Opinion of Advocate General Alber delivered on 11 May 2000

Commission of the European Communities v Kingdom of Spain

Failure by a Member State to fulfil its obligations - Articles 2 and 10 of Directive 85/384/EEC - Restrictions on the exercise of activities as an architect according to the definition of the profession in the Member State in which the relevant qualification was obtained

Case C-421/98

European Court reports 2000 Page I-10375

Opinion of the Advocate-General

I - Introduction

1. The present Treaty-infringement proceedings concern the conformity of a Spanish legal provision with the Architects Directive 85/384/EEC. In Spain, despite general recognition of their professional qualifications, architects from other Member States are permitted to exercise their profession in all fields in which Spanish architects work only if they are permitted to do so in their country of origin. Where this is not the case, they are required to work in collaboration with another member of the profession who is authorised to pursue those activities and who holds a qualification which is recognised under Spanish law (to be precise, this case relates to the drawing-up of construction projects and the supervision of construction work, activities which, in other countries, are apparently not carried out by architects, as in Spain, but rather by civil engineers). The Commission takes the view that the Spanish rules contravene Articles 2 and 10 of the Architects Directive (cited below). The Commission considers that the mutual recognition of corresponding qualifications allows unrestricted freedom to exercise the profession.

II - Relevant Legal Provisions

(1) Community Law

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 (hereinafter: the Architects Directive - where articles are cited without further reference, they are also from the Architects Directive)

(a) Scope of the Architects Directive

2. Article 1 provides:

1. This Directive shall apply to activities in the field of architecture.

2. For the purposes of this Directive, activities in the field of architecture shall be those activities usually pursued under the professional title of architect.

(b) Recognition of diplomas

3. In regard to the diplomas and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture under the professional title of architect (as stated under Chapter II), Article 2 provides:

Each 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, by giving such diplomas, certificates and other evidence of formal qualifications, as regards the right to take up activities referred to in Article 1 and pursue them under the professional title of architect pursuant to Article 23(1), the same effect in its territory as those awarded by the Member State itself.

4. Article 10, the wording of which is essentially identical to that of Article 2, governs recognition of diplomas and other evidence of formal qualifications for those who already possess these qualifications at the time of notification of this Directive ... even if those qualifications do not fulfil the minimum requirements laid down in Chapter II.

(c) Education and training of architects

5. In regard to the education and training of architects, the sixth recital in the preamble to the Architects Directive states:

methods of education and training for those practising professionally in the field of architecture are at present very varied; ... , however, provision should be made for progressive alignment of education and training leading to the pursuit of activities under the professional title of architect.

6. The 19th recital in the preamble states further:

this Directive introduces mutual recognition of diplomas..., without concomitant coordination of national provisions relating to education and training.

7. It is for this reason that Articles 3 and 4 (cited below) do not set out any definitive criteria in view of harmonisation, but rather provide only qualitative and quantitative, that is to say converging, criteria in regard to education and training.

Article 3

Education and training leading to diplomas, certificates and other evidence of formal qualifications referred to in Article 2 shall be provided through courses of studies at university level concerned principally with architecture. Such studies shall be balanced between the theoretical and practical aspects of architectural training and shall ensure the acquisition of:

...

8. an understanding of the structural design, constructional and engineering problems associated with building design,

9. an adequate knowledge of physical problems and technologies and of the function of buildings so as to provide them with internal conditions of comfort and protection against the climate,

...

8. The relevant education and training at issue here (particularly in the area of drawing up construction projects and supervising construction work) are not explicitly mentioned amongst the 11 points set out in that article.

9. Article 4 lays down rules governing the total length of education and training. The successful completion of an examination of degree standard is also specified as a requirement.

10. A list of diplomas etc. which fulfil the criteria laid down in Articles 3 and 4 must be sent to the other Member States and the Commission and published in the Official Journal of the European Communities (Article 7). Where doubts arise as to whether a diploma meets the criteria laid down in Articles 3 and 4, the Commission must bring the matter before the Advisory Committee on Education and Training in the Field of Architecture (Article 8). The same is to apply in the event of uncertainty as to whether a diploma etc. still meets those requirements (Article 9). In such a case, a Member State is also entitled to consult the Advisory Committee. Pursuant to Article 9(2) the Commission must withdraw a diploma from one of the lists published in the Official Journal of the European Communities, either in agreement with the Member State concerned or following a ruling by the Court of Justice.

(d) Use of academic titles

11. Where there is a risk that an academic title may be confused with another academic title requiring additional education or training, Article 16(2) governs the use of such a title:

If the academic title used in the Member State of origin, or in the Member State from which a foreign national comes, can be confused in the host Member State with a title requiring, in that State, additional education or training which the person concerned has not undergone, the host Member State may require such a person to use the title employed in the Member State of origin or the Member State from which he comes in a suitable form to be specified by the host Member State.

(e) Activities in the field of architecture

12. Like education and training for architects, the activities of architects have not been subject to harmonisation or definition. Reference may be made to the ninth and tenth recitals in the preamble to the Architects Directive, which read:

... the reference in Article 1(2) to "activities in the field of architecture" as being "those activities usually pursued under the professional title of architect", the justification for which lies in the conditions prevailing in certain Member States, is intended solely to indicate the scope of this Directive, without claiming to give a legal definition of activities in the field of architecture;

... in most Member States, activities in the field of architecture are pursued, in law or in fact, by persons who hold the title of architect, whether alone or together with another title, without those persons having a monopoly in pursuing those activities save where there are laws to the contrary; ... the aforementioned activities, or some of them, may also be pursued by members of other professions, in particular by engineers who have received special training in construction engineering or building.

(2) National Law

Real Decreto No 1081/1989 of 28 August 1989 (Boletín Oficial del Estado No 214 of 7 September 1989, p. 28449) (hereinafter: the Decree).

13. The Architects Directive was transposed into national law by this Decree. With regard to the drafting, that is to say the preparation, of construction projects or optional control of works, Article 10(2) of the Decree provides that holders of qualifications in architecture, awarded by another Member State and recognised in Spain pursuant to the provisions of the Decree (Article 10(1)) may not pursue in Spain any activities other than those which they are authorised to pursue in their country of origin on the basis of the qualifications awarded by the latter, unless they collaborate with another member of the profession who is authorised to pursue those activities and who holds a qualification which is likewise recognised under Spanish law.

III - Pre-litigation procedure

14. On 19 July 1990 the Commission requested that the Kingdom of Spain submit its observations as to whether Article 10(2) of the Decree was compatible with Articles 2 and 10 of the Architects Directive. In its written reply dated 30 October 1990, Spain invoked Article 56 of the EC Treaty (now, after amendment, Article 46 EC), as well as the specific respects which serve to distinguish the present Directive from other sectoral directives providing for mutual recognition of qualifications and involving full harmonisation of minimum education and training requirements.

15. In their written reply of 16 December 1992 to the Commissions reasoned opinion of 21 April 1992, the Spanish authorities expressed their intention to repeal Article 10(2) of the Decree, something, however, which they failed to do.

16. It was for this reason that the Commission brought an action, by way of a document of 19 November 1998, received at the Registry of the Court on 24 November 1998, in which it submitted that the Court should:

(1) declare that, by providing, in Article 10(2) of Real Decreto 1081/1989 of 28 August 1989, that holders of qualifications in architecture awarded by another Member State and recognised under 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 the freedom to provide services may not pursue in Spain activities other than those which they are authorised to pursue in their country of origin on the basis of the qualifications awarded by the latter, unless they collaborate with another member of the profession authorised to pursue those activities and who holds a qualification which is likewise recognised under Spanish law, the Kingdom of Spain has failed to fulfil its obligations under Articles 2 and 10 of Directive 85/384;

(2) order the Kingdom of Spain to pay the costs.

17. The Kingdom of Spain claims that the Court should:

- dismiss the action; and

- order the Commission to pay the costs.

IV - Arguments of the parties

18. The Commission contends that Article 10(2) of the Decree infringes Articles 2 and 10 of the Architects Directive. The host Member State cannot differentiate in regard to the qualifications certified by a diploma by imposing additional requirements on holders of foreign qualifications. The Commission holds that to do so would jeopardise the practical effectiveness of the Architects Directive. The principle of equal treatment, as laid down in Article 2, would be rendered ineffective if a Member State were able to restrict, without justification, the professional activities of architects holding foreign qualifications, in comparison to those architects who hold Spanish qualifications.

19. The Commission states further that every holder of an architectural diploma in the Community has completed theoretical and practical training which fulfils the requirements laid down in Articles 3 and 4. At no time has Spain argued that diplomas in other Member States serve to certify education and training not meeting these requirements. However, that alone could justify it in refusing to recognise a diploma or introducing the obligation to work in collaboration with another member of the profession.

20. The Commission further points out that, by failing to define the field of activities of architects at Community level, the Community legislature accepted, in full consciousness, a situation which made it possible for a person to exercise an activity in the host Member State for which he had received no education or training in his country of origin, or for which his qualification did not grant him authorisation in his country of origin. Existing differences in regard to the range of activities could therefore, the Commission argues, not lead a Member State to refuse mutual recognition of qualifications. Such differences could only, pursuant to Article 16(2), make it possible for the host Member State to lay down rules governing the conditions for using the title of architect.

21. Furthermore, the Commission refers to its detailed study as well at to the observations of the Member States pertaining thereto, as well as to a comparative study compiled in 1997 by an ad-hoc committee on education and training for architects. The Commission argues that neither document permits the conclusion that the activities and responsibilities of an architect in Spain are fundamentally different to those in other Member States.

22. The Commission argues that the drafting of projects and the technical control referred to in Article 10(2) of the Decree generally belong to the responsibilities of an architect in most Member States. This would also be the case where, due to the technical peculiarities of a project, professionals from other sectors might bear some responsibility and - as the case may be - might be required to work alone or in conjunction with the architect.

23. The Commission also holds the view that Article 56 of the EC Treaty is not applicable. The Commission thus considers it questionable whether a Member State may invoke Article 56 of the EC Treaty and thereby render a harmonising directive ineffective - even where such harmonisation is minimal -, when this directive itself contains in-built protective clauses against any endangerment of public safety. Furthermore, the Commission points out that Article 56 of the EC Treaty is the subject of very restrictive interpretation by the Court. In this context the Commission refers to its pleadings in Case C-114/97, which state that justification under Article 56 is possible only if it is directed against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and the existence of such a threat must be shown by the Member State on the basis of an assessment of the individual conduct of persons.

24. According to the Commission, the Spanish rule is also in no way proportionate. It holds that there are other possibilities by which to achieve corresponding safety and which would be less restrictive of the freedom of establishment and the freedom to provide services. In addition to the possibility under Article 16(2) the Commission refers to professional codes of conduct, and rules governing responsibility and liability. Because the latter are particularly strict in Spain, the Commission holds that these should dissuade an architect from carrying out an activity for which he has not been trained.

25. The Commission further refers to Articles 7 to 9 of the Architects Directive. It contends that Spain could, moreover, have sought an opt-out arrangement at the time of its accession.

26. The Spanish Government begins by pointing out that Article 10(2) of the Decree contains a fundamental limitation of its own scope in as much as it is only applicable in regard to the drawing up of constructions projects and the assumption of control over works. The restriction on the mutual recognition of diplomas contained in Article 10(2) of the Decree is thus, in the Spanish Governments view, not of a general nature.

27. Since Article 1 of the Architects Directive defines its scope only in general terms, the Spanish Government contends that the question arises as to whether the activities mentioned in Article 10(2) of the Decree - the drawing up of construction projects and control over works - are generally exercised by someone holding the professional title of architect. The Spanish Government argues that this question must be answered in the negative, because in a number of Member States such tasks are the responsibility of civil engineers.

28. Spain recognises qualifications, which grant access to those activities usually pursued by persons holding the professional title of architect. It submits that mutual recognition pursuant to Articles 2 and 10 applies only to such activities. The Directive does not seek to harmonise the training and scope of activities of architects. This leaves the option open to Member States to lay down specific conditions for granting professional access to migrant architects, in so far as these are justified and proportionate.

29. In this context the Spanish Government refers to the judgment in Bouchoucha. It contends that the Court ruled in that case, that, in the absence of a Community definition of the activity in question, each Member State is free to regulate the exercise of that activity.

30. The Commission argues that the judgment in Bouchoucha is not applicable to the present case, inasmuch as it was handed down in regard to a profession - that of osteopath - which is precisely not the subject of mutual recognition within the Community.

31. The Spanish Government further states that if the Commission contends that the principle of equal treatment would be nullified if a Member State were able, without justification, to restrict the scope of activities open to a migrant architect, this would mean that it is possible to restrict that principle where justification does exist. In this context the Spanish Government refers to the grounds of justification under Article 56 of the EC Treaty. Article 10(2) of the Decree is intended to alleviate the situation in which a particular professional title does not reflect the full competence of its holder (for example as to the technical details in regard to the structural stability of buildings). Calculations carried out in regard to certain structures, the running of simulations with a view to testing ground stability and calculating the resistance of concrete, as done by Spanish architects, are activities which, according to the Spanish Government, do not typically fall under the professional profile of an architect as set out in the Directive. Where the Commission contends that, pursuant to the Directive, an architect may, under certain circumstances, be in a position to exercise a greater number of activities in the host Member State than he was originally trained to carry out, it is clear that a restriction is justified on grounds of public safety.

32. According to the Spanish Government, the restriction which it lays down in Article 10(2) of the Decree also respects the principle of proportionality because it has the least adverse effect on the freedom to provide services. Although the Commission refers, in this context, to professional codes of conduct to which beneficiaries of the Directive are subject and which prohibit the exercise of an activity for which a person does not have sufficient training, these still cannot achieve the same result as the solution chosen by the Spanish Government.

33. In regard to the Commission's reference to Article 16(2), which governs use of academic titles, Spain contends that the disputed Article 10(2) of the Decree only contains rules governing the use of academic titles, and thereby conforms to Article 16(2) of the Architects Directive, which it is designed to transpose into national law.

34. The Commission challenges the view that Article 10(2) of the Decree transposes Article 16(2) of the Architects Directive inasmuch as it does not relate to use of academic titles, but serves rather to restrict the scope of activities.

V – Analysis

35. The aim of the Architects Directive is to achieve mutual recognition, by Member States, of diplomas, certificates and other evidence of formal qualifications obtained following the successful completion of education and training fulfilling certain requirements. As a result, each Member State must accord such qualifications, on its territory and in respect of access to the activities listed in Article 1, the same effects as it accords to qualifications that it itself awards.

36. This is not simply a matter of merely formal mutual recognition of diplomas and other evidence of formal qualifications, but rather the effective point and purpose of these rules is - as indicated by Article 57(1) of the EC Treaty (now, after amendment, Article 47(1) EC), on which the Architects Directive is based - to facilitate access to and exercise of a liberal profession. It would be contrary to this purpose to seek again to restrict the possibility of exercising such a profession. The first recital in the preamble to the Architects Directive indeed states: ...

pursuant to the Treaty, all discriminatory treatment based on nationality with regard to establishment and provision of services is prohibited ... . One may therefore infer that the Community legislature intended to achieve fully equal treatment in the exercise of the professional activity in question.

37. The Kingdom of Spain contends that the restriction introduced by it in respect of the mutual recognition of diplomas applies only to certain activities that do not come within the scope of the Architects Directive. It is true that the Member States are free to define those activities, which, according to Article 1, are usually pursued under the professional title of architect. This means that each Member State is to define the scope of activities for architects within its territory. However, under Article 2 of the Architects Directive, each Member State is required not only to recognise foreign qualifications, but also accord those qualifications, in regard to the exercise of activities under Article 1, the same effect as the qualifications which it itself awards. The point and purpose of the Architects Directive is namely to grant the holder of a qualification awarded by another Member State access to those activities which have been defined as belonging to the activities of an architect for the holders of qualifications awarded by the host Member State.

38. It is in fact evident, on reading the sixth and 19th recitals in the preamble, that the Architects Directive was neither intended nor able to achieve harmonisation in regard to either vocational education and training or the area of activities open to architects. Existing differences were consciously taken into account by the Community legislature and may therefore not be used to bring the Directive's applicability into question. Such differences are indeed occasionally compensated for by the acceptance of equivalent conditions. By way of example, in the eighth recital in the preamble the Directive states that: completion of an equal period of appropriate practical experience is recognised as sufficient, in the event that the completion of a period of practical experience is required. The Directive therefore prescribes mutual recognition of qualifications, despite differences which may exist, thereby obliging the host Member State to grant the holder of a foreign qualification access to those activities which that Member State has designated as belonging to the profession of architect.

39. The rule at issue in the present case, contained in Article 10(2) of the Royal Decree, however, serves to distinguish, in Spain, different fields of activity, according to their scope: on the one hand one has an - extensive - field for holders of Spanish qualifications; on the other, one has the field of activities open to holders of a qualification - also recognised - awarded in another Member State. A person's professional profile is consequently defined by the scope of activities determined by the other Member States.

40. Holders of foreign architectural qualifications are thus treated differently from holders of Spanish qualifications. Such unequal treatment lies not only in the fact that the area of activities open to them may, sometimes, suffer restrictions compared to that of holders of Spanish qualifications, but also in the fact that they are required to demonstrate that their qualification allows access, in their State of origin, to the same area of activities as that granted by a Spanish qualification. To this extent it is also irrelevant that - as the Spanish Government contends - there is only a limited area of activities in which architects are not treated equally. Regardless of any debate on whether or not one is in fact dealing with a limited area of activities, all holders of foreign qualifications are affected by this restriction. The qualifications awarded by other Member States are thus not accorded the same effect as are Spanish qualifications.

41. Even if one were to assume that activities in the field of architecture, within the meaning of the Directive, include only those activities which are usually pursued, in all Member States, under the professional title of architect, this would not lead to a different conclusion. Admittedly, such an approach would lead one to concentrate on the area of activities common to all Member States. However, this would restrict the Directive's scope on the one hand, while on the other hand requiring an examination of the activities to which a recognised qualification granted access in the Member State of origin, as well as an examination as to whether these activities coincided with those carried on by an architect in the other Member States. This would require a detailed comparative study in order to recognise each individual qualification. It would in that case no longer be possible to speak of any generally applicable mutual recognition of qualifications or the simplification of the effective exercise of the right of establishment or the freedom to provide services. Under the Directive, such an examination is precisely no longer required once a qualification meets the requirements laid down in Articles 3 and 4 or comes under Article 10 of the Architects Directive.

42. The Kingdom of Spain holds the view that architects who have not acquired Spanish qualifications lack the training required for certain activities pursued by architects in Spain. It cannot be inferred from Articles 3 and 4 of the Architects Directive that such extensive education and training is required. Reference is also made in this context to the procedure under Articles 7 to 9 of the Architects Directive. This procedure serves to move any examination of qualifications up-stream and to dispel any doubts as to whether those qualifications recognised and published in the Official Journal meet the requirements laid down in Articles 3 and 4 of the Architects Directive. There is no provision allowing subsequent examination of qualifications by Member States. Article 9 even sets out the possibility of examining a qualification that has already been published if a Member State or the Commission has doubts as to whether that qualification still meets the requirements laid down in Articles 3 and 4.

43. The Spanish Government has not made use of any of these possibilities but has, in effect, introduced a generally applicable, subsequent examination of foreign qualifications. This is not possible within the framework of the Directive.

44. In regard to the Spanish Government's submission that Articles 3 and 4 do not define the Directive's scope - it being rather a matter for individual Member States to designate the area of activity covered by the profession of architect - it should be reiterated here that Spain has designated not one, but several areas of activity, which results in unequal treatment of holders of qualifications from other Member States.

45. Nor are the differences, pointed out by the Spanish Government in this connection, between the areas of activity of architects in the individual Member States relevant in this context. The Community legislature

intended that qualifications awarded on the successful completion of education and training, and which meet the criteria laid down in Articles 3 and 4, should be mutually recognised throughout the Community and thereby allow unrestricted access to those activities pursued by architects.

46. The Spanish Government's reference to the judgment of the Court in Bouchoucha also does not allow any other conclusion, because the passage cited by Spain is to the effect that Member States are free to regulate the exercise of that activity provided that this does not result in discrimination. However, the provision at issue here does precisely that. Moreover, Bouchoucha involved the professional practice of osteopathy for which there was an absence of Community legislation.

47. It must therefore be held that Article 10(2) of the Decree fails to recognise in full qualifications from other Member States, resulting in discrimination against the holders of qualifications from other Member States and consequently a restriction of the right of establishment and the freedom to provide services. At issue here is indirect discrimination, inasmuch as the unequal treatment is not linked to nationality but rather to the country in which the qualifications in question were obtained. More nationals of other Member States are affected by this rule than Spanish nationals.

48. The Spanish Government also maintains that these restrictions are justified on grounds of public health and security pursuant to Article 56 of the EC Treaty. The Spanish Government contends that a non-Spanish architect, who does not possess the required knowledge in regard to the structural and stability characteristics of buildings, constitutes a danger when working in this area in Spain.

49. It must be emphasised in this context that the Architects Directive, although not providing for full harmonisation in regard to education and training and the area of activity open to architects, does nonetheless aim to do so in regard to access to the professional activities of an architect. Even if one were to reject this view and still consider reliance on Article 56 possible, other reasons exclude the application of this rule.

50. As can be seen from the case-law of the Court, public-security grounds can be called on to justify discrimination only in the event of a genuine and sufficiently serious threat affecting one of the fundamental interests of society. Such a public threat can be discounted in the present case.

51. Heading 8 of Article 3 specifies that an architect's education and training must equip him with an understanding of the structural design and constructional and engineering problems associated with building design. It is questionable whether this covers all issues arising in conjunction with the structural and stability characteristics of building. In any event, it ensures that the holder of a recognised qualification possesses an elementary understanding and basic capabilities in regard to the construction and engineering of buildings. Reference may be made in this regard to the report of the ad-hoc committee of 4 February 1997, which contains information from individual Member States provided on the basis of a questionnaire in regard to the profession of architect. This report indicates that in many Member States the activities of an architect are defined in terms that are as broad as is the case in Spain.

52. One may thus conclude that architects in the Member States possess at least basic technical knowledge regarding building stability and therefore do not represent any sufficiently serious threat when exercising those activities.

53. Even if this were not the case for all Member States, other possibilities are open to the host Member State for protecting the service recipient or client. Such protection might, for example, be achieved by requiring the person benefiting from the Directive to use the academic title in force in his Member State of origin in a form prescribed by the host Member State. This option is provided for under Article 16(2) of the Architects Directive in the event that the academic title of the Member State of origin can be confused with a title in the host Member State requiring additional education or training which the beneficiary has not completed. In this way it can be made clear that the qualification in question is not identical to that usually awarded in the host Member State, without having to indicate the extent of education and training.

54. The rule laid down in Article 10(2) of the Decree and at issue here does not - contrary to what the Spanish Government contends - constitute a transposition of Article 16(2) into national law. Article 10(2) of the Decree does not merely concern prescribing a particular form for foreign academic titles. The infringement of the right of establishment and the freedom to provide services is much more extensive because the holder of qualifications from another Member State does not enjoy the same rights, in certain areas, as the holder of Spanish qualifications but must, where relevant, work in collaboration with the latter. The restrictive measure introduced by the Spanish provision therefore goes much further than Article 16(2) of the Architects Directive, which only concerns use of the title. The host Member State could, for example, require the holder of a qualification from another Member State to indicate alongside the title, in brackets, the institution at which he obtained his title. In this way the client would be able to recognise clearly that the architect in question was not trained in Spain. He would then be free to choose whether and to what extent to award the work.

55. Nor does the restriction of the right of establishment and the freedom to provide services introduced by Spain respect the principle of proportionality. The same result can be achieved with less restrictive measures, such as, for example, those under Article 16(2) of the Architects Directive. A simple reference to the professional codes of conduct in force in the various Member States is not sufficient in this context, since these are adopted by the relevant professional associations. Even if such codes were to specify that an architect was only permitted to engage in a particular field after having received adequate education and training to do so, a client would still not be able to determine whether the architect in question had acquired the education and training usually given a native architect. Nor would strict rules on liability provide a comparable standard of protection, inasmuch as they would only have retroactive effect. While they may deter an architect who felt he was insufficiently qualified from becoming active in this field, they would nonetheless remain ineffective should an architect misjudge or over-estimate his capabilities.

56. It must therefore be held that the rule introduced by Spain in Article 10(2) of Decree No 1081/1989 precludes mutual recognition of qualifications in the field of architecture, as provided for under Articles 2 and 10 of Directive 85/384. This rule restricts the right of establishment and the freedom to provide services by denying qualifications from other Member States the same effect as those awarded in Spain. This, however, is precisely the purpose of the Directive - even if the areas of activity as well as education and training are not identical amongst the various Member States. The restriction introduced by Spain is unjustified.

VI – Costs

57. Pursuant to the first subparagraph of Article 69(2) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for by the successful party. Since the Kingdom of Spain has been unsuccessful in the present case, it must pay the costs in accordance with the form of order sought by the Commission.

VII – Conclusion

58. On the basis of the foregoing, I suggest the Court:

(1) declare that, by providing, in Article 10(2) of Real Decreto No 1081/1989 of 28 August 1989, that persons holding qualifications in architecture awarded by another Member State and recognised under 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, may not pursue in Spain activities other than those which they are authorised to pursue in their country of origin on the basis of the qualifications awarded by the latter, unless they collaborate with another member of the profession who is authorised to pursue those activities and who holds a qualification which is likewise recognised under Spanish law, the Kingdom of Spain has failed to fulfil its obligations under Articles 2 and 10 of that directive;

(2) order the Kingdom of Spain to pay the costs.