JUDGMENT OF THE COURT (Grand Chamber)

5 April 2011 *

In Case C-424/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Symvoulio tis Epikrateias (Greece), made by decision of 29 June 2009, received at the Court on 28 October 2009, in the proceedings

Christina Ioanni Toki

v

Ipourgos Ethnikis Pedias kai Thriskevmaton,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, K. Schiemann (Rapporteur), J.-J. Kasel and D. Šváby, Presidents of Chambers, R. Silva de Lapuerta, E. Juhász, G. Arestis, M. Safjan and M. Berger, Judges,

* Language of the case: Greek.

Advocate General: P. Mengozzi,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 October 2010,

after considering the observations submitted on behalf of:

— Ms Toki, by T. Georgopoulos, dikigoros,

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

— the European Commission, by G. Zavvos and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 November 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of point (b) of the first subparagraph of Article 3 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 reference has been made in proceedings between Ms Toki, the holder of certain qualifications in the field of environmental engineering obtained in the United Kingdom, and the Ipourgos Ethnikis Pedias kai Thriskevmaton (Minister for National Education and Religious Affairs) in relation to decisions of the Symvoulio Anagnorisis Epangelmatikis Isotimias Titlon Tritovathmias Ekpaidefsis (Council for the Recognition of the Equivalence of Higher Education Diplomas) refusing to authorise her to take up the profession of environmental engineer in Greece.

Legal context

European Union legislation

3 According to the third and fourth recitals in its preamble, Directive 89/48 has as its object the establishment of a general system of recognition of higher-education diplomas to enable European citizens to pursue all those professional activities which in a host Member State are dependent on the completion of post-secondary education and training, provided they hold such a diploma preparing them for those activities awarded on completion of a course of studies lasting at least three years and issued in another Member State.

4 According to the fifth and tenth recitals in the preamble to that directive, Member States reserve the option of fixing the necessary minimum level of qualification with a view to guaranteeing the quality of services provided in their territory as regards professions for the pursuit of which the European Union has not laid down that level, and the general system for the recognition of diplomas is not intended to amend the rules, including those relating to professional ethics, applicable to any person pursuing a profession in the territory of a Member State.

5 According to the first subparagraph of Article 2 of Directive 89/48, that directive is to apply to any national of a Member State wishing to pursue a 'regulated profession' in another Member State.

6 As defined in Article 1(c) of Directive 89/48, a 'regulated profession' is the regulated professional activity or range of activities which constitute that profession in a Member State.

7 Article 1(d) contains the following definition, for the purposes of that directive:

'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 organization 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 recognized 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 organizations 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 organization, it shall inform the Commission thereof, which shall publish this information in the *Official Journal of the European Communities.*'

8 The list referred to in the third subparagraph of Article 1(d) of Directive 89/48 includes the 'Engineering Council'.

9 'Professional experience' is, for the purposes of that directive, defined in Article 1(e) thereof as 'the actual and lawful pursuit of the profession concerned in a Member State'.

10 Article 3 of Directive 89/48 provides:

'Where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

(a) if the applicant holds the diploma required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or

(b) if the applicant has pursued the profession in question full-time for two years during the previous ten years in another Member State which does not regulate that profession, within the meaning of Article 1(c) and the first subparagraph of Article 1(d), and possesses evidence of one or more formal qualifications:

— which have been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of such State,

— which show that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level of a Member State and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course and

— which have prepared the holder for the pursuit of his profession.

However, the two years of professional experience referred to in the first subparagraph may not be required where the qualification or qualifications held by the applicant and referred to in this point were awarded on completion of regulated education and training.

The following shall be treated in the same way as the evidence of formal qualifications referred to in the first subparagraph: any formal qualifications or any set of such formal qualifications awarded by a competent authority in a Member State if it is awarded on the successful completion of training received in the Community and is recognized by that Member State as being of an equivalent level, provided that the other Member States and the Commission have been notified of this recognition.'

11 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.

National legislation

12 The purpose of Presidential Decree 165/2000 of 23 June 2002 (FEK A' 149/28.6.2000), 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 to transpose Directive 89/48 into Greek law.

13 Article 2(3) and (4) of Decree 165/2000 defines regulated profession, regulated professional activity and professional activity deemed to be a regulated professional activity in the same terms as in Directive 89/48. However, as regards the mechanism of recognition provided for in Article 3 of Directive 89/48, Article 4(1)(b) of that decree provides that 'where the taking up or pursuit of a regulated profession in Greece is subject to possession of the diploma referred to in Article 2, the Council referred to in Article 10 of this decree may not, on the grounds of inadequate qualification, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals if the applicant: … has pursued that profession full-time for two years over the last 10 years in another Member State which does not regulate that provision within the meaning of Article 2 (3) and (4) of this decree …'.

14 Accordingly, in relation to cases where the application of the prescribed mechanism of recognition is excluded, that provision of national law refers not only to the provision corresponding to Article 1(c) of Directive 89/48 but also to provisions corresponding to Article 1(d) of that directive, in its entirety. This drafting has the effect of excluding the application of that mechanism of recognition where the person concerned comes from a Member State in which the pursuit of the profession concerned is regulated by private organisations recognised by that Member State in accordance with the second paragraph of Article 1(d) of that directive.

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

15 Ms Toki, a Greek national, holds a Bachelor of Engineering degree and a Master of Science degree in the field of environmental engineering, both obtained in the United Kingdom, respectively from Sheffield Hallam University in 1997 and the University of Portsmouth in 1998. On 1 September 1999 the University of Portsmouth engaged Ms Toki as a researcher. She worked there in the Department of Civil Engineering until 31 August 2002. Ms Toki's activities included, in addition to general research work, assisting the work of undergraduate and postgraduate students and assessing, in collaboration with a private undertaking which specialised in technology relating to that field, the effectiveness of a pioneering method of waste processing.

16 In the United Kingdom the activities constituting the engineering profession are regulated by the Engineering Council, which is expressly named in the list provided for in the third subparagraph of Article 1(d) of Directive 89/48. Membership of that organisation is not obligatory in order to pursue the engineering profession, but a large number of professionals in that field are members and voluntarily respect the Engineering Council's regulatory framework. Ms Toki applied for interim registration (Stage 1 registration) with the Engineering Council, but she did not subsequently become a full member with the title of Chartered Engineer. Furthermore, she registered as a member of the Chartered Institution of Water and Environmental Management as a graduate.

17 Since the profession of environmental engineer is regulated in Greece, Ms Toki applied for recognition of her right to pursue that profession, and based that application on the qualifications and professional experience which she had obtained in the United Kingdom. That application was rejected by a decision of 12 April 2005 of the Symvoulio Anagnorisis Epangelmatikis Isotimias Titlon Tritovathmias Ekpaidefsis, on the ground that since Ms Toki is not the holder of an engineering diploma in the United Kingdom, because she is not a full member of the Engineering Council and does not hold the title of Chartered Engineer, she could not rely on the mechanism of

recognition provided for in point (a) of the first subparagraph of Article 3 of Directive 89/48.

18 Ms Toki challenged that rejection before the referring court and claimed that her application had been unlawfully rejected on the basis of provisions of Decree 165/2000 designed to transpose point (a) of the first subparagraph of Article 3 of Directive 89/48, namely Article 4(1)(a) of Decree 165/2000, whereas her application should have been examined on the basis of those provisions of that decree which transposed point (b) of the first subparagraph of Article 3 of that directive, namely Article 4(1)(b) of Decree 165/2000, given that, first, the profession of environmental engineer is not regulated in the United Kingdom and, second, Ms Toki both held the necessary titles and had three years professional experience in the United Kingdom during the previous ten years.

19 The referring court states that the rejection of Ms Toki's application is in accordance with the rules established by the provisions of Decree 165/2000 which exclude, as explained above in paragraphs 13 and 14 of this judgment, the application of the mechanism of recognition provided for in point (b) of the first subparagraph of Article 3 of Directive 89/48 where, in the Member State of origin, the profession concerned is regulated or deemed to be a regulated professional activity within the meaning of the second subparagraph of Article 1(d) of that directive.

20 Faced with difficulties in interpreting Directive 89/48, the Symvoulio tis Epikrateias decided to stay the proceedings and to refer the following two questions to the Court for a preliminary ruling:

'(1) For the purposes of point (b) [of the first subparagraph] of Article 3 of Directive 89/48 … does the mechanism of recognition provided for therein apply to cases

in which, in the Member State of origin, the profession in question is regulated within the meaning of the second subparagraph of Article 1(d) [of that directive], but the person concerned is not a full member of an association or organisation which fulfils the conditions of that paragraph?

(2) For the purposes of point (b) [of the first subparagraph] of Article 3 of Directive 89/48 … does pursuit of a profession full-time in the Member State of origin mean pursuit in a self-employed or employed capacity of the actual profession authorisation to pursue which is being sought in the host Member State in reliance on Directive 89/48 … or may it also cover employment on research work in a scientific field related to the profession in an establishment that is in principle not for profit?'

The questions referred for a preliminary ruling

The first question

21 As regards the scope of the two mechanisms of recognition provided for in points (a) and (b) of the first subparagraph of Article 3 of Directive 89/48, the Court has already ruled that it is clear from the general scheme of that Article 3 that only one of the two mechanisms may, as a general rule, apply in any particular factual context (Case C-149/05 *Price* [2006] ECR I-7691, paragraph 36).

22 The first question referred by the referring court concerns the particular situation, covered by the second subparagraph of Article 1(d) of Directive 89/48 and especially common in Ireland and the United Kingdom, in which the profession at issue is not regulated, within the meaning of the first subparagraph of that provision, by the Member State of origin, but is often pursued in practice by the members of an association or private organisation which enjoys a specific form of recognition by the Member State concerned and which ensures that those members respect a degree of regulation.

23 In that regard it is clear from reading points (a) and (b) of the first subparagraph of Article 3 of Directive 89/48 that it is only the mechanism provided for in point (b) of that first subparagraph which may apply to professions falling under the second subparagraph of Article 1(d) of Directive 89/48. First, the members of an association or an organisation referred to in the second subparagraph of Article 1(d) of that directive indisputably do not possess a diploma which is 'required in another Member State' for the taking up of a profession, as stipulated in point (a) of the first subparagraph of Article 3. Secondly, point (b) of the first subparagraph of Article 3 expressly excludes from its scope the professions covered by the first subparagraph of Article 1(d), but does not exclude those professions covered by the second subparagraph of that provision, and it therefore applies in full to the latter professions.

24 While it is true that the second subparagraph of Article 1(d) of Directive 89/48 provides that the professions covered by that provision are to be deemed to be regulated professions where they are pursued by a member of the organisation or association concerned, that deemed equivalence, as observed by the Advocate General in point 57 of his Opinion, is not full equivalence, and those professions do not constitute regulated professions within the meaning of Article 1(c) of that directive. Consequently, the recognition mechanism provided for in point (a) of the first subparagraph of Article 3 thereof cannot, contrary to the Court's ruling in paragraphs 45 and 47 of *Price*, be relied on by members of such professions who apply for recognition. Furthermore, contrary to what seems to follow from paragraphs 36, 45, 46 and 48 of *Price*, it is the

mechanism of recognition provided for in point (b) of the first subparagraph of Article 3 of Directive 89/48 which is applicable to a profession falling under the second subparagraph of Article 1(d) of that directive.

25 Irrespective of whether Ms Toki is or is not a full member of the Engineering Council, it is therefore only the mechanism of recognition provided for in point (b) of the first subparagraph of Article 3 of Directive 89/48 which is applicable to her situation, given that her situation does not fall under Article 1(c) and the first subparagraph of Article 1(d) of that directive.

26 Consequently, the answer to the first question is that point (b) of the first subparagraph of Article 3 of Directive 89/48 is to be interpreted as meaning that the mechanism of recognition which it provides for is applicable where, in the Member State of origin, the profession at issue falls under the second subparagraph of Article 1(d) of that directive, irrespective of whether the person concerned is or is not a full member of the association or organisation concerned.

The second question

27 By its second question, the referring court seeks, in essence, to ascertain which criteria should be applied in order to determine whether the professional experience relied on by a person seeking authorisation to pursue a regulated profession in the host Member State must be taken into account for the purposes of point (b) of the first subparagraph of Article 3 of Directive 89/48.

28 In that regard, Article 1(e) of Directive 89/48 defines 'professional experience' for the purposes of that directive as the 'actual and lawful pursuit of the profession concerned in a Member State'.

29 In order to answer the second question, the Court must initially clarify the content of the concept of actual pursuit of a profession in so far as concerns the mechanism of recognition provided for in point (b) of the first subparagraph of Article 3 of Directive 89/48, and thereafter examine in what circumstances the profession to which that experience relates in the Member State of origin can be considered to be the same profession as that for the pursuit of which authorisation is sought in the host Member State.

30 The purpose of the condition laid down in point (b) of the first subparagraph of Article 3 of Directive 89/48, namely that an applicant for recognition from a Member State which does not regulate either the profession which the applicant wants to pursue in another Member State or the relevant education and training must provide evidence of a minimum of two years professional experience, is to enable the host Member State to have the benefit of safeguards comparable to those in place where either the profession concerned or the preparatory education and training for the pursuit of that profession are regulated in the Member State of origin, and where either point (a) of the first subparagraph of Article 3 or the second subparagraph of Article 3 of Directive 89/48 apply.

31 Where a profession is not regulated by the State, the guarantee of a certain level of quality of service in the professional field concerned is usually ensured by market forces, in that only those members of the profession concerned who possess skills and abilities at a level deemed adequate by employers or clients will be capable of pursuing that profession full-time in an employed or self-employed capacity, over the prescribed period of two years. The essence of the requirement of professional experience of that duration is therefore that there is a real possibility that the applicant for recognition can pursue the profession concerned in the Member State of origin.

32 That requirement cannot, on the other hand, be understood as concerning the specific content of the professional qualifications of the applicant for recognition nor as replacing the compensatory measures specified in paragraph 11 of this judgment, as provided for in Article 4 of Directive 89/48, which can, in any event, be imposed on an applicant for recognition where there are substantial differences between the education and training which that person has followed in the Member State of origin and the education and training normally required in the host Member State.

33 As regards the form in which the profession must have been pursued in the Member State of origin, it should be observed, as stated by the Advocate General in point 70 of his Opinion, first, that the organisational and regulatory framework in which an applicant for recognition pursued his or her profession in the Member State of origin is of no relevance for the purpose of applying the mechanism of recognition provided for by Directive 89/48 and, second, that the fact that his or her employer in that Member State was a non-profit making institution cannot affect the applicability of point (b) of the first subparagraph of Article 3 of that directive. Likewise that directive, according to the first paragraph of Article 2 thereof, applies to any national of a Member State wishing to pursue a regulated profession 'in a self-employed capacity or as an employed person' in another Member State and no provision of that directive states that a profession, which is usually pursued in a self-employed capacity, must have been pursued in a self-employed capacity rather than as an employed person in the Member State of origin in order for the professional experience thus acquired to be taken into account.

34 Moreover, while point (b) of the first subparagraph of Article 3 of Directive 89/48 requires that the profession concerned has been pursued 'full-time', and while Article 1(c) of that directive defines a regulated profession as 'the regulated professional activity or range of activities' which constitute that profession, it cannot be deemed necessary, without inordinately restricting the scope of the mechanism of recognition provided for in point (b) of the first subparagraph of Article 3, that an applicant for recognition has dedicated himself wholly and exclusively to the whole range of activities constituting the profession concerned in order for his or her professional experience to be taken into account.

35 Accordingly, it is sufficient, for the purpose of point (b) of the first subparagraph of Article 3 of Directive 89/48, that the experience relied on has involved, in a framework of full-time work, the continuous and regular pursuit of a range of professional activities which characterise the profession concerned, but it need not cover all those activities.

36 The question of which professional activities are characteristic of a specific profession is principally a question of fact which must be resolved by the competent authorities of the host Member State, subject to review by the national courts and tribunals, seeking assistance when necessary from the authorities of the Member State of origin. If, as in the main proceedings, the profession pursued in the Member State of origin is not a regulated profession in that State, within the meaning of the first paragraph of Article 1(d) of Directive 89/48, reference should be made to the professional activities normally pursued by the members of that profession in that Member State.

37 As part of that assessment, the competent authorities of the host Member State must determine whether the professional experience for the purposes of point (b) of the first subparagraph of Article 3 of Directive 89/48 consists principally in practical experience linked to the employment market for the profession concerned.

38 In that regard, the activities pursued by Ms Toki, such as general research work or assisting the work of undergraduate and postgraduate students, described in paragraph 15 of this judgment, cannot be considered, by themselves, as actual pursuit of the profession of environmental engineer and therefore as professional experience

which must be taken into account for the purposes of point (b) of the first subparagraph of Article 3 of Directive 89/48.

39 On the other hand, work carried out in collaboration with a private company which specialised in technology relating to liquid waste processing, as described in paragraph 15 of this judgment, might constitute such pursuit, provided however that that activity was pursued for at least two years on a continuous and regular basis in the course of full-time work, a matter which, when appropriate, it is for the national authorities to determine.

40 If it were to be established that Ms Toki actually pursued the profession of environmental engineer in the United Kingdom, it would be necessary to determine whether that profession constitutes the same profession as that which the applicant in the main proceedings has sought authorisation to pursue in Greece. In the context of the mechanism of recognition established by point (b) of the first subparagraph of Article 3 of Directive 89/48, it is for the competent authorities of the host Member State to verify whether that is the case.

41 In that regard, according to the Court's case-law, the expression 'the profession in question', in point (a) of the first subparagraph of Article 3 of Directive 89/48, is to be construed as covering professions which, in the Member State of origin and the host Member State, are identical or analogous or, in some cases, simply equivalent in terms of the activities they cover (Case C-330/03 *Colegio de Ingenieros de Caminos, Canales y Puertos* [2006] ECR I-801, paragraph 20). That interpretation is equally valid, as observed by the Advocate General in point 75 of his Opinion, in relation to point (b) of the first subparagraph of Article 3 of that directive, a provision which expressly refers to the pursuit of 'the profession in question'.

42 It follows from all of the foregoing that the answer to the second question is that, before account can be taken, for the purposes of point (b) of the first subparagraph of Article 3 of Directive 89/48, of professional experience relied on by a person seeking to obtain authorisation to pursue a regulated profession in the host Member State, the following three conditions must be satisfied:

— the experience relied on must consist of full-time work for at least two years during the previous ten years;

— that work must have consisted of the continuous and regular pursuit of a range of professional activities which characterise the profession concerned in the Member State of origin, but that work need not have encompassed all those activities, and

— the profession, as it is normally pursued in the Member State of origin, must be equivalent, in respect of the activities which it covers, to the profession which the person has sought authorisation to pursue in the host Member State.

Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Point (b) of the first subparagraph of Article 3 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, must be interpreted as meaning that the mechanism of recognition which it provides for is applicable where, in the Member State of origin, the profession at issue falls under the second subparagraph of Article 1(d) of that directive, irrespective of whether the person concerned is or is not a full member of the association or organisation concerned.**

2. **Before account can be taken, for the purposes of point (b) of the first subparagraph of Article 3 of Directive 89/48, as amended by Directive 2001/19, of professional experience relied on by a person seeking to obtain authorisation to pursue a regulated profession in the host Member State, the following three conditions must be satisfied:**

   — **the experience relied on must consist of full-time work for at least two years during the previous ten years;**

   — **that work must have consisted of the continuous and regular pursuit of a range of professional activities which characterise the profession concerned in the Member State of origin, but that work need not have encompassed all those activities, and**

— **the profession, as it is normally pursued in the Member State of origin, must be equivalent, in respect of the activities which it covers, to the profession which the person has sought authorisation to pursue in the host Member State.**

[Signatures]