment in Case C-286/06 *Commission* v *Spain* [2008] ECR I-8025. These cases both concern the extent to which the provisions of Directive 89/48 may be relied upon in order to oblige a Member State to recognise diplomas awarded following studies in an individual's own Member State by the authorities of another Member State.

Legal context

Community legislation

3 According to the third and fourth recitals in the preamble to Directive 89/48, the purpose of the directive is to introduce a general system for the recognition of diplomas such as to enable nationals of Community countries to pursue all those professional activities which in a host Member State are dependent on the completion of post-secondary education and training, provided that they hold diplomas

preparing them for those activities awarded on completion of a course of studies lasting at least three years and issued in another Member State.

The concept of 'diploma'

4 Article 1(a) 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 equivalent 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'.

The obligation to recognise

5 The first paragraph of Article 3 of Directive 89/48 provides that a host Member State which makes the taking up of a profession subject to possession of a diploma may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up that profession if the applicant adduces certain qualifications specified in that provision. That is the case in particular 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.

The compensatory measures

6 Notwithstanding Article 3 of Directive 89/48, Article 4 thereof authorises the host Member State, in certain circumstances which are set out in that article, to require the applicant to provide evidence of professional experience of a specific duration, to complete an adaptation period not exceeding three years or to take an aptitude test ('the compensatory measures').

7 According to the third subparagraph of Article 4(1)(b) of Directive 89/48, the host Member State which imposes compensatory measures must, in principle, leave the choice between an adaptation period and an aptitude test to the applicant. By derogation from that principle, the host Member State may stipulate either an adaptation period or an aptitude test for professions 'whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity'. The introduction of derogations for other professions as regards an

applicant's right to choose is subject to the application of the procedure laid down in Article 10 of that directive, which presupposes in particular communication of the draft derogation to the Commission and gives the latter the option of taking a decision to the contrary within three months of its notification.

Provisions relating to professions regulated by associations or organisations recognised by the State

8 Article 1(d) of Directive 89/48 draws a distinction between professional activities regulated directly or indirectly by the State and those regulated by associations or organisations recognised by the State. According to that provision, the following definitions apply:

'regulated professional activity: a professional activity, in so far as the taking up or pursuit of such activity or one of its modes of pursuit in a Member State is subject, directly or indirectly by virtue of laws, regulations or administrative provisions, to the possession of a diploma. The following in particular shall constitute a mode of pursuit of a regulated professional activity:

— pursuit of an activity under a professional title, in so far as the use of such a title is reserved to the holders of a diploma governed by laws, regulations or administrative provisions,

— pursuit of a professional activity relating to health, in so far as remuneration and/or reimbursement for such an activity is subject by virtue of national social security arrangements to the possession of a diploma.

Where the first subparagraph does not apply, a professional activity shall be deemed to be a regulated professional activity if it is pursued by the members of an association or organisation the purpose of which is, in particular, to promote and maintain a high standard in the professional field concerned and which, to achieve that purpose, is recognised in a special form by a Member State and:

— awards a diploma to its members,

— ensures that its members respect the rules of professional conduct which it prescribes, and

— confers on them the right to use a title or designatory letters, or to benefit from a status corresponding to that diploma.

A non-exhaustive list of associations or organisations which, when this Directive is adopted, satisfy the conditions of the second subparagraph is contained in the Annex. Whenever a Member State grants the recognition referred to in the second subparagraph to an association or organisation, it shall inform the Commission thereof, which shall publish this information in the *Official Journal of the European Communities'*.

9 Article 7(3) of Directive 89/48, which lays down a specific provision for professions regulated by an association or organisation within the meaning of the second subparagraph of Article 1(d) of that directive, is worded as follows:

'Where a profession is regulated in the host Member State by an association or organisation referred to in Article 1(d), nationals of Member States shall only be entitled to use the professional title or designatory letters conferred by that organisation or association on proof of membership.

Where the association or organisation makes membership subject to certain qualification requirements, it may apply these to nationals of other Member States who are in possession of a diploma within the meaning of Article 1(a) or a formal qualification within the meaning of Article 3(b) only in accordance with this Directive, in particular Articles 3 and 4.'

Evidence which may be required by the host Member State

10 Pursuant to Article 8(1) of Directive 89/48, the host Member State is to accept as proof that the conditions laid down in Articles 3 and 4 of that directive are satisfied the certificates and documents issued by the competent authorities in the Member States, which the person concerned is to submit in support of his application to pursue the profession concerned.

National legislation

11 Presidential Decree 165/2000 of 28 June 2000 (FEK A' 149), as amended by Presidential Decrees 373/2001 of 22 October 2001 (FEK A' 251) and 385/2002 of 23 December 2002 (FEK A' 334; 'Decree 165/2000'), is intended to transpose Directive 89/48 into the Greek legal system.

12 Article 10 of Decree 165/2000 conferred exclusive powers on the Saeitte, which, pursuant to Article 11 of that decree, was made responsible for adjudicating on applications for recognition of higher education diplomas falling within the scope of Directive 89/48.

13 Where the Commission challenges specific provisions of national law by its complaints, those provisions will be identified in the context of the assessment of those complaints.

The pre-litigation procedure

14 Following complaints from 37 individuals, the Commission took the view that the Greek legislation did not comply with Directive 89/48 on several points. It therefore sent the Hellenic Republic a letter of formal notice on 27 July 2001, followed, on 21 December 2001, by a supplementary letter of formal notice. The Greek Govern-

ment replied to those communications by letters of 12 October 2001 and 13 March 2002 respectively.

15 The Commission considered that those replies were inadequate and sent the Hellenic Republic a reasoned opinion on 1 July 2002 and, on 9 July 2004, a supplementary reasoned opinion, calling upon that Member State to adopt the measures necessary to comply with those opinions within two months of their notification. The Member State concerned replied to those opinions by communications of 3 September 2002, 26 August 2004 and 7 April 2005.

16 Whilst acknowledging that the information provided by the Hellenic Republic answers its complaints on certain points, the Commission maintained its stance that that Member State had not taken all the measures necessary to transpose Directive 89/48. It therefore decided to bring this action.

The action

17 In its application, the Commission puts forward seven complaints in support of its action for failure to fulfil obligations. In the light of the arguments and clarifications provided by the Hellenic Government in its defence, the Commission, in its reply, withdrew its fourth and seventh complaints, so that it is no longer necessary to examine them.

The first complaint: failure to recognise education and training provided within the framework of a homologation agreement

18 The first complaint put forward by the Commission alleges systematic refusal to recognise diplomas obtained following education and training provided within the framework of an agreement pursuant to which education and training provided by a private body in Greece is homologated by a competent authority of another Member State which awards diplomas to students who have received that education and training ('a homologation agreement').

19 It is common ground in this respect that the Hellenic Republic reserves the provision of university and higher education to public establishments only. It therefore refuses to recognise education and training provided in the framework of a homologation agreement as well as diplomas awarded by the competent authorities of other Member States following such education and training.

20 According to the Commission, that refusal constitutes an infringement of Articles 1(a) and 3 of Directive 89/48. It maintains that the diploma conferred following education and training provided in the framework of a homologation agreement is a diploma, as defined in Article 1(a) of Directive 89/48, awarded by a competent authority in another Member State, which must therefore be recognised by the Hellenic Republic pursuant to Article 3 of that directive.

21 By contrast, the Hellenic Republic submits that a host Member State is not obliged to recognise a diploma awarded by a competent authority in another Member State if that diploma is awarded on completion of education and training received, in whole or in part, in the host Member State and which, under the legislation of that State, is not recognised as higher education.

22 First, the Hellenic Republic observes that, pursuant to Articles 149 EC and 150 EC, the content and organisation both of the education system and of professional education and training fall within the competence of the Member States. Education and training provided on the territory of a Member State are therefore governed by the domestic law of that State, which is free to establish in particular the legal form of higher education establishments, together with the content and level of the university or higher education and training offered by the public or private establishments on its territory. An obligation on a Member State to recognise education and training received on its territory as university or higher education and training, whilst, according to national law, it does not constitute such education or training, would infringe the distribution of powers resulting from Articles 149 EC and 150 EC.

23 The Hellenic Republic observes in that context that, pursuant to Article 16 of the Greek Constitution, university and higher education is provided in that Member State solely and exclusively by public establishments and the creation of higher education institutions by individuals is expressly prohibited. Any possibility of recognising, as a university or higher education diploma, an educational qualification awarded by a private education institution of whatever nature established in Greece is therefore precluded.

24 Second, as regards the specific provisions of Directive 89/48, the question whether an educational establishment situated a Member State is 'a university or establishment of higher education' or 'another establishment of equivalent level', within the meaning of the second indent of Article 1(a) of Directive 89/48, must be assessed solely by reference to the law of the Member State on whose territory the education and training are provided. In the present case, it is therefore solely by reference to Greek law that the status of the establishments in question must be assessed. In so far as the education and training provided within the framework of a homologation agreement are provided in establishments situated in Greece which do not satisfy the conditions required by Greek law, diplomas awarded following that education and training are not therefore diplomas within the meaning of Article 1(a) of Directive 89/48. Consequently, no obligation to recognise flows from Directive 89/48 as regards those qualifications.

25 The Commission contends in this regard that education and training provided within the framework of homologation agreements and diplomas conferred on completion of such education and training fall entirely within the education system of the Member State in which the establishment awarding the diploma is established, irrespective of the Member State where the courses took place. According to the Commission, it is therefore, pursuant to Articles 149 EC and 150 EC, for the Member State in which the establishment awarding the diploma is established to determine the content and organisation of the education and training and evaluate the level of the courses provided. By the same token, Article 16 of the Greek Constitution is not applicable to education and training provided within the framework of homologation agreements since they do not fall within the Greek education system.

Findings of the Court

26 Subject to the provisions of Article 4 of Directive 89/48, subparagraph (a) of the first paragraph of Article 3 of that directive entitles any applicant who holds a 'diploma', within the meaning of that directive, enabling him to pursue a regulated profession in one Member State to pursue the same profession in any other Member State.

27 The definition of the concept of 'diploma' set out in Article 1(a) of Directive 89/48 limits, to a certain extent, the applicability of that directive to qualifications acquired in non-Member States.

28 However, neither Article 1(a) nor any other provision of Directive 89/48 contains any limitation as regards the Member State in which an applicant must have acquired

his professional qualifications. It follows expressly from the first paragraph of Article 1(a) that it is sufficient that the education and training were received 'mainly in the Community'. It has already been held that that expression covers both education and training received entirely in the Member State which awarded the formal qualification in question and that received partly or wholly in another Member State (Case C-102/02 *Beuttenmüller* [2004] ECR I-5405, paragraph 41).

29 Furthermore, no reason can justify such a limitation, since the main question, for the purposes of adjudicating on the applicability of Directive 89/48, is whether the applicant is or is not entitled to pursue a regulated profession in a Member State. According to the system put in place by that directive, a diploma is recognised not on the basis of the intrinsic value of the education and training to which it attests, but because it gives the right to take up a regulated profession in the Member State where it was awarded or recognised. Differences in the duration or content of education and training acquired in another Member State by comparison with that provided in the host Member State are not therefore sufficient to justify a refusal to recognise the professional qualification concerned. At most, where those differences are substantial, they may, in accordance with Article 4 of that directive, justify the host Member State requiring that the applicant satisfy one or other of the compensatory measures set out in that provision (see, to that effect, *Beuttenmüller*, paragraph 52, and Case C-330/03 *Colegio* [2006] ECR I-801, paragraph 19).

30 The general system for the recognition of higher education diplomas laid down in Directive 89/48 is based on the mutual trust that Member States have in the professional qualifications that they award. That system essentially establishes a presumption that the qualifications of an applicant entitled to pursue a regulated profession in one Member State are sufficient for the pursuit of that profession in the other Member States.

31 It is inherent in that system, which does not harmonise the education and training giving access to the regulated professions, that it is for the competent authorities

awarding diplomas giving such access alone to verify, in the light of the rules applicable within the framework of their professional education and training system, whether the conditions necessary for their award are fulfilled. It may be observed, in this respect, that Article 8(1) of Directive 89/48 expressly obliges the host Member State to accept, in any event, as proof that the conditions for recognition of a diploma are satisfied, the certificates and documents issued by the competent authorities in the other Member States. Consequently, the host Member State cannot examine the basis on which such documents have been issued, although they do have the possibility of carrying out a review as regards those of the conditions laid down in Article 1(a) of Directive 89/48 which, on the face of those documents, do not appear to have been satisfied already.

32 Consequently, it is also solely in the light of the rules applicable within the framework of the professional education and training system of the Member State to which the competent authority awarding a diploma belongs that it can be assessed whether the educational establishment in which the holder received his education and training is 'a university or establishment of higher education' or 'another establishment of equivalent level' within the meaning of the second indent of the first paragraph of Article 1(a) of Directive 89/48.

33 The approach advocated by the Hellenic Republic in this respect, which is to apply the rules laid down by the Member State in which the education and training were received, would have the effect of obliging the competent authorities awarding the diplomas to treat the persons who received education and training of an equivalent quality differently, depending on the Member State in which they undertook their education and training.

34 It should also be noted that, according to the wording of Directive 89/48 itself, the education and training must not necessarily have been received in a university or in a higher education establishment. According to the second indent of Article 1(a) of that directive, it is sufficient that it is an 'establishment of equivalent level'. Consequently, the condition imposed by that provision is not intended to ensure that the educational establishment fulfils formal conditions as to its status, but refers essentially to the level of the education and training provided. That condition is closely

linked to the characteristics of the diploma awarded. The assessment carried out in this respect must therefore fall within the purview of the competent authority awarding the diploma; that authority must ensure that the diploma is conferred only on persons who are sufficiently qualified to pursue the regulated profession to which it gives access.

35 It is apparent from the abovementioned considerations that Articles 1(a) and 3 of Directive 89/48 must be interpreted as meaning that a host Member State is obliged, subject to the application of Article 4 of that directive, to recognise a diploma awarded by an authority of another Member State even if that diploma is awarded on completion of education and training received, in whole or in part, in the host Member State and even if, according to the legislation of that State, that education and training is not recognised as higher education.

36 It should be added that that interpretation does not call into question the responsibility of the Hellenic Republic for the content of teaching and the organisation of the education system.

37 First of all, it should be pointed out in this respect that Directive 89/48 does not concern the recognition of academic qualifications, but relates solely to professional qualifications giving access to regulated professions.

38 Next, unlike the sectoral directives relating to specific professions, Directive 89/48 is not intended to harmonise the conditions for the taking up or pursuit of the various professions to which it applies and the Member States therefore remain competent to define such conditions within the limits imposed by Community law (Case C-149/05 *Price* [2006] ECR I-7691, paragraph 54).

39 Lastly, the recognition method established by Directive 89/48 does not lead to automatic and unconditional recognition of the diplomas and professional qualifications concerned. Article 4 of that directive expressly makes it possible to impose compensatory measures if it transpires that the education and training received by an applicant differs in terms of its duration or content from the education and training required in Greece.

40 Similarly, since they are awarded by the competent authorities of other Member States solely in the light of the applicable rules within the framework of their respective education and training systems, diplomas awarded on completion of education and training provided within the framework of homologation agreements do not fall, in the context of Directive 89/48, within the Greek education system. Consequently, the objective of ensuring a high level of Greek university education and training is not called into question by such education and training, the quality of which it is for the competent authorities of the other Member States issuing the diplomas awarded on completion of that education and training to ensure.

41 In the light of the above, the Court holds that the Commission's first complaint is well founded.

The second complaint: absence of choice in relation to the various types of compensatory measures

42 Article 5(1)(b),(bb) of Decree 165/2000 lays down the principle that, where it is necessary to impose compensatory measures on an applicant, that applicant may

choose between an adaptation period and an aptitude test. That provision contains a derogation to that principle, formulated in the following terms:

'That right to choose does not apply in respect of professions whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, nor in respect of all the other professions covered by various specific provisions.'

43 According to the Commission, that provision is contrary to the third subparagraph of Article 4(1)(b) and Article 10 of Directive 89/48, in that it derogates from the principle that the choice of the type of compensatory measures is a matter for the applicant, not only so far as concerns the professions which require knowledge of national law, but also 'in respect of all the other professions covered by various specific provisions'.

44 It must be held that the second complaint put forward by the Commission is well founded for the reason stated by the Commission.

45 The Hellenic Republic recognises moreover that that complaint is well founded and states that the provision at issue was caused by a 'drafting error'. It states that a presidential decree withdrawing the part of the sentence concerned is in the process of adoption.

The third complaint, relating to the powers of the Saeitte

46 As provided in Article 10(1)(b),(aa) and (bb) of Decree 165/2000, the following powers were conferred on the Saeitte:

'the assessment of any question which is decisive for the recognition of professional equivalence and, in particular, the question whether:

(aa) the educational establishment in which the applicant completed his professional education and training belongs to the higher education sector,

(bb) the applicant has the necessary professional experience, in a case where the duration of the education and training falls short by at least one year of that required in Greece in order to pursue that profession.'

47 According to the Commission, the above provision is contrary to Article 8(1) of Directive 89/48 in so far as it gives power to an authority of the host Member State to verify facts which are, pursuant to Article 8(1), definitively established by certificates and documents issued by the competent authorities of the Member State of origin.

48 It must be held that the third complaint put forward by the Commission is well founded for the reason stated by the Commission.

49 The Hellenic Republic moreover recognises that that complaint is well founded and states that a presidential decree repealing Article 10(1)(b), (aa) and (bb) of Decree 165/2000 is in the process of adoption.

The fifth complaint: failure to recognise the diplomas of persons recruited in the public sector

50 In the fourth indent of the claims made in its application, the Commission raised a fifth complaint relating to the progression of salaries and careers of persons recruited in the public sector.

51 According to the Commission, the administrative practice followed by the Saeitte and the various services in the Greek public sector is contrary to Article 3 of Directive 89/48 in so far as holders of diplomas within the meaning of that directive working in the public sector are deprived of the possibility of having the professional equivalence of their qualifications recognised for the purposes of obtaining a higher grade or salary and therefore the possibility of pursuing their profession in conditions identical to those to which holders of national diplomas are entitled.

52 The Hellenic Republic contests those claims. In its rejoinder, it claimed that the provisions of the Civil Service Code resulting from Law 2683/1999 (FEK A' 19) entitle persons recruited after the entry into force of Decree 165/2000 who consider that they have been classified incorrectly in a given civil service category to apply for reclassification in posts in higher grades, on condition that they fulfil the conditions laid down by the provisions in force.

53 In response to a question put by the Court, the Hellenic Republic stated that the right to be reclassified applies to persons recruited both before and after the entry into force of Decree 165/2000.

54 Article 70(1) and (2) of Civil Service Code, cited in that connection by the Hellenic Republic, is worded as follows:

'Reclassification in a post in a higher category

1. An official may, at his request, be reclassified in a vacant post in a higher category within the same ministry or the same public-law corporation. The official must fulfil the formal and substantive conditions required to occupy the post in which he is reclassified. A probationary official may not be reclassified.

2. Officials who, at the time of their recruitment application, fulfilled the formal conditions to be recruited to a post in a higher category may not be reclassified until eight years have elapsed since their recruitment.'

55 The Commission claimed at the hearing that that provision does not ensure the necessary legal certainty for the persons concerned recruited before the entry into force of Decree 165/2000 at a level lower than that to which they would have been entitled if their diplomas had been recognised in accordance with Article 3 of Directive 89/48. In that connection, the Commission observed in particular that, pursuant to Article 70(2) of the Civil Service Code, an official who has been incorrectly classified in a given grade must wait eight years from the time of his recruitment before he is eligible for reclassification in a post in a higher category.

56 Further, in response to a question put by the Court at the hearing, the Hellenic Republic confirmed that, according to the wording of Article 70(1) of the Civil Service Code, persons who have been classified incorrectly can apply for their reclassification only if a post in a higher category within the same ministry or the same public-law corporation becomes available.

57 On those points, the Hellenic Republic stated at the hearing that 'it [was] committed to settling all the applications for reclassification in the best possible way' and that it always endeavoured to reclassify the persons who had to be so reclassified by reason of Community law. As regards the eight-year waiting period provided for in Article 70(2) of the Civil Service Code, that provision did not concern persons who, on account of an error by the administration, were not classified from the outset in the grade to which they were entitled. Furthermore, the Hellenic Republic stated that it was prepared to regularise with retroactive effect the situation of persons who had not been recruited at that grade on account of the belated transposition of Directive 89/48 into the national legal system.

58 It should be recalled that the provisions of directives must be implemented with unquestionable binding force, and with the necessary specificity, precision and clarity, in order to satisfy the requirements of legal certainty. In this respect, mere statements, such as those made by the Hellenic Republic at the hearing, which, in the continued existence of express provisions of the Civil Service Code, maintain, for the persons concerned, a state of uncertainty as regards the extent of their rights in an area governed by Community law are not sufficient (see, to that effect, in particular Case C-80/92 *Commission* v *Belgium* [1994] ECR I-1019, paragraph 20; Case C-151/94 *Commission* v *Luxembourg* [1995] ECR I-3685, paragraph 18; and Case C-415/01 *Commission* v *Belgium* [2003] ECR I-2081, paragraph 21).

59 The Court therefore holds that the fifth complaint put forward by the Commission is well founded in so far as it alleges a failure by the Hellenic Republic to allow, in the public sector, the reclassification in a higher grade of persons recruited at a level lower than that to which they would have been entitled if their diplomas had been recognised by the competent authority in accordance with Article 3 of Directive 89/48.

The sixth complaint: conditions for registration in the Technical Chamber of Greece

60 In the fourth indent of the form of order sought in its application, the Commission also raised a sixth complaint concerning the conditions for registration in the Technical Chamber of Greece (Techniko Epimelitirio Ellados; 'the TEE').

61 In Greece, the engineering profession is a regulated profession pursuit of which is reserved for members of the TEE. The latter is a public-law corporation under the control of the Ministry of Public Works. It was established by the Presidential Decree of 27 November and 14 December 1926 codifying the provisions on the composition of the TEE (FEK A' 430), as amended by Law 1486/1984 (FEK A' 161) and by Presidential Decree 512/1991 of 30 November and 12 December 1991 (FEK A' 190).

62 Article 4(3) of Law 1486/1984 provides, inter alia, that the TEE is to conduct examinations, grant authorisations to pursue the profession of engineer in accordance with the provisions in force and keep registers of engineers.

63 Interministerial Order ED 5/4/3399 of the Minister for Public Works and the Minister for Education and Religious Affairs of 14 September 1984 (FEK B' 713) laid down the procedure for the granting, by the TEE, of authorisation to pursue the profession of engineer. That interministerial order provides in the first and second paragraphs of its sole article as follows:

'1. Authorisation to pursue the profession shall be granted by the TEE, following an oral examination, to engineers holding diplomas from national higher education institutions and to engineers holding equivalent diplomas from foreign higher education institutions.

2. The persons concerned must submit to the TEE the following documents:

...

(d) (for holders of diplomas from abroad): certificate of conformity of the diploma produced, issued by the Inter-University Centre for the Recognition of Foreign Diplomas (Diapanepistimiako Kentro Anagnoriseos Titlon Spoudon tis Allodapis, 'the Dikatsa');

…'

Arguments of the parties

64 According to the Commission, the TEE makes registration, in its registers, of engineers qualified in another Member state holding a diploma within the meaning of Directive 89/48 subject, first, to success in a competition and, second, to the presentation of a certificate of conformity of that diploma issued by the Dikatsa. The Commission relies in this respect on the wording of Interministerial Order ED 5/4/3399 and refers to complaints that dozens of applications for registration in the TEE remain unanswered.

65 According to the Commission, those requirements are contrary to Article 7(3) of Directive 89/48, since, pursuant to that provision, an association or professional organisation may make membership subject to certain qualification requirements only in accordance with that directive, in particular its Articles 3 and 4.

66 The Hellenic Republic expressly acknowledges that the TEE cannot make registration, in its registers, of engineers holding a diploma within the meaning of Directive 89/48 subject to success in a competition or the presentation of a certificate issued by the Dikatsa. Once the Saeitte, which is alone competent in this respect, has recognised the diploma concerned, the TEE is automatically required to register the person concerned in its registers.

67 However, the Hellenic Republic contests the Commission's complaint on the facts. TEE's practice has changed following the adoption of Decree 165/2000, since registration of the persons concerned has since been automatic on the basis of recognition of the diploma by the Saeitte.

68 Interministerial Order ED 5/4/3399 does not apply to holders of diplomas which fall within the scope of Directive 89/48 and are recognised pursuant to Decree 165/2000. The competitions in question concern solely the other categories of applicants wishing to take up the profession of engineer in Greece. Holders of diplomas which fall within the scope of Directive 89/48 are recognised pursuant to Decree 165/2000 and such holders are not therefore required to sit a competition. Accordingly, the mere fact that the competition notice does not expressly refer to holders of such diplomas cannot give rise to an infringement of Directive 89/48. The Hellenic Republic adds in its rejoinder that the TEE intends to amend the competition notices so that no doubt subsists.

69 As regards the complaints received by the Commission, the Hellenic Republic emphasises the fact that each case is unique and it refers moreover to six individual cases in which the TEE reacted immediately to applications by registering the persons concerned in its register.

70 The Commission counters by stating that Article 1 of Interministerial Order ED 5/4/3399 refers in general terms to 'engineers holding diplomas from national higher education institutions and to engineers holding equivalent diplomas from foreign higher education institutions' without drawing a distinction according to whether or not the diplomas in question have been recognised pursuant to Decree 165/2000. Even if the TEE's practice has changed, the current situation is a source of legal uncertainty for migrant workers.

Findings of the Court

71 As the Hellenic Republic acknowledges, and as is moreover apparent from the case-law, the TEE cannot make registration, in its registers, of engineers holding a diploma within the meaning of Directive 89/48 subject to success in a competition or the presentation of a certificate issued by the Dikatsa (see, to that effect, Case C-141/04 *Peros* [2005] ECR I-7163, paragraphs 35 and 39). Such requirements are contrary to subparagraph (a) of the first paragraph of Article 3 of Directive 89/48.

72 None the less, it should be noted that the Commission bases its complaint in this respect entirely on Article 7(3) of that directive.

73 However, Article 7(3) applies only to professions regulated in the host Member State by an association or organisation referred to in the second subparagraph of Article 1(d) of Directive 89/48.

74 In this respect, it must be stated that the professional activities placed under the responsibility of the TEE fall not within the second subparagraph of Article 1(d) of Directive 89/48 but within the first subparagraph of Article 1(d). In Greece, the taking up and pursuit of the profession of engineer are made directly subject to the possession of a diploma by legislative provisions.

75 In those circumstances, the sixth complaint raised by the Commission cannot succeed since it refers solely to a provision of Directive 89/48 which is not applicable in the present case. The Commission's sixth complaint must therefore be rejected.

76 In the light of all the above, it must be held that:

— by failing to recognise the diplomas awarded by the competent authorities of another Member State following education and training provided within the framework of a homologation agreement;

— by providing for the application of compensatory measures in more cases than those allowed by Directive 89/48;

— by entrusting to the Saeitte the power to assess whether 'the educational establishment in which the applicant completed his education and training belongs to

the higher education sector' and whether 'the applicant has the necessary professional experience, in a case where the duration of the education and training falls short by at least one year of that required in Greece in order to pursue that profession', and

— by not allowing, in the public sector, the reclassification in a higher grade of persons recruited at a level lower than that to which they would have been entitled if their diplomas had been recognised in accordance with Article 3 of Directive 89/48,

the Hellenic Republic has failed to fulfil its obligations under Articles 1, 3, 4, 8 and 10 of Directive 89/48.

Costs

77 Pursuant to Article 69(3) of the Rules of Procedure, where each party succeeds on some heads and fails on others, the Court may order that the costs be shared. Further, according to Article 69(5) of the Rules of Procedure, a party who discontinues or withdraws from proceedings shall be ordered to pay the costs if they have been applied for in the observations of the other party on the discontinuance. In those circumstances, it is appropriate to order the Hellenic Republic to pay two thirds of the Commission's costs and to decide that, for the remainder, each party should bear its own costs.

On those grounds, the Court (Second Chamber) hereby declares that:

1. The Hellenic Republic,

— by failing to recognise the diplomas awarded by the competent authorities of another Member State following education and training provided within the framework of an agreement pursuant to which education and training provided by a private body in Greece is homologated by those authorities;

— by providing for the application of compensatory measures in more cases than those allowed by 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, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001;

— by entrusting to the Council Responsible for Recognising Professional Equivalence of Higher Education Qualifications the power to assess whether 'the educational establishment in which the applicant completed his education and training belongs to the higher education sector' and whether 'the applicant has the necessary professional experience, in a case where the duration of the education and training falls short by at least one year of that required in Greece in order to pursue that profession', and

— **by not allowing, in the public sector, the reclassification in a higher grade of persons recruited at a level lower than that to which they would have been entitled if their diplomas had been recognised in accordance with Article 3 of Directive 89/48, as amended by Directive 2001/19,**

has failed to fulfil its obligations under Articles 1, 3, 4, 8 and 10 of Directive 89/48.

2. **The action is dismissed as to the remainder.**

3. **The Hellenic Republic shall pay two thirds of the costs of the Commission of the European Communities and bear its own costs.**

4. **The Commission of the European Communities shall bear one third of its own costs.**

[Signatures]