Union Nationale des Entraineurs et Cadres Techniques Professionnels du Football (UNECTEF) v. Georges Heylens and Others (Case 222/86)

Before the Court of Justice of the European Communities

ECJ

(Presiding, Lord Mackenzie Stuart C.J.; Bosco, Due, Mointinho de Almeida and Rodriguez Iglesias PP.C.; Koopmans, Everling, Bahlmann, Galmot, Kakouris, Joliet, O'Higgins and Schockweiler JJ.) Sig. Federico Mancini, Advocate General.

15 October 1987

Reference from France by the Tribunal de Grande Instance (Regional Court), Lille, under Article 177 EEC.

Employment. Discrimination.

Article 48 EEC aims to eliminate provisions in national law relating to employment, remuneration and other conditions of work and employment whereby a worker who is a national of another member-State is subject to more severe treatment or is placed in an unfavourable position, in law or in fact, as compared with a local national in the same situation. [9]
Regina v. Saunders (175/78): [1979] E.C.R. 1129, [1979] 2 C.M.L.R. 216, explained.

Employment. Qualifications. Establishment.

In the absence of harmonisation of the conditions of access to a particular occupation, the member-States are entitled to lay down the knowledge and qualifications needed in order to pursue it and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications. But that nevertheless constitutes a restriction on the effective exercise of the

freedom of establishment guaranteed by the EEC Treaty. The fact that directives have not yet been issued for mutual recognition of relevant diplomas does not entitle a member-State to deny the practical effect of that freedom to a person subject to Community law when it is possible within that State to ensure the freedom *e.g.* by national procedures for recognition of equivalent foreign diplomas. [10]-[11]
Patrick v. Ministre des Affaires Culturelles (11/77): [1977] E.C.R. 1199, [1977] 2 C.M.L.R. 523, *applied.* *902

Employment. Human rights. Judicial review.

Free access to employment is a fundamental right, as embodied in Articles 6 and 13 ECHR, which the EEC Treaty confers individually on each worker in the Community. It is therefore essential that there be a remedy of a judicial nature against any decision of a national authority refusing the benefit of that right. A national authority refusing a Community national the right to work (*in casu,* on grounds of lack of requisite national qualifications) must therefore inform the would-be worker of the reasons on which its refusal is based, either in the decision itself or in a subsequent communication made at his request. This applies, however, only to final decisions and not to opinions and other measures occurring in the preparation and investigation stage. [14]-[16]

Employment. Qualifications. Judicial review.

Where in a member-State access to an occupation is open only to workers who possess a national diploma or a foreign diploma recognised as equivalent, the principle of free movement in Article 48 EEC requires that a decision refusing to recognise the equivalence of such foreign diploma should be susceptible to judicial review and that the reasons for the negative decision should be made available for that purpose. [17]
The Court *interpreted* **Article 48** EEC *in the context of* a Belgian football trainer holding a Belgian football trainer's diploma, recognition of which had been refused by the French authorities, who had been employed as trainer by a French (Lille) football club contrary to French law which required possession of either a French diploma or a foreign diploma recognised by the French authorities, *to the effect that* France was entitled to require possession of a trainer's diploma, *that* in applying such a requirement it must take account of the fundamental right of freedom of employment, *that* the application of the rules on equivalence of diplomas must be objective and subject to judicial scrutiny, *that* for that purpose the reasons for refusing to grant equivalence must be given, *and that* consequently the Belgian defendant should be entitled, in the course of his defence on a charge of unlawfully acting as trainer, to put in question the lawfulness of the French refusal to recognise his Belgian diploma and to have discovery of the reasons for that refusal in order to refute them.

Representation

Jean-Jacques Bertrand, of the Paris Bar, for the plaintiff trade union.
Géard Doussot, of the Lille Bar, for the defendants.
Laurids Mikaelsen and Joergen Molde, both Legal Advisers in the Ministry of Foreign Affairs, for the Danish Government as *amicus curiae* in the written and oral proceedings respectively. *903
Gilbert Guillaume, Director responsible for Legal Affairs in the Ministry for Foreign Affairs, for the French Government as *amicus curiae*.
Joseph Griesmar, Legal Adviser to the E.C. Commission, for the Commission as *amicus curiae*.

The following cases were referred to in the judgment:
1. The State v. Watson and Belmann (118/75). 7 July 1976: [1976] E.C.R. 1185, [1976] 2 C.M.L.R. 552. Gaz: 118/75.
2. Regina v. Saunders (175/78), 28 March 1979: [1979] E.C.R. 1129, [1979] 2 C.M.L.R. 216. Gaz:175/78.
3. Patrick v. Ministre des Affaires Culturelles (11/77), 28 June 1977: [1977] E.C.R. 1199, [1977] 2 C.M.L.R. 523. Gaz:11/77.
4. Thieffry v. Conseil de l'Ordre des Avocats A la Cour de Paris (71/76), 28 April 1977: [1977] E.C.R. 765, [1977] 2 C.M.L.R. 373. Gaz:71/76.
5. Johnston v. Chief Constable of the Royal Ulster Constabulary (222/84), 15 May 1986: [1986] E.C.R. 1651, [1986] 3 C.M.L.R. 240. Gaz:222/84.

The following further cases were referred to by the Advocate General:
6. Reyners v. the Belgian State (2/74), 21 June 1974: [1974] E.C.R. 631, [1974] 2 C.M.L.R. 305. Gaz:2/74.
7. Van Binsbergen v. Bestuur Van de Bedrijfsvereniging voor de Metaalnijverheid (33/74), 3 December 1974: [1974] E.C.R. 1299, [1975] 1 C.M.L.R. 298. Gaz:33/74.
8. Walrave and Koch v. Association Union Cycliste Internationale (36/74), 12 December 1974: [1974] E.C.R. 1405, [1975] 1 C.M.L.R. 320. Gaz:36/74.
9. Ministere Public v. Auer (136/78), 7 February 1979: [1979] E.C.R. 437, [1979] 2 C.M.L.R. 373. Gaz:136/78.
10. Ordre des Avocats Au Barreau de Paris v. Klopp (107/83), 12 July 1984: [1984] E.C.R. 2971, [1985] 1 C.M.L.R. 99. Gaz:107/83.
11. Rutili v. Ministre de l'Interieur (36/75), 28 October 1975: [1975] E.C.R. 1219, [1976] 1 C.M.L.R. 140. Gaz:36/75.
12. Regina v. Secretary of State for Home Affairs, Ex parte Santillo (131/79), 22 May 1980 [1980] E.C.R. 1585, [1980] 2 C.M.L.R. 308. Gaz:131/79.
13. Adoui and Cornuaille v. Belgian State (115-116/81), 18 May 1982: [1982] E.C.R. 1665, [1982] 3 C.M.L.R. 631. Gaz:115/81.

The following additional case was referred to in argument:
14. Re Registration of Foreign Doctors: E.C. Commission v. France (96/85), 30

April 1986: [1986] E.C.R. 1475, [1986] 3 C.M.L.R. 57. Gaz:96/85 *904 .

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Opinion of the Advocate General (Sig. Federico Mancini)

1

In connection with criminal proceedings concerning unlawfully practising the occupation of football trainer, the Tribunal de Grande Instance (Regional Court), Lille, has asked the Court whether under Articles 48 to 51 EEC national administrative measures affecting the freedoms and rights guaranteed by those **Articles** must fulfil specific minimum requirements and in particular whether they must include an express statement of reasons.
Mr. Georges Heylens, a Belgian national, holds a Belgian football trainer's diploma issued on 18 June 1977 by the Ecole des Entraîneurs de l'Union Royale Belge de Sociétés de Football Association. During the 1984-1985 football season he was taken on by the Lille Olympic Sporting Club ('the Club'), whose team is in the French First Division. The Club took immediate steps to regularise Mr. Heylen's position, but the Minister for Youth and Sport, by a letter dated 8 January 1985, informed him that the national Equivalence Committee had recommended that his diploma should not be recognised as equivalent to the corresponding French certificate, and asked him to refrain from carrying out any form of tuition for gain in France.
However, Mr. Heylens did not give up training the Lille team and neither did he comply with the notice which was subsequently served upon him by the Union Nationale des Entraîneurs et Cadres Techniques Professionnels du Football (UNECATEF). Consequently the latter summoned him and the management of the Club to appear before the Tribunal de Grande Instance, Lille, to face charges under section 43 of Act 84-610 of 16 July 1984 [FN1] and section 259 of the Criminal Code with regard to the wrongful assumption of titles.

FN1 [1984] J.O.R.F. 2288.

By order of 4 July 1986 the Tribunal de Grande Instance suspended the proceedings and requested the Court of Justice to deliver a preliminary ruling under Article 177 EEC on the following question: 'Does the requirement that a person wishing to exercise a gainful occupation as a trainer with a sports team (section 43 of the Act of 16 July 1984) must hold a French diploma or a foreign diploma recognised as equivalent thereto by a committee whose rulings do not state the reasons on which they are based and against whose decisions no specific legal remedy is available constitute a restriction on freedom of movement for workers as defined by Articles 48 to 51 of the EEC Treaty *905 , in the absence of any directive applicable to that occupation?'
In the course of the proceedings before the Court of Justice, written observations have been submitted by UNECATEF, the defendants in the main proceedings,

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

2

For a better appreciation of the issue before the Court it is useful to adumbrate the French rules with regard to the recognition of the 'equivalence' of foreign football trainers' diplomas. They are set out in the first place in the Order of 30 July 1965 of the State Secretary for Youth and Sport listing the diplomas which give entitlement to practise the occupation of physical education or sports master. [FN2] Section 6 of that order sets up a national committee to consider applications from holders of foreign diplomas; however, the power of decision with regard to such applications is vested in the State Secretary himself, who is to take individual decisions 'until such time as relevant agreements has been concluded with the countries concerned.' A persons who practises the occupation of trainer unlawfully is liable to a fine (of 6,000 to 50,000 FF.) or a term of imprisonment (six months to one year) or both under section 43 of Act 84-610 of 16 July 1984. The first paragraph of that section provides as follows: 'It shall be unlawful for any person, save for the officials of the State in the performance of their duties, to teach physical or sporting activities for gain, as a principal or second occupation, in full-time or seasonal employment, or to assume the title of teacher, trainer, instructor or master, or any other similar title, unless he holds a diploma certifying that he has the qualifications and aptitude for such employment. That diploma shall be a French diploma drawn up and delivered, or delivered for a qualification deemed to be equivalent, by the State, ... or a foreign diploma recognised as equivalent thereto'.

FN2 [1965] J.O.R.F. 9457.

3

Before going any further it should be observed that by letters dated 13 June and 19 August 1985 the Minister for Youth and Sport notified Mr. Heylens that he had decided to recognise his diploma as equivalent following reassessment by the Equivalence Committee. The French Government, to which the Court owes that information, admitted, however, that since that recognition is effective *ex nunc* it is without effect on the existence of the criminal offence; the problem *906 raised by the Tribunal de Grande Instance--to which it falls, in any event, to assess whether the interpretation which the Court of Justice has been requested to give is still pertinent for the purposes of the judgment-- therefore remains completely relevant.

But in order to provide the national court with an answer which is truly useful its question must be rephrased somewhat, for applications for the recognition of the equivalence of foreign diplomas are not in fact decided on by the Equivalence Committee. On the contrary, section 6 of the order of 30 July 1965 (cited above) provides that following examination of such applications by the Equivalence

Committee the decisions thereupon are to be taken by the State Secretary for Youth and Sport. Since the Committee's recommendation takes the form of a mere preparatory measure for the final decision, it therefore has no external relevance and hence cannot affect the situation of the parties concerned.
If that is the position and it is true that the applicant is entitled to have recourse, as against the Minister's decision, to the normal remedies available under the French legal system, it is certainly not contrary to Community law that an action will not lie against the Committee's non-binding opinion. Hence by stressing that aspect the Tribunal de Grande Instance has placed a non-existent problem before the Court; consequently the scope of its question must be extended by rephrasing it as I did at the beginning of this Opinion. That is to say, the question must be understood as seeking to establish whether, as a result of the Community rules on the movement of persons, national decisions affecting the rights given to migrants must comply with a number of minimum requirements, including the duty to give an express statement of reasons.

4

The relevant Community rules are laid down by Articles 48 to 58 EEC and, specifically as regards migrant workers, by Council Regulation 1612/68. Article 45 of Regulation 1612/68 provides that the Commission is to submit to the Council 'proposals aimed at abolishing, in accordance with the conditions of the Treaty, restrictions on eligibility for employment of workers who are nationals of member-States, where the absence of mutual recognition of diplomas, certificates or other evidence of formal qualifications may prevent freedom of movement for workers'. In this sector, as in others, no directive-- the directive being the instrument by which the Council is to abolish the restrictions in question--has yet seen the light of day. Can it be inferred therefrom that the restrictions in the various national legal systems are unlawful? More specifically, is each member-State entitled to lay down a requirement for a diploma issued by its national authorities, thereby excluding the validity of qualifications obtained in the country of origin or in another country albeit still a member-State of the Community?
*907 The only possible answer, it seems to me, must be in the negative as a result of three principles expressly laid down in the Treaty or inferred by the case law interpreting the Treaty: (a) the Treaty requirement that member-States must abstain from any measure which could jeopardise the attainment of the objectives of the Treaty (Article 5(2)); (b) the blanket prohibition of discrimination laid down by Article 7; and (c) the direct effect of provisions which, pursuant to that rule, provide for the abolition of restrictions on the movement of persons and services. The Court's pronouncements on (b) and (c) now number dozens: see in particular the judgments in Case 2/74, Reyners v. Belgian State [FN3]; Case 33/74, Van Binsbergen [FN4]; Case 36/74, Walgrave and Koch; [FN5]; Case 11/77, Patrick [FN6]; Case 136/78, Auer [FN7]; and Case 107/83, Klopp. [FN8]

FN3 [1974] E.C.R. 631, [1974] 2 C.M.L.R. 305 At Para. [32].

FN4 [1974] E.C.R. 1299, [1975] 1 C.M.L.R. 298 At Paras. [24]-[27].

FN5 [1974] E.C.R. 1405, [1975] 1 C.M.L.R. 320 At Paras. [4]-[6].

FN6 [1977] E.C.R. 1199, [1977] 2 C.M.L.R. 523 At Paras. [9]-[13].

FN7 [1979] E.C.R. 437, [1979] 2 C.M.L.R. 373 At Para. [24].

FN8 [1984] E.C.R. 2971, [1985] 1 C.M.L.R. 99 At Para. [11].

Consequently the existence of a straightforward power to negate the validity of certificates obtained outside the national territory but within the Community must be ruled out. On the contrary, even today the member-States must recognise that such certificates are valid, at least in as much as they certify that the holders are in possession of qualifications equivalent to the competence certified by the corresponding national documents (see, moreover, Case 71/76, Thieffry [FN9]). As the French and Danish Governments observe, the absence of directives on the mutual recognition of diplomas will hence have one effect only; it will leave the member-States the power independently to lay down rules governing the recognition procedures. However, there is no doubt that that power constitutes objective discrimination against holders of foreign diplomas. It follows that in order not to increase their disadvantages and hence in order not to infringe Community law, the rules laid down by the member-State must fulfil a two-fold requirement: they must stipulate no more than is absolutely necessary, that is to say they must introduce machinery designed simply to ascertain whether the applicant's knowledge is comparable to that certified by the national certificate, and they must hedge that machinery about with every safeguard to enable the applicant to exercise his freedom of movement.

FN9 [1977] E.C.R. 765, [1977] 2 C.M.L.R. 373 At Para. [19].

5

Having said that, let us return to the national court's question as we have seen fit to rephrase it; can it be said that rules which are such that measures of the kind of the contested decision can be adopted remain within the limits of the power still vested in the member-States? The question arises above all as regards a particular *908 characteristic of the decision in question: the complete absence of a statement of reasons. The letter of 8 January 1985 refers to an 'unfavourable opinion' delivered by the Equivalence Committee, but does not set out--indeed does not even refer to--reasons why the Committee came out with an adverse recommendation. Neither can it be told whether the reasons were given in a document submitted to the State Secretary for his use in drawing up the final decision.
The views of the parties are manifestly at odds with each other. Mr. Heylens argues that the procedure laid down by the Order of 30 July 1965 is incompatible with Community law in so far as it allows the French authorities to disregard--

without stating why--the equivalence of sports diplomas granted by other member-States. That the decision is arbitrary even from the technical point of view is shown, he states,--and I leave full responsibility for his words with him--by the fact that 'high quality Belgian football is at least as good as French football of the highest quality.' Lastly, he suspects that the absence of a requirement to state reasons is a 'corporatist' expedient designed to protect French trainers from 'foreign competition'.

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

Finally, the Commission points out that when, as in this case, what is in question is a fundamental freedom guaranteed by the Treaty the national rules must fulfil at least two requirements: they must enable the person concerned to ascertain the reasons for the refusal in his case and to bring an action against the administrative authorities before the courts.

6

Personally, I doubt whether under French law a measure refusing to recognise the equivalence of a foreign sports diploma is in fact exempt from the duty to state reasons (*cf* Act 79-587 of 21 July 1979 and the circulars of 31 August 1979 and 10 January 1980 of the Prime Minister [FN10]). However, whether that impression is correct or not and, if so, whether an unlawful practice is involved is for the Tribunal de Grande Instance to determine. As has been made clear above, the Court's rôle is different: it has to establish whether or not national *909 rules which do not require but authorise the administration to state reasons for decisions of refusal conflict with Community law.

FN10 [1979] J.O.R.F. 1711, [1979] J.O.R.F. 2146 and [1980] J.O.R.F. 465 Respectively.

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

expensive and, as far as he is concerned, of absolutely unpredictable outcome. Indeed, that dilemma indubitably constitutes an unwarranted aggravation of a situation which is in itself discriminatory, and in this case inevitably so, as between national and foreign trainers as a result of the absence of a directive. However, its most serious consequence is that for the foreigner involved it alters the ordinary assessments--let us say the ordinary cost/benefit analysis--which the beneficiaries of safeguards in the shape of legal remedies carry out before deciding to press ahead with those remedies. To state--as the French Government does--that in the event that an action is brought the administration must divulge the reasons for its refusal is correct, but it is also misleading, since if he is not aware what those reasons are a national of another member-State is not free to decide whether he should avail himself of his right to bring an action. Furthermore, the alteration and the additional discrimination which I have just identified inevitably affect the foreign trainer's freedom of movement (if he decides not to bring an action, he decides in effect to leave the host country); and if that is correct it seems obvious to me that there is an implied obligation on the part of the member-States under Articles 48 to 51 EEC to obviate those consequences by requiring the national authorities to state reasons for the decisions by which they refuse to recognise the validity of foreign certificates. Confirmation of the above reasoning--in particular as regards the insufficiency of the protection afforded by the mere possibility of legal redress--is provided by Council Directive 64/221 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health. [FN11] Article 8 thereof requires the member-States to guarantee all Community citizens access to the legal remedies available to nationals; nevertheless Article 6 provides that 'the person concerned shall be informed of the grounds of public *910 policy, public security, or public health upon which the [unfavourable] decision taken ... [in the case of a Community national] is based, unless this is contrary to the interests of the security of the State involved.' It is also significant that the 'dual safeguard' called for by those provisions is stressed by the judgments in Case 36/75, Rutili [FN12]; Case 131/79, Santillo [FN13]; and Joined Cases 115-116/81, Adoui and Cournuaille. [FN14]

FN11 [1963-64] O.J. Spec.ED.117.

FN12 [1975] E.C.R. 1219, [1976] 1 C.M.L.R. 140 At Paras. [36]-[39].

FN13 [1980] E.C.R. 1585, [1980] 2 C.M.L.R. 308 At Paras. [14] & [19].

FN14 [1982] E.C.R. 1665, [1982] 3 C.M.L.R. 631 At Para. [13].

In the course of the oral proceedings, the representative of the Danish Government argued on the basis of Article 6 of Directive 64/221 that the Community legislation *dixit ubi voluit* and hence a duty to give reasons did not exist where, as in this case, there was no express provision for such a

requirement. However, there is no merit in that argument--and not only because it basically denies the very possibility of interpreting the provisions systematically. For such an argument to hold good it would have to be backed by counter evidence; but since there is no directive on football trainers there is no basis from which it might be possible to infer that *ubi tacuit* the legislature *noluit* or that a lack of intention can be inferred from the absence of a relevant provision.

7

In the light of all the foregoing considerations I propose that the Court should answer the question on which the Tribunal de Grande Instance, Lille, asked the Court to give a preliminary ruling by order of 4 July 1986 in connection with criminal proceedings brought against Georges Heylens and others in the following terms.
Articles 7 and 48 to 51 of the EEC Treaty must be interpreted as follows: a national law or administrative practice whereby recognition of the equivalence of a football trainer's diploma issued by another member-State may be refused without any reasons being required to be given, thus preventing its holder from practising as a football trainer, must be deemed to be incompatible with the aforementioned Treaty provisions.

JUDGMENT

[1] By judgment of 4 July 1986, lodged at the Court Registry on 18 August 1986, the Tribunal de Grande Instance (Regional Court), Lille, referred to the Court for a preliminary ruling pursuant to Article 177 EEC a question on the interpretation of Article 48 EEC.
[2] That question was raised in the criminal proceedings following the private prosecution brought by Union Nationale des Entraîneurs et Cadres Techniques de Football against Georges Heylens, a *911 football trainer, and Jacques Dewailly, Jacques Amyot and Roger Deschodt, directors of the Lille Olympic Sporting Club, a *société anonyme d'économie mixte*, as principal and accessories, respectively, for having infringed the provisions of French Act 84-610 of 16 July 1984 on the organisation and promotion of physical and sporting activities [FN15] and section 259 of the Criminal Code with regard to the wrongful assumption of a title.

FN15 J.O.R.F. 17 July 1984.

[3] It appears from the documents before the Court that in order to practise the occupation of football trainer in France a person must be the holder of a French football-trainer's diploma or a foreign diploma which has been recognised as equivalent by decision of the competent member of the Government after consulting a special committee.
[4] The defendant, George Heylens, is a Belgian national and the holder of a Belgian football-trainer's diploma and was engaged by the Lille Olympic Sporting Club as trainer of the club's professional football team. An application for

recognition of the equivalence of the Belgian diploma was rejected by decision of the competent member of the Government, which referred, by way of statement of reasons, to an adverse opinion of the special committee, which itself contained no statement of reasons. Since Mr. Heylens continued to practise as a football trainer, the French football-trainers' union summoned him, and the directors of the football club which had engaged him, before the Lille criminal court.
[5] Since it had doubts about the compatibility of the French legislation with the rules on the free movement of workers, the Tribunal de Grande Instance de Lille (8th Criminal Chamber) suspended the proceedings until the Court had delivered a preliminary ruling on the following question:
Does the requirement that a person wishing to pursue a gainful occupation as trainer of a sports team (section 43 of the Act of 16 July 1984) must hold a French diploma or a foreign diploma recognised as equivalent thereto by a committee whose rulings do not state the reasons on which they are based and against whose decisions no specific legal remedy is available constitute a restriction on freedom of movement for workers as defined by Articles 48 to 51 of the EEC Treaty, in the absence of any directive applicable to that occupation?
[6] Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
[7] The question put by the national court essentially seeks to establish whether, where in a member-State access to an occupation as an employed person is dependent upon the possession of a national diploma or a foreign diploma recognised as equivalent *912 thereto, the principle of the free movement of workers laid down in Article 48 of the Treaty requires that it must be possible for a decision refusing to recognise the equivalence of a diploma granted to a worker who is a national of another member-State by that member-State to be made the subject of judicial proceedings, and that the decision must state the reasons on which it is based.
[8] In order to answer that question it must be borne in mind that **Article 48** of the Treaty implements, with regard to workers, a fundamental principle contained in Article 3(c) the Treaty, which states that, for the purposes set out in Article 2, the activities of the Community are to include the abolition, as between member-States, of obstacles to freedom of movement for persons and services (see Case 118/75, Watson and Belmann [FN16]).

FN16 [1976] E.C.R. 1185, [1976] 2 C.M.L.R. 552.

[9] In application of the general principle set out in Article 7 of the Treaty under which discrimination on grounds of nationality is prohibited, Article 48 aims to eliminate in the legislation of the member-States provisions as regards employment, remuneration and other conditions of work and employment under which a worker who is a national of another member-State is subject to more severe treatment or is placed in an unfavourable situation in law or in fact as

compared with the situation of a national in the same circumstances (see Case 175/78, Saunders [FN17]).

FN17 [1979] E.C.R. 1129, [1979] 2 C.M.L.R. 216.

[10] In the absence of harmonisation of the conditions of access to a particular occupation, the member-States are entitled to lay down the knowledge and qualifications needed in order to pursue it and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications.
[11] However, as the Court held in Case 11/77, Patrick v. Ministre des Affaires Culturelles, [FN18] the lawful requirement, in the various member-States, relating to the possession of diplomas for admission to certain occupations constitutes a restriction on the effective exercise of the freedom of establishment guaranteed by the Treaty the abolition of which is to be made easier by directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications. As the Court also held in that judgment, the fact that such directives have not yet been issued does not entitle a member-State to deny the practical benefit of that freedom to a person subject to Community law when that freedom can be ensured in that member-State, in particular because it is possible under its laws and regulations for equivalent foreign diplomas to be recognised.

FN18 [1977] E.C.R. 1199, [1977] 2 C.M.L.R. 523.

[12] Since freedom of movement for workers is one of the fundamental objectives of the Treaty, the requirement to secure free movement under existing national laws and regulations stems, as the *913 Court held in Case 71/76, Thieffry, [FN19] from Article 5 of the Treaty, under which the member-States are bound to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty and to abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.

FN19 [1977] E.C.R. 765, [1977] 2 C.M.L.R. 373.

[13] Since it has to reconcile the requirement as to the qualifications necessary in order to pursue a particular occupation with the requirements of the free movement of workers, the procedure for the recognition of equivalence must enable the national authorities to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. That assessment of the equivalence of the foreign diploma must be effected exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training which the diploma certifies that he has carried out.
[14] Since free access to employment is a fundamental right which the Treaty confers individually on each worker in the Community, the existence of a remedy

of a judicial nature against any decision of a national authority refusing the benefit of that right is essential in order to secure for the individual effective protection of his right. As the Court held in Case 222/84, Johnston v. Chief Constable of the Royal Ulster Constabulary, [FN20] that requirement reflects a general principle of Community law which underlies the constitutional traditions common to the member-States and has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

FN20 [1986] E.C.R. 1651, [1986] 3 C.M.L.R. 240.

[15] Effective judicial review, which must be able to cover the legality of the reasons for the contested decision, presupposes in general that the court to which the matter is referred may require the competent authority to notify its reasons. But where, as in this case, it is more particularly a question of securing the effective protection of a fundamental right conferred by the Treaty on Community workers, the latter must also be able to defend that right under the best possible conditions and have the possibility of deciding, with a full knowledge of the relevant facts, whether there is any point in their applying to the courts. Consequently, in such circumstances the competent national authority is under a duty to inform them of the reasons on which its refusal is based, either in the decision itself or in a subsequent communication made at their request.
[16] In view of their aims those requirements of Community law, that is to say, the existence of a judicial remedy and the duty to state reasons, are however limited only to final decisions refusing to *914 recognise equivalence and do not extend to opinions and other measures occurring in the preparation and investigation stage.
[17] Consequently, the answer to the question put by the Tribunal de Grande Instance, Lille, must be that where in a member-State access to an occupation as an employed person is dependent upon the possession of a national diploma or a foreign diploma recognised as equivalent thereto, the principle of the free movement of workers laid down in Article 48 of the Treaty requires that it must be possible for a decision refusing to recognise the equivalence of a diploma granted to a worker who is a national of another member-State by that member-State to be made the subject of judicial proceedings in which its legality under Community law can be reviewed, and for the person concerned to ascertain the reasons for the decision.

Costs

[18] The costs incurred by the Government of the French Republic, the Government of the Kingdom of Denmark and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action 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 Tribunal de Grande Instance, Lille, by judgment of 4 July 1986,
HEREBY RULES
Where in a member-State access to an occupation as an employed person is dependent upon the possession of a national diploma or a foreign diploma recognised as equivalent thereto, the principle of the free movement of workers laid down in Article 48 of the Treaty requires that it must be possible for a decision refusing to recognise the equivalence of a diploma granted to a worker who is a national of another member-State by the member-State to be made the subject of judicial proceedings in which its legality under Community law can be reviewed, and for the person concerned to ascertain the reasons for the decision.

[1989] 1 C.M.L.R. 901

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