

**Abdullah Tawil-Albertini v. Ministre des Affaires  
Sociales**

**(Case C-154/93)**

**Before the Court of Justice of the European  
Communities**

**ECJ**

**(Presiding, Due C.J.; Diez de Velasco and Edward  
(rapporteur) PP.C; Kakouris,  
Joliet, Schockweiler and Zuleeg JJ.) M. Marco Darmon,  
Advocate General.**

**9 February 1994**

Reference from France by the Conseil d'Etat under Article 177 EEC. Provision considered:

Dir. 78/686

**Professions. Dentists. Qualifications.**

The mutual recognition of qualifications in dentistry awarded by Member States, mentioned in Directive 78/686, is based on the guarantees provided by the application of minimum criteria for dental training throughout the Community imposed by Directive 78/687. In relations with non-member States, such co-ordination of legislation on training can be established only by agreements between the States concerned, and Member States remain free, by virtue of Article 1(4) of Directive 78/687, in accordance with their own rules in respect of their own territory, to authorise holders of qualifications obtained in non-Community States to take up and pursue the activities of a dental practitioner. Accordingly, recognition by a Member State of qualifications awarded by non-member States does not bind the other Member States. [11]-[13]

**Professions. Dentists. Qualifications.**

Article 7 of the Dentists Directive 78/686 concerns only qualifications awarded by Member States and does not require Member States to recognise diplomas,

certificates and other evidence of formal qualifications which do\*613 not testify to dental training in one of the Member States of the Community. [14]-[15]

T-A, a French national, qualified as a dentist in the Lebanon and was authorised to practise in Belgium after the authorities recognised his Lebanese qualification as equivalent to their own. He was also authorised to practise in the United Kingdom and Ireland. The Court *interpreted* Article 7 of the 1st Dentists Directive 78/686 *in the context of* the subsequent refusal by the French authorities to grant him a practising certificate *to the effect that* the mutual recognition of dental qualifications between the Member States was only possible because the 2nd Dentists Directive 78/687 guaranteed minimum standards of training throughout the Community, *that* the establishment of such arrangements with non-member States was a matter for the Member States on an individual basis, *and that*, therefore, the fact that one Member State had recognised a foreign qualification did not oblige others to do so.

The applicant submitted a written brief.

### **Representation**

Edwige Belliard, Deputy Director of Legal Affairs at the Ministry of Foreign Affairs, and Claude Chavance, Principal Attache for Central Administration, for the French Government.

Marie-Jose Jonczy, Legal Adviser to the E.C. Commission, for the Commission as *amicus curiae*.

No cases were referred to.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Opinion of the Advocate General (M. Marco Darmon)

1. May a Member State refuse to recognise a diploma of dentistry awarded by a non-member State although the holder has had it recognised in another Member State? That, essentially, is the question referred to the Court from the French Conseil d'Etat.

2. Article 3 of Council Directive 78/686 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services ("the first directive" ) [FN1] lists the diplomas awarded by each of the Member States to which the others must give the same effect in their territory as those which they themselves award. [FN2]

FN1 [\*614 1978] O.J. L233/1.

FN2 Article 2.

3. Council Directive 78/687 concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners ("the second directive"), [FN3] lays down the training which the Member States are to require for access to the dental profession. [FN4]

FN3 [1978] O.J. L233/10.

FN4 Article 1.

4. As regards recognition of qualifications awarded by Member States before the entry into force of the second directive, Article 7(1) of the first directive provides that

In the case of nationals of Member States whose diplomas, certificates and other evidence of formal qualifications do not satisfy all the minimum training requirements laid down in Article 1 of Directive 78/687, each Member State shall recognise as being sufficient proof the diplomas, certificates and other evidence of formal qualifications in dentistry awarded by those Member States before the implementation of Directive 78/687, accompanied by a certificate stating that those nationals have effectively and lawfully been engaged in the activities in question for at least three consecutive years during the five years prior to the date of issue of the certificate.

5. That article was transposed into French law by section L.356-2 of the Code de la Sante Publique (Public Health Code) making the right to practise as a dental surgeon in France available to those holding either the French State Diploma of Doctor of Dental Surgery ... or, if the person concerned is a national of a Member State of the European Economic Community, a diploma, certificate or other evidence of formal qualifications as a practitioner of dentistry awarded by one of those States in accordance with Community obligations ... or any other diploma, certificate or other evidence of formal qualifications as a dental practitioner awarded by one of the Member States attesting to training as a dental practitioner acquired in one of those States which was commenced before 28 January 1980, provided that it is accompanied by a certificate from that State stating that the holder of the diploma, certificate or other evidence of formal qualifications has actually been lawfully engaged in dental practice for at least three consecutive years during the five years prior to the date of issue of the certificate.

6. Mr Tawil-Albertini, a French national, obtained a diploma of doctor of dental surgery in Beirut (Lebanon) in 1968.

7. On 20 July 1979, that is to say prior to the entry into force of the second directive, the Belgian Minister for National Education and French Culture recognised his Lebanese qualification as equivalent to the Belgian "Diplome Legal de Licencie en Science Dentaire" (Official Diploma of Graduate in Dental Science), a decision which had the effect of authorising Mr Tawil-Albertini to pursue a dental profession in Belgium. His qualification was also recognised by the United Kingdom and Irish authorities.

8. Relying on such recognition by the authorities of various Member\*615 States, Mr Tawil-Albertini applied to the Minister for Social Security and Employment for authorisation to practise dentistry in France. He was refused that authorisation on 2 May 1986.

9. By a judgment of 28 October 1987, the Tribunal Administratif (Administrative Court), Paris, dismissed his application for annulment of that decision.

10. The matter was brought before the Conseil d'Etat, which referred a question to the Court of Justice in order to ascertain whether Article 7 excludes from its scope qualifications obtained by virtue of equivalence which therefore do not testify to dental training acquired in one of the Member States of the Community.

11. This provision must be placed in its legislative context.

12. It appears from Articles 2 and 3 that the object of the first directive is the *mutual recognition* by Member States of diplomas in dentistry which are exhaustively listed and *awarded by those States*.

13. Diplomas conferred by any Member State are *automatically* recognised in the other States of the Community because they correspond to the minimum criteria, defined by the second directive, [FN5] on which the Member States have agreed.

FN5 The first recital of the directive refers to "the requirement that minimum standards be observed".

14. There is no such co-ordination of training and legislation with non-member countries. Article 1(4) of the second directive provides, in that respect, that 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 and other evidence of formal qualifications *which have not been obtained in a Member State* to take up and pursue the activities of a dental practitioner. [FN6]

FN6 My emphasis.

15. The *ratio legis* of that provision was explained in an answer given on 29 July 1993 on behalf of the Commission by Mr Vanni d'Archirafi to a written question submitted by an MEP:

... automatic recognition is based on procedures ensuring mutual trust between Member States (each Member State awards a diploma in respect of training given in its territory which it guarantees as meeting the minimum training standards laid down in Directive 78/687). Yet it follows from Article 1(4) referred to above that Member States have not been--and are still not--prepared to trust one another in the case of training received in a third country, the reason being that the Member State granting recognition is not able to verify such training to the same degree as that received in its territory. [FN7]

FN7 Answer to Written Question no. 257/93 ([1993] O.J. C297/26 ). See also the answer to Question no. 690/93 ([1993] O.J. C292/39) which appears to relate to the situation of the applicant in the main proceedings.

16. By means of Directive 89/48 of 21 December 1988, [FN8] the Council\*616 introduced a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years duration. However, that directive does not apply to professions which are the subject of a separate directive establishing arrangements for the mutual recognition of diplomas by Member States. [FN9] Thus, although the effect of Article 1(a) is that diplomas obtained in a non-member State may be recognised, the present dispute falls outwith its scope. Moreover, by a recommendation of that date, the Council recommended that the governments of the Member States should allow their nationals who hold diplomas awarded by a non-member State to take up and pursue regulated professions within the Community. [FN10]

FN8 [1989] O.J. L19/16.

FN9 Article 2(2).

FN10 Council Recommendation 89/49/EEC concerning nationals of Member States who hold a diploma conferred in a non-member State ([1989] O.J. L19/24).

17. Council Directive 92/51 on a second general system for the recognition of professional education and training to supplement Directive 89/48 [FN11] likewise does not apply to professions which are the subject of a specific directive establishing arrangements for the mutual recognition of diplomas by Member States. [FN12]

FN11 [1992] O.J. L209/25.

FN12 Article 2.

18. There is therefore no requirement for a Member State to recognise a diploma obtained in a non-member State, even in the case of a Community national. That is still the case as regards the transitional arrangements provided for in Article 7 which refers only to the recognition of qualifications *awarded by the Member States*.

19. However, must a Member State recognise as equivalent a qualification obtained in a non-member State on the ground that *another* Member State has recognised it as equivalent to its own diplomas?

20. The question of recognition by Member States of diplomas conferred by non-member States is not germane to the specific directives on the mutual recognition of diplomas. Generally they refer to it only in order to explain that it is governed by national law which determines its own criteria for equivalence and which retains an unfettered power of discretion which Community law does not put in question. [FN13] Thus, a Member State cannot be obliged to recognise a diploma awarded by a non-member State on the ground that another Member

State considers it to be equivalent.

FN13 See, for example, Article 1(4) of Council Directive 78/1027 concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons ([1978] O.J. L362/7).

21. Any other solution would lead to a logical impasse: in effect, the facility granted to a Member State pursuant to Article 1(4) of the second directive would become an obligation with regard to all the others. Such a construction cannot be placed on that provision without distorting it. More specifically, the equivalence of diplomas within the\*617 Community cannot depend on bilateral agreements concluded between Member States on one side, and non-member States on the other, and which do not observe a minimum Community standard.

22. Commenting on a provision analogous to Article 1(4) of the second directive which appears in Article 1(5) of the Directive 75/363 on doctors, [FN14] Lord Cockfield, replying on behalf of the Commission to a question from an MEP, [FN15] stated as follows:

FN14 Council Directive concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors ([1975] O.J. L167/14.).

FN15 Written Question no. 2076/87 ([1988] O.J. C283/11).

Recognition of diplomas obtained in a non-Community country thus depends solely on the regulations in force in the host Member State; these regulations must, of course, apply equally to nationals of that Member State and the nationals of the other Member States. By virtue of Article 1(5) referred to above, the United Kingdom retains the right not to recognise a basic Israeli diploma, even though it has been recognised by the Federal Republic of Germany.

23. That view was repeated on 13 March 1989 in an answer given by Mr Bangemann, again on behalf of the Commission. Commenting in particular on that occasion on the directives of 25 July 1978, he stated that the diplomas of non-Community States are not covered by this "mutual recognition". The legal instruments in question specifically leave to the Member States the right to grant on their own territory and in line with their own regulations access to the professional activities in question and their exercise by the holders of diplomas acquired in non-Community States. However, recognition of such diplomas by a Member State does not automatically imply an obligation upon the other Member States to recognise them as well. [FN16]

FN16 Answer to Written Question no. 2103/88 ([1989] O.J. C202/19).

24. It follows that, where a national of a Member States does not hold a Community qualification, he may not rely on the provisions of the first directive, and in particular on Article 7 of that directive.

25.I therefore propose that the Court give the following answer to the question submitted by the national court:

A Community national who holds a diploma in dentistry awarded by a non-member State cannot rely *vis-a-vis* a Member State on the provisions of Article 7 of Council Directive 78/686 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, even if the diploma in question has been recognised as equivalent in one or more other Member States.

## **JUDGMENT**

[1] By a decision of 15 February 1993, which was received at the Court on 14 April 1993, the French Conseil d'Etat referred to the Court for a preliminary ruling under Article 177 EEC a question on\*618 the interpretation of Article 7 of Council Directive 78/686 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services. [FN17]

FN17 [1978] O.J. L233/1.

[2] That question arose in proceedings between Abdullah Tawil-Albertini, a French national, and the French Ministre des Affaires Sociales (Minister for Social Security and Employment) with regard to the latter's refusal to authorise him to practise dentistry in France.

[3] The object of Directive 78/686 is the mutual recognition by Member States of qualifications in dentistry which are exhaustively listed in Article 3 and awarded by those States. The co-ordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners is ensured by Council Directive 78/687. [FN18] According to Article 2 of Directive 78/686, qualifications awarded by a Member State in accordance with the minimum criteria as regards theoretical and practical training defined by Directive 78/687 are automatically recognised in the other Member States.

FN18 [1978] O.J. L233/10.

[4] As regards recognition of qualifications awarded by Member States before the entry into force of that system, Article 7(1) of Directive 78/686 provides that: In the case of nationals of Member States whose diplomas, certificates and other evidence of formal qualifications do not satisfy all the minimum training requirements laid down in Article 1 of Directive 78/687, each Member State shall recognise as being sufficient proof the diplomas, certificates and other evidence of formal qualifications in dentistry awarded by those Member States before the implementation of Directive 78/687, accompanied by a certificate stating that those nationals have effectively and lawfully been engaged in the activities in

question for at least three consecutive years during the five years prior to the date of issue of the certificate.

[5] As regards diplomas, certificates and other evidence of formal qualifications obtained in a Member State, Article 1(4) of Directive 78/687 provides that: 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 and other evidence of formal qualifications which have not been obtained in a Member State to take up and pursue the activities of a dental practitioner.

[6] Sections L365-1 and L356-2 of the Code de la Sante Publique (Public Health Code), which transpose into French law Directive 78/686, entitle nationals of the other Member States who hold a qualification from one of those States to practise dentistry in France.

\*619 [7] Tawil-Albertini obtained a diploma of doctor of dental surgery in Beirut, Lebanon, in 1968. On 20 July 1979, that is to say, before the entry into force of Directive 78/686, the Belgian Minister for National Education and French culture recognised his Lebanese qualification as equivalent to the Belgian "Diplome Legal de Licencie en Science Dentaire" (Official Diploma of Graduate in Dental Science), which authorised him to practise in Belgium. In December 1980 he was authorised to practise dentistry in the United Kingdom and in February 1986 in Ireland. The information in the case-file is not sufficient to establish the basis on which those authorisations were granted.

[8] Relying on the fact that his qualification had been recognised as equivalent in another Member State, Tawil-Albertini applied to the French Ministre des Affaires Sociales to be allowed to benefit from the provisions of Directive 78/686, which had been implemented in France since 1980, in order to be able to practise his profession in the territory of that State. That application was refused by decision of 2 May 1986.

[9] By a judgment of 28 October 1987, the Tribunal Administratif (Administrative Court), Paris, dismissed an application for annulment of that decision brought by Tawil-Albertini on the ground that he could not rely on a Belgian diploma of graduate in dental science but only on the recognition that his Lebanese diploma was equivalent to it.

[10] Tawil-Albertini then brought an appeal against that decision before the French Conseil d'Etat claiming that, by virtue of Article 7 of Directive 78/686, he was entitled to practise dentistry in France. Since it was uncertain as to the interpretation to give that provision, the French Conseil d'Etat decided to stay the proceedings and seek a preliminary ruling from the Court of Justice on whether Article 7 of Directive 78/686 excludes from its scope qualifications obtained by virtue of equivalence which therefore do not testify to dental training acquired in one of the Member States of the Community.

[11] It should be noted that Article 2 of Directive 78/686 provides for the mutual recognition by Member States of qualifications in dentistry exhaustively listed in Article 3 and awarded by those States. That recognition has been automatic since the implementation of the directive because, concurrently, Directive 78/687 defined the minimum criteria which dental training in the various States of the



Community must satisfy. The mutual recognition of qualifications in dentistry awarded by the Member States, mentioned in Directive 78/686, is based on the guarantees provided by the application of minimum criteria for training imposed by Directive 78/687.

[12] In relations with non-member States, such co-ordination of legislation on training can be established only by agreements concluded between the States concerned. Thus, by virtue of Article 1(4) of Directive 78/687, Member States remain free, in accordance with their own rules in respect of their own territory, to authorise\*620 holders of qualifications obtained in non-Community States to take up and pursue the activities of a dental practitioner.

[13] Accordingly, recognition by a Member State of qualifications awarded by non-member States does not bind the other Member States.

[14] Article 7 concerns only qualifications awarded by the Member States.

[15] The answer to the question referred to the Court for a preliminary ruling should therefore be that Article 7 of Directive 78/686 does not require Member States to recognise diplomas, certificates and other evidence of formal qualifications which do not testify to dental training acquired in one of the Member States of the Community.

### **Costs**

[16] The costs incurred by the French Government and the E.C. 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 proceedings pending before the national court, the decision on costs is a matter for that court.

### **Order**

On those grounds, THE COURT, in answer to the question referred to it by the French Conseil d'Etat by decision of 15 February 1993,  
HEREBY RULES:

Article 7 of Directive 78/686 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, does not require Member States to recognise diplomas, certificates and other evidence of formal qualifications which do not testify to dental training acquired in one of the Member States of the Community.

(c) Sweet & Maxwell Limited

[1995] 1 C.M.L.R. 612

END OF DOCUMENT