

Judgment of the Court (Fourth Chamber) of 14 July 2005

Maria Aslanidou v Ypourgos Ygeias & Pronoias

Reference for a preliminary ruling: Symvoulio tis Epikrateias - Greece

Directive 92/51/EEC - Workers - Recognition of diplomas - Occupational therapist

Case C-142/04

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In Case C-142/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Simvoulio tis Epikratias (Greece), by decision of 30 December 2003, received at the Court on 17 March 2004, in the proceedings

Maria Aslanidou

v

Ipourgos Igeias & Pronias,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, N. Colneric and K. Schiemann (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Ms Aslanidou, by A.I. Vagias, dikigoros,
 - the Greek Government, by E. Skandalou, acting as Agent,
 - the Commission of the European Communities, by M. Patakia and H. Støvlbæk, acting as Agents,
- having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 The reference for a preliminary ruling concerns the circumstances in which certain provisions of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25) may be relied upon, where that directive has not been transposed, after the expiry of the period prescribed for transposition, by the holder of a diploma falling within its scope. In the alternative, the reference concerns the interpretation of Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC).
- 2 That reference, which is very similar to that which gave rise to the judgment in Case C-141/04 *Peros* [2005] ECR I-7163, delivered on the same day as this judgment, was made in proceedings between Ms Aslanidou and the Ypourgos Ygeias & Pronoias (Greek Minister for Health and Welfare) concerning the rejection by the latter of Ms Aslanidou's application for authorisation to pursue the profession of occupational therapist in Greece. Ms Aslanidou had submitted her application on the basis of her entitlement to pursue that profession in Germany.

Law

The Community legislation

- 3 Directive 92/51 establishes a complementary general system for the recognition of professional education and training covering the levels of education and training not covered by the initial general system introduced by Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), application of which is limited to higher education.
- 4 According to the fifth recital in the preamble to Directive 92/51, that complementary system is based on the same principles and contains *mutatis mutandis* the same rules as the initial general system.
- 5 Under Article 1 of Directive 92/51, evidence which shows that the holder has successfully completed one of the education and training courses in Annex C to that directive constitutes a diploma within the meaning of that directive provided:
 - that it has been awarded by a competent authority in a Member State,
 - that the holder has the professional qualifications required for the taking up of the profession in that Member State and
 - that the education and training attested by that evidence was received mainly in the Community.

6 One of the training courses listed in Annex C to Directive 92/51 in the version applicable to the facts in the main proceedings, namely before it was amended by Commission Decision 2004/108/EC of 28 January 2004 (OJ 2004 L 32, p. 15), is that for an occupational therapist ['Beschäftigungs- und Arbeitstherapeut(in)'], mentioned in the third indent relating to Germany, under point 1 headed 'Paramedical and childcare training courses'.

7 Article 3(a) of Directive 92/51 provides:

'Without prejudice to Directive 89/48/EEC, where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, as defined in this directive ... , the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as those which apply to its own nationals:

(a) if the applicant holds the diploma, as defined in this Directive or in Directive 89/48/EEC, 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 ...'

8 Notwithstanding Article 3 of that directive, Article 4 authorises the host Member State, in certain circumstances which are defined in that article, to require the applicant to provide evidence of professional experience of a specific duration, to complete an adaptation period not exceeding three years or to take an aptitude test ('the compensatory measures'). The same article lays down certain rules and conditions applicable to any compensatory measures which may be required.

9 Article 10 of Directive 92/51 lists the documents proving that applicants are of good character or repute or that they have not been declared bankrupt and certifying their physical or mental health which may be required as evidence by the competent authority of the host Member State, and contains a number of provisions regarding the wording of oaths or solemn declarations which may be imposed on nationals of other Member States.

10 Under Article 13(1) of Directive 92/51, Member States were required to designate, within the period provided for in Article 17, namely by 18 June 1994, the competent authorities empowered to receive the applications and take the decisions referred to in that directive and were required to communicate that information to the other Member States and to the Commission of the European Communities.

The national legislation

11 In Greece, the profession of occupational therapist is regulated by Presidential Decree No 83/1989 entitled 'Professional rights of graduates in the sectors: ... (c) Occupational therapy of the technological educational institutes (TEIs)' (FEK A' 37).

12 Under Article 3(4) of that decree, pursuit of that profession is subject to an authorisation granted by the Ministry of Health, Welfare and Social Insurance ('the Ministry of Health').

13 At the time when Ms Aslanidou's application was made, Order A4b/251 of 23 January 1990 (FEK B' 94) of the Minister for Health and Welfare required applications for authorisation to pursue the profession of occupational therapist to be accompanied by a copy of the diploma and, 'in the case of holders of foreign diplomas, [of] the decision recognising the equivalence of the diploma, issued by the Ministry of Education and Religious Affairs'.

14 Law No 1404/1983 of 22/24 November 1983 (FEK A' 173), as in force at the material time, had established a public authority known as the 'Institute for Technical Education and Training' ('the ITE') under the supervision of the Ministry of Education and Religious Affairs in order to advise the latter on pedagogical and scientific matters relating to higher technological educational and training.

15 Under Article 14(II)(2) of Law No 1404/1983, as replaced by Article 71(5) of Law No 1566/1985 of 30 September 1985 (FEK A' 167), the ITE had the task, inter alia, of deciding on the equivalence of foreign institutions or departments of non-university higher education and of the educational qualifications awarded by them, in relation to Greek technical education institutes and the qualifications awarded by them.

16 Article 2 of Presidential Decree No 567/1984 of 3 August/17 December 1984 (FEK A' 204) on the functioning of the ITE provided for the establishment of a Scientific Council within the ITE and laid down that 'the recognition of the equivalence of an educational qualification or of the institute shall take place by decision of the Scientific Council, which is to be communicated, in summarised form, to the person concerned by the president of the Scientific Council. That information shall constitute proof of the equivalence of the qualification.'

17 Following the facts in the main proceedings, Presidential Decree No 231/1998 (FEK A' 178), which was intended to transpose Directive 92/51 into Greek law, was adopted.

18 Article 14 of that decree confers exclusive competence on the Council for the Recognition of Equivalence of Higher-Education and Training Qualifications (Simvoulío Epangelmatikis Anagnorisis Titlon Ekpaidefsis kai Katartisis), a government body set up for that specific purpose, to recognise the right of the holder of a diploma to pursue the relevant regulated profession in Greece. That body has sole competence on the question and its opinion is binding on the Ministry responsible for granting authorisation to pursue the profession.

The main proceedings and the questions referred for a preliminary ruling

19 Ms Aslanidou, a Greek national, passed, following a three-year programme of study, the national examination for occupational therapists ('Zeugnis über die Staatliche Prüfung für Beschäftigungs- und Arbeitstherapeuten') at the recognised College of Occupational Therapy in Stuttgart (Germany), allowing her to take up the profession of occupational therapist in Germany.

20 Wishing to pursue that profession in Greece, Ms Aslanidou submitted an application, on 1 September 1997, to the Health Directorate of the Prefecture of Thessaloniki for authorisation on the basis of Directive 89/48. That application was forwarded to the Ministry of Health for investigation whether the conditions laid down by the Council for the Recognition of the Professional Qualifications of Occupational Therapists ('Simvoulío Anagnorisis Epangelmatikon Titlon Ergotherapefton', hereinafter 'the SAETE') were satisfied.

21 The latter deferred its decision and asked the ITE whether the institution at which Ms Aslanidou had studied in Germany 'could be classified as an establishment of what corresponds to higher education in Greece'. Following

the ITE's reply, according to which Ms Aslanidou's diploma was not equivalent to the qualifications awarded by Greek technological educational institutes, the SAETE took the view that the supporting documents submitted by Ms Aslanidou did not correspond to those required under Directive 89/48 and that, consequently, it could not grant her an authorisation to pursue the profession of occupational therapist on the basis of Directive 89/48. It therefore proposed that she submit a further application after Directive 92/51 had been transposed into Greek law.

- 22 By its Decision No 1 of 12 May 1998, the SAETE finally formally rejected Ms Aslanidou's application for authorisation on the ground that the qualification relied on by her was not a higher-education diploma since, in order to be eligible for a place at the German institution in question, a basic training of eight to 10 years, and not 12 years, was required, so that the conditions laid down by Directive 89/48 were not satisfied.
- 23 Ms Aslanidou lodged an appeal against that decision rejecting her application before the Simvoulio tis Epikratias (Council of State) on 21 July 1998.
- 24 In the main proceedings, it is common ground, according to the referring court, that even though Ms Aslanidou had applied to be granted authorisation to pursue the profession of occupational therapist under Directive 89/48, the competent authority was obliged to examine of its own motion the application and the facts relied on by the applicant in the light of the appropriate legal measure, namely Directive 92/51.
- 25 In that regard, the Simvoulio tis Epikratias is uncertain whether, between the expiry of the period prescribed for transposing Directive 92/51 and its belated transposition into national law, an individual relying on a diploma awarded in another Member State and falling within the scope of that directive was entitled, on the basis of its relevant provisions, to apply to the authorities of the host Member State for authorisation to take up the corresponding regulated profession in the host Member State.
- 26 In the main proceedings, a majority within the Simvoulio tis Epikratias is of the opinion that the substantive provisions of Articles 3, 4 and 10 of Directive 92/51 are unconditional and sufficiently precise as to the circumstances in which the authorities of the host Member State are bound to authorise the holder of a diploma awarded in another Member State to take up a regulated profession in the host Member State and that, consequently, they may be relied upon by the holder of such a diploma after the expiry of the period prescribed for the transposition of that directive.
- 27 According to that majority view, the failure to designate a competent authority pursuant to Article 13(1) of Directive 92/51 does not preclude reliance on those provisions, provided that the Member State's legislation, as it was in force before the directive was transposed, entrusted an identified administrative body with the task of establishing that the conditions for taking up the profession in question were satisfied and, where appropriate, of granting the person concerned authorisation to pursue that profession.
- 28 However, in the view of a minority within the Simvoulio tis Epikratias, rejection of the application for registration was justified on the grounds, first, that the relevant provisions of Directive 92/51 were not capable of being relied on by an individual at the time when the application at issue was submitted and, secondly, that the authority competent to process applications had not yet been designated pursuant to Article 13(1) of that directive.
- 29 The Simvoulio tis Epikratias is also uncertain whether, in so far as the provisions of Directive 92/51 were not capable of being relied on before the Ministry of Health, the latter would nevertheless have been obliged, under Articles 48 and 52 of the Treaty, to ascertain whether the qualification acquired by the appellant in Germany was equivalent to Greek diplomas.
- 30 In those circumstances, the Simvoulio tis Epikratias decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. Are the provisions of Articles 3, 4(1)(a) and (b) and (2) and 10(1) to (4) of Directive 92/51 ... unconditional and sufficiently precise so that, between the date of expiry of the period prescribed for transposing the directive and the date of its belated transposition into the national law of a Member State (the host Member State), an individual was entitled, on the basis of a diploma acquired in another Member State and falling within the scope of the above provisions, to rely on those provisions before an administrative body of that Member State, to which the national legislation entrusted competence, in order to obtain from that body authorisation to take up and pursue a regulated profession in the host Member State?
- (2) If, between the date of expiry of the period prescribed for transposition and the date of belated transposition into national law, an individual was not entitled to rely on the provisions of Directive 92/51 ... before an administrative body of the host Member State, to which the national legislation entrusted competence to issue authorisations to pursue a particular profession to holders of diplomas awarded by a national technological educational institute (TEI) or to holders of a foreign diploma recognised as equivalent following the general procedure described in the grounds of the order for reference, could that administrative body, taking into account the provisions of [Articles 48 and 52 of the Treaty] ..., make authorisation to take up and pursue the profession in question, applied for during the abovementioned period by the holder of a diploma acquired in another Member State, dependent on prior recognition, in accordance with the general procedure referred to above, of the equivalence of that diploma, or should that body itself have undertaken a comparative examination of the qualifications attested to by the diploma in question, on the one hand, and the knowledge and qualifications required by the national legislation, on the other, before reaching a decision accordingly?'

The questions referred for a preliminary ruling

- 31 Article 3(a) of Directive 92/51 provides that the competent authority of the host Member State may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue a regulated profession on the same conditions as apply to its own nationals if the applicant holds the diploma, as defined in that directive, which is 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.

- 32 Ms Aslanidou is the holder of a diploma within the meaning of Article 1 of Directive 92/51, read in conjunction with point 1 of Annex C to that directive. Her situation therefore falls within the scope of Article 3(a) of that directive. There is therefore no need for the Court to rule on the interpretation of Article 3(b) of that directive, which applies only if the profession in question is not regulated in the Member State of origin.
- 33 So far as concerns Article 3(a) of Directive 89/48, the wording of which is essentially identical to that of Article 3(a) of Directive 92/51, the Court has already ruled that it is a provision the subject-matter of which is unconditional and sufficiently precise for individuals to be entitled to rely upon it before a national court against the State where the latter has failed to transpose the directive into national law by the end of the period prescribed (Case C-102/02 *Beuttenmüller* [2004] ECR I-5405, paragraph 55). The same finding applies to Article 3(a) of Directive 92/51, since, according to the fifth recital in the preamble to that directive, the complementary general system introduced by it is expressly based on the same principles and contains *mutatis mutandis* the same rules as the initial general system introduced by Directive 89/48.
- 34 As regards the possibility of making access to a regulated profession dependent on the condition that an applicant first comply with compensatory measures provided for in Article 4 of Directive 92/51, the Court has held in the context of Directive 89/48 that, in principle, if that is provided for by the national legislation in force at the time when the application in question is processed, the competent authority is entitled to require the person concerned to comply with the compensatory measures provided for in Article 4(1), if the conditions laid down therein for that purpose are satisfied (see, to that effect, Case C-285/01 *Burbaud* [2003] ECR I-8219, paragraph 55).
- 35 However, if the imposition of such compensatory measures is not provided for by the national legislation in force, it is apparent from the case-law that a Member State which has failed to fulfil its obligation to transpose the provisions of a directive into national law can no more rely, as against Community citizens, upon the limitations laid down by those provisions than it can require that they perform the obligations laid down by that directive (see, to that effect, Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 21, and *Beuttenmüller*, paragraph 63).
- 36 It is for the national court, where appropriate, to determine to what extent the national legislation in force at the time of processing the application in question allowed the imposition of compensatory measures such as those provided for in Article 4(1) of the relevant directive. In that regard, it should be recalled that, according to settled case-law, where a situation falls within the scope of a directive, the national court is required, when applying its domestic law, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive (see, to that effect, *inter alia*, Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 119).
- 37 In any event, the Court has already ruled that, where one or other of Directives 89/48 or 92/51 is applicable, a public body in a Member State which is bound to comply with the rules laid down in the relevant directive can no longer require that a candidate's qualifications be granted official recognition by the competent national authorities (Case C-234/97 *Fernández de Bobadilla* [1999] ECR I-4773, paragraph 27).
- 38 Article 10 of Directive 92/51 merely lists the documents proving that applicants are of good character or repute or that they have not been declared bankrupt and certifying their physical or mental health which may be required as evidence by the competent authority, and contains a number of provisions regarding the wording of oaths or solemn declarations which may be imposed on nationals of other Member States. Since no such evidence or declaration was required by the competent authority of the host Member State in the main proceedings, the Court is not bound to rule on the interpretation of that provision, which, in any event, could not affect the possibility of relying on Article 3(a) of that directive.
- 39 Nor does the requirement under Article 13(1) of Directive 92/51 for Member States to designate the competent authorities empowered to receive the applications and take the decisions referred to in that directive preclude reliance on Article 3(a) of that directive. It is apparent from a reading of Article 13(1) in the light of the other paragraphs of the same article that the objective of that provision is to facilitate the application of the system for the recognition of diplomas introduced by Directive 92/51 by rendering the decision-making process applicable within a Member State more transparent. However, designation under Article 13(1) is not necessary in order to be able to identify the competent authorities referred to in Article 3, which are the authorities controlling the taking up of the regulated professions.
- 40 It is apparent from the case-law that a Member State may not rely, as against an individual, upon its failure to adopt the very provisions which are intended to facilitate the application of a system established by the directive in question (see to that effect, *inter alia*, Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 52, and Case C-45/01 *Dornier* [2003] ECR I-12911, paragraph 79). The failure to designate a competent authority pursuant to Article 13(1) of Directive 92/51 therefore does not preclude Article 3(a) of that directive from being relied upon as against the authority with *de facto* competence to regulate the taking up of a particular profession under the relevant national legislation.
- 41 In the main proceedings, it is clear that the Ministry of Health, under the aegis of which the SAETE was operating, is a competent authority within the meaning of Article 3(a) of Directive 92/51, since pursuit of the profession of occupational therapist is dependent, under the national legislation, on authorisation being granted by that ministry. Consequently, the Ministry of Health may not, relying on the ground of inadequate qualifications, refuse to authorise a person in Ms Aslanidou's position to take up the profession of occupational therapist, subject only to the possible application of compensatory measures as referred to in Article 4(1) of that directive if such compensatory measures were provided for by the national legislation.
- 42 The answer to the first question must therefore be that, where national measures transposing the directive are not adopted within the period prescribed in Article 17 of Directive 92/51, a national of a Member State may rely on Article 3(a) of that directive in order to obtain, in the host Member State, authorisation to pursue a regulated profession such as that of occupational therapist. That possibility may not be made subject to recognition of the

qualifications of the person concerned by the competent national authorities. The compensatory measures referred to in Article 4(1) of Directive 92/51 may be imposed on the person concerned only in so far as they are provided for by the national legislation in force at the time of processing the application in question.

43 In the light of the answer given to the first question, there is no need to answer the second question.

Costs

44 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 (Fourth Chamber) hereby rules:

Where national measures transposing Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC have not been adopted within the period prescribed in Article 17 thereof, a national of a Member State may rely on Article 3(a) of that directive in order to obtain, in the host Member State, authorisation to pursue a regulated profession such as that of occupational therapist.

That possibility may not be made dependent on official recognition of the qualifications of the person concerned by the competent national authorities.

The compensatory measures referred to in Article 4(1) of Directive 92/51 may be imposed on the person concerned only in so far as they are provided for in the national legislation in force at the time of processing the application in question.

[Signatures]

* Language of the case: Greek.