

**Judgment of the Court (Fifth Chamber) of 22 January 2002**

**Conseil national de l'ordre des architectes v Nicolas Dreessen**

**Reference for a preliminary ruling: Cour de cassation – Belgium**

**Reference for a preliminary ruling - Articles 10 EC and 43 EC - National legislation restricting access to the profession of architect to the possession of a diploma or professional qualification - Community national holding a diploma not listed in Directive 85/384/EEC - Obligation on the host Member State when presented with an application to practise the profession of architect on its territory to make a comparison between the specialised knowledge and abilities certified by the diploma and the experience acquired, and the qualifications required by its national legislation**

**Case C-31/00**

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In Case C-31/00,

REFERENCE to the Court under Article 234 EC by the Cour de Cassation (Belgium) for a preliminary ruling in the proceedings pending before that court between

Conseil National de l'Ordre des Architectes

and

Nicolas Dreessen

on the interpretation of Articles 10 EC and 43 EC,

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, S. von Bahr, D.A.O. Edward (Rapporteur), A. La Pergola and C.W.A. Timmermans, Judges,

Advocate General: P. Léger,

Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- the Conseil National de l'Ordre des Architectes, by P. Henry, F. Moises and V. Bertrand, avocats,
- Mr Dreessen, by L. Misson and P. Mbaya Kapita, avocats,
- the Italian Government, by U. Leanza, acting as Agent, assisted by F. Quadri, avvocato dello Stato,
- the Commission of the European Communities, by B. Mongin, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Conseil National de l'Ordre des Architectes, represented by V. Bertrand, of Mr Dreessen, represented by P. Mbaya Kapita, of the French Government, represented by S. Pailler, acting as Agent, of the Italian Government, represented by F. Quadri, and of the Commission, represented by B. Mongin, at the hearing on 8 March 2001,

after hearing the Opinion of the Advocate General at the sitting on 17 May 2001,

gives the following

Judgment

**Grounds**

**1** By decision of 21 January 2000, received at the Court on 7 February 2000, the Belgian Cour de Cassation (Court of Cassation) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Articles 10 EC and 43 EC.

**2** That question arose in the course of proceedings between Mr Dreessen and the Conseil National de l'Ordre des Architectes (National Council of the Architects Association, the National Council) concerning his enrolment in the register of the Ordre des Architectes de la Province de Liège (Architects' Association of the Province of Liège, the Provincial Association).

## **The legal background**

**3** Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15) makes provision for the automatic recognition of certain qualifications under two separate schemes.

**4** First, Articles 2 to 9 of Directive 85/384, which appear in Chapter II headed Diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture under the professional title of architect, set out a general scheme of automatic mutual recognition for all qualifications in the field of architecture which meet the requirements laid down therein. Article 2 provides that [e]ach Member State shall recognise the diplomas, certificates and other evidence of formal qualifications acquired as a result of education and training fulfilling the requirements of Articles 3 and 4 and awarded to nationals of Member States by other Member States ....

**5** Second, Articles 10 to 15 of Directive 85/384, which appear in Chapter III headed Diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture by virtue of established rights or existing national provisions, introduces a transitional scheme of mutual recognition for certain specifically listed qualifications. Under Article 10 [e]ach Member State shall recognise the diplomas, certificates and other evidence of formal qualifications set out in Article 11, awarded by other Member States to nationals of the Member States, where such nationals already possess these qualifications at the time of notification of this Directive or their studies leading to such diplomas, certificates and other evidence of formal qualifications commences during the third academic year at the latest following such notification, even if those qualifications do not fulfil the minimum requirements laid down in Chapter II .... That provision refers to the 1987/1988 academic year.

**6** The German diplomas, certificates and other evidence of formal qualifications entitled to recognition under the second scheme include, as specified in the fourth indent of Article 11(a), diplomas awarded before 1 January 1973 by the architecture departments of Ingenieurschulen (engineering colleges), accompanied by a certificate from the competent authorities to the effect that the person concerned has passed a test of his formal qualifications in accordance with Article 13.

## **The main action and the question referred for a preliminary ruling**

**7** Mr Dreessen, who is a Belgian national, holds a diploma in engineering awarded in the Federal Republic of Germany on 16 February 1966 by the Allgemeiner Hochbau (general construction) department of the Staatliche Ingenieurschule für Bauwesen Aachen (Aachen State Civil Engineering College), after having followed an engineering course in building construction (Ingenieurkunde, Fachrichtung Hochbau). He worked in Belgium for 25 years as a salaried employee of various architects' firms in Liège.

**8** After a winding-up order had been made against the company by which he was employed, Mr Dreessen applied, on 12 December 1991, to the Council of the Provincial Association (the Provincial Council) for his name to be entered on the register of that association so that he could practise as a self-employed architect. That application was rejected on 29 April 1993 on the ground that his diploma did not correspond to one awarded by an architecture department within the meaning of the fourth indent of Article 11(a) of Directive 85/384 and was not therefore covered by that article.

**9** Mr Dreessen appealed against that refusal to the Conseil d'Appel d'Expression Française de l'Ordre des Architectes (French Language Appeals Committee of the Architects Association, the Appeals Committee) and, by decision of 17 November 1993, that committee referred a question to the Court of Justice for a preliminary ruling.

**10** In its judgment of 9 August 1994 in Case C-447/93 Dreessen [1994] ECR I-4087, the Court held that a diploma awarded in 1966 by the Allgemeiner Hochbau department of the Staatliche Ingenieurschule für Bauwesen Aachen cannot be equated with the diplomas referred to in the fourth indent of Article 11(a) of Directive 85/384.

**11** On the basis of that judgment the Appeals Committee dismissed Mr Dreessen's appeal by a decision of 15 February 1995. Mr Dreessen's appeal on points of law was dismissed by the Cour de Cassation by judgment delivered on 25 November 1995.

**12** On 25 October 1997 Mr Dreessen made a fresh application to the Provincial Council for his name to be entered on the register claiming, primarily, that his diploma did not appear in the list in Article 11(a) of Directive 85/384 owing to an error on the part of the German authorities and that the Provincial Council should have carried out a comparative examination of the education and training received, in accordance with the Court's judgment in Vlassopoulou (Case C-340/89 [1991] ECR I-2357).

**13** The Provincial Council rejected that fresh application in a decision of 5 February 1998 on the ground that it was not required to take into consideration Mr Dreessen's knowledge and qualifications, or to evaluate them, and that since he had already made an application which had been rejected, his second application was inadmissible as being *res judicata*. The Appeals Committee reversed that decision on 16 June 1999, finding that Mr Dreessen had shown that he possessed the qualifications and knowledge required under Belgian legislation, and ordered that his name be entered in the register of the Provincial Association.

**14** The National Council brought an appeal on points of law, claiming that where a directive has been adopted on the basis of Article 47(1) EC to determine the conditions for mutual recognition of the diplomas required for admission to a profession, the competent authorities of a Member State to which an application has been made for authorisation to practise that profession must restrict themselves to ascertaining whether the conditions laid

down by the directive have been met. Where those conditions are not met, they cannot go on to carry out a comparison between the qualifications and knowledge of the applicant and those required under the national provisions governing access to the profession - as the Appeals Committee had wrongly done on the basis of Article 43 EC.

**15** Uncertain as to the correct interpretation of the relevant Community law, the Cour de Cassation decided to stay proceedings and referred the following question to the Court for a preliminary ruling:

Do Article 5 of the EC Treaty [now Article 10 EC] and Article 52 of the EC Treaty [now, after amendment, Article 43 EC] mean that the competent authority of a Member State to which a Community national who holds a diploma obtained in another Member State makes an application for authorisation to practise a profession access to which, under national legislation, depends on the possession of a diploma or a professional qualification, is required to take into consideration the diploma relied upon by the applicant and to make a comparison between, on the one hand, the specialised knowledge and abilities and the qualifications evidenced by that diploma and, on the other hand, those required under the national rules, even where there exists, with regard to the profession in question, a directive adopted by the Council on the basis of Article 57(1) and (2) of the EC Treaty [now, after amendment, Article 47(1) and (2) EC] and that directive provides, so far as concerns courses of study taken up or pursued during a transitional period, an exhaustive list of the diplomas or certificates, awarded in the various Member States, which are to enable the profession concerned to be practised in the other Member States, where the applicant falls within the scope of that transitional scheme and where the diploma on which he relies is not included in that exhaustive list?

### **The question referred for a preliminary ruling**

#### **Observations submitted to the Court**

**16** The National Council and the Italian Government submit that the question referred must be answered in the negative. According to them, since his diploma is not covered by Article 11 of Directive 85/384, Mr Dreessen is not entitled to have it recognised in another Member State, and it is not necessary to make a comparison between the specialised knowledge and abilities and the qualifications evidenced by that diploma and those required by the provisions of national law.

**17** They add that the obligation, specified in *Vlassopoulou*, cited above, to carry out such a comparison is strictly confined to those professions in respect of which no directive on mutual recognition of diplomas has been adopted. The National Council goes even further and claims that where such a directive exists, as in the case in the main proceedings, the national authorities must confine themselves to ascertaining whether the conditions laid down by that directive are met.

**18** Mr Dreessen contends that the purpose of Article 47 EC is merely to coordinate mutual recognition of qualifications required for the practice of certain professions, and does not replace the fundamental right to freedom of establishment enshrined in Article 43 EC for all professions, of whatever kind.

**19** The Commission argues, in addition, that, whilst Directive 85/384 draws up an exhaustive list of the diplomas in the field of architecture which are entitled to automatic recognition, it does not preclude application of the line of authority beginning with the judgment in *Vlassopoulou* to diplomas which do not fall within the scope of that directive.

#### **Findings of the Court**

**20** It follows from *Dreessen*, cited above, that Mr Dreessen's diploma in engineering does not satisfy the necessary requirements for it to be equated with the diplomas referred to in the fourth indent of Article 11(a) of Directive 85/384 and that, consequently, that diploma is not entitled to the automatic recognition accorded to diplomas in architecture by Article 10 of that directive.

**21** It should, however, be stressed that, by reason of the express terms of the question which gave rise to the judgment in *Dreessen*, which were solely concerned with the interpretation of Article 11 of Directive 85/384, the Court gave no ruling on the possibility of Mr Dreessen's qualifications being recognised on the basis of the Court's interpretation of Article 43 EC in *Vlassopoulou*.

**22** In the present case, by contrast, the question referred for a preliminary ruling specifically concerns that question.

**23** The purpose of the present reference for a preliminary ruling is not therefore to ascertain whether, in the case in the main proceedings, the national authorities are required to recognise Mr Dreessen's diploma as being equivalent to the qualifications in architecture referred to in Directive 85/384, but to ascertain whether those authorities must examine whether Mr Dreessen's professional qualifications and experience correspond in full or in part to the requirements and conditions for access to the profession of architect in Belgium and, depending on the outcome of that examination, accord him the right to practise that profession there.

**24** In that respect, the authorities of a Member State to which an application has been made by a Community national for authorisation to practise a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience, are required to take into consideration all of the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities so certified and that experience with the knowledge and qualifications required by the national legislation (see, *inter alia*,

Vlassopoulou, paragraphs 16, 19 and 20, Case C-319/92 Haim [1994] ECR I-425, paragraphs 27 and 28, and Case C-238/98 Hocsman [2000] ECR I-6623, paragraph 23).

**25** The Court has emphasised that those judgments are merely the expression in judicial decisions of a principle inherent in the fundamental freedoms of the Treaty, and that the legal effect of that principle cannot be reduced as a result of the adoption of directives on mutual recognition of diplomas (Hocsman, paragraphs 24 and 31).

**26** The object of such directives is, as is apparent from Article 47(1) EC, to facilitate the mutual recognition of diplomas, certificates and other evidence of formal qualifications by laying down rules and common criteria which result, as far as possible, in automatic recognition of those diplomas, certificates and other evidence of formal qualifications. It is not the purpose of those directives to make recognition of such diplomas, certificates and other evidence of formal qualifications more difficult in situations falling outside their scope, nor may they have such an effect.

**27** It follows that Member States must comply with their obligations as regards mutual recognition of professional qualifications arising from the Court's interpretation of Articles 43 EC and 47 EC (see, in particular, Vlassopoulou, Haim and Hocsman), in examining any application for authorisation to practise a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience, where the diploma held by the Community national is not the subject of automatic recognition under a directive on the mutual recognition of diplomas, even if such a directive has been adopted in the professional field in question.

**28** It is of no consequence, in this respect, that the person concerned, albeit he can prove that he holds a diploma in a field in which a directive on mutual recognition of diplomas has been adopted, cannot avail himself of the mechanism for automatic recognition laid down by such a directive because his diploma was awarded in a third country (as was the case in Hocsman) or because, for other reasons, the conditions for the application of that mechanism are not met (as was the case in Dreessen, and in the present case).

**29** The importance of complying with the principles established in Vlassopoulou and in the line of authority beginning with that judgment in situations not covered by a directive on mutual recognition of diplomas is underlined by the fact that it may be due to error that the type of diploma in question is not included amongst the qualifications covered by that directive. The Commission states in that respect - although there is no need for the Court to make any finding on the point - that it was by mistake that the type of diploma that Mr Dreessen obtained was not included in the list in Article 11 of Directive 85/384.

**30** In the light of the foregoing considerations it does not appear necessary to interpret Article 10 EC, the interpretation of Article 43 EC alone being sufficient to provide the referring court with the reply that it needs.

**31** The reply to the question referred for a preliminary ruling must therefore be that Article 43 EC is to be interpreted as meaning that where a Community national applies to the competent authorities of a Member State for authorisation to practise a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience, those authorities are required to take into consideration all of the diplomas, certificates and other evidence of formal qualifications of the person concerned, and his relevant experience, by comparing the specialised knowledge and abilities so certified, and that experience, with the knowledge and qualifications required by the national legislation, even where a directive on the mutual recognition of diplomas has been adopted for the profession concerned, but where application of that directive does not result in automatic recognition of the applicant's qualification or qualifications.

## Decision on costs

### Costs

**32** The costs incurred by the French and Italian Governments and by the Commission of the European Communities, 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 action pending before the national court, the decision on costs is a matter for that court.

## Operative part

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Cour de Cassation by decision of 21 January 2000, hereby rules:

Article 43 EC is to be interpreted as meaning that where a Community national applies to the competent authorities of a Member State for authorisation to practise a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience,

those authorities are required to take into consideration all of the diplomas, certificates and other evidence of formal qualifications of the person concerned, and his relevant experience, by comparing the specialised knowledge and abilities so certified, and that experience, with the knowledge and qualifications required by the national legislation, even where a directive on the mutual recognition of diplomas has been adopted for the profession concerned, but where application of that directive does not result in automatic recognition of the applicant's qualification or qualifications.