JUDGMENT OF THE COURT
31 March 1993 *

In Case C-19/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Stuttgart (Federal Republic of Germany) for a preliminary ruling in the proceedings pending before that court between

Dieter Kraus

and

Land Baden-Württemberg

on the interpretation of Article 48 of the EEC Treaty or any other relevant provision of Community law,

THE COURT,

composed of: O. Due, President, C. N. Kakouris, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse and M. Diez de Velasco, Judges,

Advocate General: W. Van Gerven,
Registrar: H. A. Rühl,

after considering the written observations submitted on behalf of:

— The *Land* Baden-Württemberg, by M. E. Schömbs, Regierungsdirektor at the Ministry of Sciences and Arts of the Land Baden-Württemberg,

— The Commission of the European Communities, by H. Étienne, Principal Legal Adviser and E. Lasnet, Legal Adviser, acting as Agents,

* Language of the case: German.

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Dieter Kraus, representing himself, of the *Land* Baden-Württemberg, of the United Kingdom, represented by Miss S. Cochrane, of the Treasury Solicitor's Department, acting as Agent, assisted by Mr R. Plender QC, of the Bar of England and Wales, and of the Commission at the hearing on 20 November 1992,

after hearing the Opinion of the Advocate General at the sitting on 13 January 1993,

gives the following

Judgment

1 By order of 19 December 1991, received at the Court on 24 January 1992, the Verwaltungsgericht Stuttgart (Administrative Court, Stuttgart), Federal Republic of Germany, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 48 of the Treaty, with a view to determining the compatibility with Community law of legislation of a Member State requiring prior authorization for the use by one of its nationals, on its territory, of a postgraduate academic title awarded in another Member State.

2 This question was raised in proceedings between Mr Dieter Kraus, a German national, and the *Land* Baden-Württemberg, represented by the Ministry of Sciences and Arts, concerning the refusal of the Ministry to accept that the use of the postgraduate academic title awarded to Mr Kraus in the United Kingdom was not subject to the rules on prior authorization established by German legislation.

3 The documents before the Court show that the German Law of 7 June 1939 relating to the use of academic titles (Reichsgesetzblatt 1939 I, p. 985) provides that persons holding academic diplomas awarded by a German higher education

establishment may use those titles on German territory without special authorization to do so.

4 In contrast, German nationals who have obtained an academic title in a foreign establishment of higher education must, in order to be able to use it in the Federal Republic of Germany, apply for authorization from the competent ministry of the relevant *Land*. The requirement of individual authorization also applies to non-nationals, including Community nationals, with the exception of persons staying in the Federal Republic of Germany, either on official mission or on a temporary basis, for a period not exceeding three months, and for a non-professional purpose. In those cases it is sufficient for such persons to have been authorized to use their academic titles under the law of their country of origin.

5 The authorization in question may be granted in the form of a general authorization for academic titles awarded by certain foreign establishments. The German *Länder*, which have competence in this matter, have however made use of this possibility only with respect to titles awarded by French and Netherlands higher education establishments.

6 The application for authorization to use academic titles in the Federal Republic of Germany must be made on a special form, to which a number of documents must be attached. In the *Land* Baden-Württemberg the applicant must also pay an administrative fee of DM 130.

7 Under the German Criminal Code it is an offence punishable by a term of imprisonment not exceeding one year or by a fine to use without authorization academic titles awarded abroad.

8 Mr Kraus studied law in the Federal Republic of Germany and in 1986 he passed the first State examination in law. In 1988 he obtained the university degree of 'Master of Laws (LL. M)' following postgraduate study at the University of

Edinburgh (United Kingdom). After temporary employment as an assistant at the University of Tübingen (Federal Republic of Germany), he underwent various periods of professional training in the *Land* Baden-Württemberg with a view to taking the second State examination in law.

9 In 1989 Mr Kraus sent a copy of his degree certificate from the University of Edinburgh to the Ministry of Sciences and Arts of the *Land* Baden-Württemberg, requesting confirmation that, having done so, there was nothing further to prevent him from using his title in the Federal Republic of Germany.

10 The Ministry replied that his request could be allowed only if he made formal application for the authorization prescribed for the purpose by German law, using the appropriate form and attaching to it a certified copy of the diploma in question. Mr Kraus subsequently sent a certified copy of his Edinburgh degree, but refused to submit a formal application for authorization on the ground that the requirement for such an authorization prior to the use of an academic title awarded in another Member State constituted an obstacle to the free movement of persons and also discrimination, both prohibited by the EEC Treaty, since no such authorization was required for the use of a diploma awarded by a German establishment.

11 Mr Kraus then brought the matter before the Verwaltungsgericht Stuttgart, which referred to the Court the following question for a preliminary ruling:

'Is it contrary to Article 48 of the EEC Treaty — or to any other provision of Community law which may afford an answer to the point at issue — for a Member State of the European Community to require its nationals to obtain authorization from the State before using, in its territory, in their original form, academic titles acquired through postgraduate studies in another Member State which do not provide access to a profession but which are advantageous for the exercise of that profession, and to threaten to punish use of the academic title without the aforementioned authorization?'

12 Reference is made to the Report of the hearing for a fuller account of the facts in the main case, the procedure before the Court and the observations submitted to the Court, which are mentioned as discussed hereinafter only in so far as is necessary for the reasoning of the Court.

13 The documents before the Court show that the point of the question put by the national court is to ascertain whether on their proper construction Articles 48 and 52 of the Treaty preclude a Member State from prohibiting one of its own nationals who holds a postgraduate academic title awarded in another Member State from using that title on its territory unless he has obtained administrative authorization to do so.

14 In order to answer that question, it is necessary first to consider whether Community law applies in such a situation.

15 Although the provisions in the Treaty relating to freedom of movement for persons do not apply to situations which are purely internal to a Member State, the Court has already held that Article 52 of the Treaty may not be interpreted in such a way as to exclude from the benefit of Community law the nationals of a given Member State when, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired a vocational qualification which is recognized under Community law, they are, with regard to their State of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty (see judgments in Case 115/78 *Knoors* v *Staatssecretaris voor Economische Zaken* [1979] ECR 399, paragraph 24, and in Case 61/89 *Bouchoucha* [1990] ECR I-3551, paragraph 13).

16 The same reasoning must be followed as regards Article 48 of the Treaty. In its judgment in *Knoors*, cited above (paragraph 20), the Court held that freedom of movement for workers and the right of establishment guaranteed by Article 48 and 52 of the Treaty were fundamental rights in the Community system, and would not be fully realized if the Member States were able to refuse to grant the benefit of the provisions of Community law to those of their nationals who had taken

advantage of its provisions to acquire vocational qualifications in a Member State other than that of which they were nationals.

17 The same consideration applies where a national of a Member State has obtained in another Member State a university qualification which supplements his basic education and training and of which he intends to make use after he returns to his country of origin.

18 Although a postgraduate academic title is not usually a prerequisite for access to a profession, either as an employee or on or on a self-employed basis, the possession of such a title nevertheless constitutes, for the person entitled to make use of it, an advantage for the purpose both of gaining entry to such a profession and of prospering in it.

19 Accordingly, in so far as it constitutes proof of possession of an additional professional qualification and thereby confirms its holder's fitness for a particular post, and also, as the case may be, his command of the language of the country where it was awarded, a university diploma of the kind in point in the main proceedings is by its nature such as to improve its holder's chances of appointment as compared with those of other candidates who are unable to make use of any qualification supplementary to the basic education and training required for the post in question.

20 In some cases possession of a postgraduate academic title obtained in another State may even be a prerequisite for access to certain professions, where those professions require specific knowledge such as that evidenced by the diploma in question. That may be so in the case of a postgraduate diploma in law required, for example, for access to an academic career in the fields of international or comparative law.

21 Furthermore, the holder of a diploma such as that in question in the main proceedings may find himself in an advantageous position in the pursuit of his professional

activity in so far, as through possession of that diploma, he can obtain higher remuneration or more rapid advancement or, in the course of his career, access to certain specific posts reserved to persons with particularly high qualifications.

22 Similarly, the possibility of using academic titles awarded abroad and supplementing national diplomas required for access to a profession greatly facilitates establishment as an independent practitioner and, in any event, the pursuit of a corresponding professional activity.

23 It follows that the situation of a Community national who holds a postgraduate academic title which, obtained in another Member State, facilitates access to a profession or, at least, the pursuit of an economic activity, is governed by Community law, even as regards the relations between that national and the Member State whose nationality he possesses.

24 However, although the question put to the Court thus falls within the scope of application of the Treaty, it is not governed, as Community law stands at present, by any specific legislation.

25 Council Directive 89/48/EEC of 21 December 1988, relating to a general system of 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) does not cover an academic title such as that in point before the national court, which was awarded on completion of studies of only one year's duration.

26 In contrast, Council Directive 92/51/EEC 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) extends the system of recognition to diplomas evidencing completion of studies of at least one year's duration. That directive,

however, was adopted after the occurrence of the circumstances giving rise to the main proceedings and the period prescribed for its transposition into national law has not yet expired.

27 In the absence of harmonization of the conditions under which a person holding a postgraduate academic title may make use of it in Member States other than the one in which it was awarded, the Member States remain, as a matter of principle, competent to lay down the detailed rules governing the use of such a title on their territory.

28 On that point, it must however be stressed that Community law sets limits to the exercise of those powers by the Member States in so far as provisions of national law adopted in that connection must not constitute an obstacle to the effective exercise of the fundamental freedoms guaranteed by Articles 48 and 52 of the Treaty (see, to that effect, the judgment in Case 222/86 *UNECTEF* v *Heylens and Others* [1987] ECR 4097, paragraph 11).

29 The Court has confirmed that Articles 48 and 52 of the Treaty implement the fundamental principle contained in Article 3c of the Treaty in which it is stated 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 (see, in particular, judgments in Case 118/75 *Watson and Belmann* [1976] ECR 1185, paragraph 16; in *Heylens*, cited above, paragraph 8 and in Case C-370/90 *The Queen, ex parte Secretary of State for the Home Department* v *Immigration Appeal Tribunal and Surinder Singh* [1992] ECR I-4265).

30 In stating that freedom of movement for workers and freedom of establishment are to be secured by the end of the transitional period, Articles 48 and 52 lay down a precise obligation of result. The performance of that obligation was to be facilitated by but not to be made dependent upon the implementation of Community measures. The fact that such measures have not yet been adopted does not authorize a Member State to deny to a person subject to Community law the practical benefit of the freedoms guaranteed by the Treaty.

31 Furthermore, Member States are required, in conformity with Article 5 of the Treaty, 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 measures which could jeopardize the attainment of the objectives of the Treaty.

32 Consequently, Articles 48 and 52 preclude any national measure governing the conditions under which an academic title obtained in another Member State may be used, where that measure, even though it is applicable without discrimination on grounds of nationality, is liable to hamper or to render less attractive the exercise by Community nationals, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty. The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest (see to that effect, judgment in Case 71/76 *Thieffry* v *Conseil de l'Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). It would however also be necessary in such a case for application of the national rules in question to be appropriate for ensuring attainment of the objective they pursue and not to go beyond what is necessary for that purpose (see judgment in Case C-106/91 *Ramrath* v *Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

33 It should be noted that, as the *Land* Baden-Württemberg has pointed out in its observations, national legislation such as that described by the national court is designed to protect the public against misleading use of academic titles awarded outside the territory of the Member State concerned.

34 Community law does not preclude a Member State from adopting, in the absence of harmonization, measures designed to prevent the opportunities created under the Treaty from being abused in a manner contrary to the legitimate interests of the State (see the judgment in *Knoors*, cited above, paragraph 25).

35 The need to protect a public which will not necessarily be alerted to abuse of academic titles which have not been awarded according to the rules laid down in the country in which the holder of the title intends to make use of it constitutes a legitimate interest such as to justify a restriction, by the Member State in question, of the fundamental freedoms guaranteed by the Treaty.

36 It follows that the fact that a Member State establishes a procedure for the issue of administrative authorizations, to be obtained prior to using postgraduate academic titles awarded in another State, and prescribes criminal penalties for non-compliance with that procedure is not, in itself, incompatible with the requirements of Community law.

37 However, in order to satisfy the requirements laid down by Community law with respect to the observance of the principle of proportionality, national rules of that kind must fulfil certain conditions.

38 Thus, the authorization procedure must in the first place be intended solely to verify whether the postgraduate academic title obtained in another Member State was properly awarded, following a course of studies which was actually completed, in an establishment of higher education which was competent to award it.

39 Next, the authorization procedure must be easy of access to interested parties, and should not, in particular, be dependent on the payment of excessive administration fees.

40 Moreover, verification of the academic title, referred to in paragraph 38 of this judgment, must be carried out by the national authorities in accordance with a procedure which is in conformity with the requirements of Community law as regards the effective protection of the fundamental rights conferred by the Treaty on Community nationals. It follows that any refusal of authorization by the competent national authority must be capable of being subject to judicial proceedings in which its legality under Community law can be reviewed and that the person concerned must be able to ascertain the reasons for the decision taken with respect to him (see judgment in *Heylens*, cited above, paragraphs 14 to 17, and judgment in Case 340/89 *Vlassopoulou* v *Ministerium für Justiz, Bundes-und Europaangelegenheiten Baden-Württemburg* [1991] ECR I-2357, paragraph 22).

41 Finally, whilst the national authorities are entitled to prescribe penalties for non-compliance with the authorization procedure, the penalties imposed should not exceed what appears proportionate to the offence committed. It is for the national court to determine whether the penalties laid down for that purpose in the rules of the Member State concerned are not so severe as to impede the exercise of the fundamental freedoms guaranteed by the Treaty (see judgment in Case 8/77 *Sagulo and Others* [1977] ECR 1495, paragraphs 12 and 13).

42 It follows that the answer to the question put by the national court must be that Articles 48 and 52 of the Treaty must be interpreted as meaning that they do not preclude a Member State from prohibiting one of its own nationals, who holds a postgraduate academic title awarded in another Member State, from using that title on its territory without having obtained an administrative authorization for that purpose, provided that the authorization procedure is intended solely to verify whether the postgraduate academic title was properly awarded, that the procedure is easily accessible and does not call for the payment of excessive administrative fees, that any refusal of authorization is capable of being subject to proceedings, that the person concerned is able to ascertain the reasons for the decision and that the penalties prescribed for non-compliance with the authorization procedure are not disproportionate to the gravity of the offence.

Costs

43 The costs incurred by the United Kingdom and the Commission of the European of which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Verwaltungsgericht Stuttgart, by order of 19 December 1991, hereby rules:

Articles 48 and 52 of the Treaty must be interpreted as meaning that they do not preclude a Member State from prohibiting one of its own nationals, who holds a postgraduate academic title awarded in another Member State, from using that title on its territory without having obtained an administrative authorization for that purpose, provided that the authorization procedure is intended solely to verify whether the postgraduate academic title was properly awarded, that the procedure is easily accessible and does not call for the payment of excessive administrative fees, that any refusal of authorization is capable of being subject to judicial proceedings, that the person concerned is able to ascertain the reasons for the decision and that the penalties prescribed for non-compliance with the authorization procedure are not disproportionate to the gravity of the offence.

Due Kakouris Zuleeg Murray Mancini

Schockweiler Moitinho de Almeida Grévisse Diez de Velasco

Delivered in open court in Luxembourg on 31 March 1993.

J. G. Giraud
Registrar

O. Due
President