

Christine Morgenbesser
v
Consiglio dell'Ordine degli avvocati di Genova

(Reference for a preliminary ruling from the Corte suprema di cassazione (Italy))

«(Freedom of establishment – Enrolment in the register of praticanti – Recognition of diplomas – Access to regulated professions)»

Opinion of Advocate General Stix-Hackl delivered on 20 March 2003

Judgment of the Court (Fifth Chamber), 13 November 2003

Summary of the Judgment

- 1.. *Freedom of movement for persons – Freedom of establishment – Lawyers – Practice of the profession on a permanent basis in a Member State other than that in which the qualification was acquired – Directive 98/5 – Scope – Trainee lawyer – Not included (Directive 98/5 of the European Parliament and the Council)*
 - 2.. *Freedom of movement for persons – Freedom of establishment – Workers – Recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration – Scope of Directive 89/48 – Concept of regulated profession – Trainee lawyer – Not included (Council Directive 89/48)*
 - 3.. *Freedom of movement for persons – Freedom of establishment – Lawyers – Access to the profession – Enrolment of trainee lawyers in the professional register – Requirement of a law degree issued, confirmed or recognised as equivalent by the authorities of the Member State concerned – Not permissible (Arts 39 EC and 43 EC)*
1. Directive 98/5 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained concerns only lawyers fully qualified as such in their Member State of origin, and therefore does not apply to persons who have not yet acquired the professional qualification necessary to practise the profession of lawyer but are carrying out a period of practice necessary for admission to the bar. see para. 45
 2. A profession must be regarded as regulated, within the meaning of Directive 89/48, 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, where access to, or pursuit of, the professional activity in question is governed by laws, regulations or administrative provisions that create a system under which that professional activity is expressly reserved for those who fulfil certain conditions and access to it is prohibited to those who do not fulfil them. However, even if it is reserved for persons who fulfil certain conditions and prohibited to those who do not, the period of practice necessary for admission to the bar cannot be regarded as a regulated profession within the meaning of Directive 89/48, since it is limited in time and is designed to constitute the practical part of the training necessary for access to the profession of lawyer, and, unless an aptitude test is passed before that period expires, pursuit of the activities carried out during that period is not authorised. see paras 49-52
 3. Community law precludes the authorities of a Member State from refusing to enrol the holder of a legal diploma obtained in another Member State in the register of persons undertaking the necessary period of practice for admission to the bar solely on the ground that it is not a legal diploma issued or confirmed by a university of the first State. Recognition, for academic and civil purposes, of the equivalence of a diploma obtained in one Member State may be relevant, and even decisive, for enrolment with the bar of another Member State. However, the taking into account of the diploma of the person concerned must be carried out in the context of the assessment of the whole of the training, academic and professional, which that person is able to demonstrate. In that respect, it is the duty of the competent authority to examine whether, and to what extent, the knowledge certified by the diploma granted in another Member State and the qualifications or professional experience obtained there, together with the experience obtained in the Member State in which the candidate seeks enrolment, must be regarded as satisfying, even partially, the conditions required for access to the activity concerned. see paras 64, 66-67, 72, operative part

JUDGMENT OF THE COURT (Fifth Chamber)
13 November 2003 (1)

((Freedom of establishment – Enrolment in the register of praticanti – Recognition of diplomas – Access to regulated professions))

In Case C-313/01,

REFERENCE to the Court under Article 234 EC by the Corte suprema di cassazione (Italy) for a preliminary ruling in the proceedings pending before that court between

Christine Morgenbesser

and

Consiglio dell'Ordine degli avvocati di Genova,

on the interpretation of Articles 10 EC, 12 EC, 14 EC, 39 EC, 43 EC and 149 EC,

THE COURT (Fifth Chamber),,

composed of: D.A.O. Edward (Rapporteur), acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

- Ms Morgenbesser, by G. Borneto, avvocato,
- the Italian Government, by I.M. Braguglia, assisted by G. Fiengo, avvocato dello Stato,
- the Danish Government, by J. Molde, acting as Agent,
- the Commission of the European Communities, by E. Traversa and M. Patakia, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Morgenbesser, represented by G. Conte, avvocato, and G. Borneto, of the Consiglio dell'Ordine degli avvocati di Genova, represented by M. Condinanzi, avvocato, of the Italian Government, represented by A. Cingolo, avvocato dello Stato, and of the Commission, represented by E. Traversa, at the hearing on 16 January 2003,

after hearing the Opinion of the Advocate General at the sitting on 20 March 2003,

gives the following

Judgment

1 By order of 19 April 2001, received at the Court on 8 August 2001, the Corte suprema di cassazione (Supreme Court of Cassation) referred to the Court for a preliminary ruling under Article 234 EC a question

on the interpretation of Articles 10 EC, 12 EC, 14 EC, 39 EC, 43 EC and 149 EC.

- 2 That question was raised in connection with an appeal by Ms Morgenbesser against the decision of the Consiglio Nazionale Forense (National Bar Council) (Italy), confirming the decision of the Consiglio dell'Ordine degli avvocati di Genova (Bar Council of Genoa) to refuse her enrolment in the register of praticanti.

Legal background

- 3 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) applies, according to Article 2 thereof, to any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person.
- 4 According to Article 1 of Directive 89/48: For the purposes of this Directive the following definitions shall apply:
- (a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:
- which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;
 - which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and
 - which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State, provided that the education and training attested by the diploma, certificate or other evidence of formal qualifications were received mainly in the Community
- ...
- (c) a regulated profession: the regulated professional activity or range of activities which constitute this profession in a Member State;
- (d) regulated professional activity: a professional activity, in so far as the taking up or pursuit of such activity or one of its modes of pursuit in a Member State is subject, directly or indirectly by virtue of laws, regulations or administrative provisions, to the possession of a diploma. The following in particular shall constitute a mode of pursuit of a regulated professional activity:
- pursuit of an activity under a professional title, in so far as the use of such a title is reserved to the holders of a diploma governed by laws, regulations or administrative provisions, ...
- ...
- (f) adaptation period: the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant person under supervision shall be laid down by the competent authority in the host Member States;
- (g) aptitude test: a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State. In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant. The aptitude test must take account of the

fact that the applicant is a qualified professional in the Member State of origin or the Member State from which he comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to exercise the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State. The detailed application of the aptitude test shall be determined by the competent authorities of that State with due regard to the rules of Community law. The status, in the host Member State, of the applicant who wishes to prepare himself for the aptitude test in that State shall be determined by the competent authorities in that State.

- 5 According to subparagraph (a) of the first paragraph of Article 3 of Directive 89/48: Where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, 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 apply to its own nationals:
 - (a) if the applicant holds the diploma 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; ...
- 6 Article 4 of Directive 89/48 authorises the host Member State to impose certain conditions on the taking up of a regulated profession. Thus, under Article 4(1)(b), Article 3 of the directive does not preclude the host Member State from requiring the applicant to complete an adaptation period not exceeding three years or take an aptitude test.
- 7 The second sub-subparagraph of Article 4(1)(b) provides further that, for professions whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may [by way of derogation from this principle] stipulate either an adaptation period or an aptitude test.
- 8 On 16 February 1998, the European Parliament and the Council adopted Directive 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36).

National legislation

The basic provisions concerning the profession of avvocato

- 9 The basic provisions on enrolment and practice as a member of the bar in Italy are contained in Regio Decreto Legge No 1578, Ordinamento delle professioni di avvocato e procuratore (Royal Decree-Law No 1578 on the organisation of the professions of avvocato and procuratore) of 27 November 1933 (GURI No 281 of 5 December 1933, p. 5521; hereinafter Decree-Law No 1578/33). (The status of procuratore was abolished as a result of Law No 27 of 27 February 1997.)
- 10 Points 1 and 4 to 6 of the first paragraph of Article 17 of Decree-Law No 1578/33 provide that, in order to be enrolled as a member of the bar, a person must:
 - be an Italian national;
 - hold a diploma in law (laurea in giurisprudenza) issued or confirmed by a university in the Italian Republic;
 - after obtaining that diploma, have completed a period of practice (periodo di pratica) of at least two consecutive years in the office of an avvocato, involving attendance at hearings in civil and criminal proceedings, or, over the same period, have carried on the activities of legal representation and defence (esercitato il patrocinio) before the courts; and
 - have passed the aptitude examination for pursuing the profession.
- 11 The nationality condition under the above provision is deemed to have been repealed, in respect of Community nationals, by Legge No 146, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alla Comunità europea, legge comunitaria 1993 (Law No 146 laying down rules for fulfilment of the obligations arising from Italy's membership of the European Community, Community Law 1993), of 22 February 1994 (Ordinary Supplement to GURI No 52 of 4 March 1994), but the text of that provision has not been amended.

- 12 The period of practice is governed by Article 8 of Decree-Law No 1578/33. Law graduates who undertake that period (praticanti) are registered in a special register held by the bar of the court for the area where they are resident. They are subject to the disciplinary authority of that bar.
- 13 Under the second paragraph of Article 17 of Decree-Law No 1578/33, in order to be enrolled in the register of praticanti, it is also necessary to hold a legal diploma issued or confirmed by an Italian university.
- 14 In accordance with Article 8 of Decree-Law No 1578/33, praticanti are allowed, after one year's enrolment, within certain limits and for a period not exceeding six years, to carry out legal representation and defence before the courts of the district of the bar council concerned. In criminal matters, they may be officially assigned as defence lawyers before the same courts and, within the same limits, may exercise the functions of public prosecutor, and may lodge appeals either as defence lawyers or as representatives of the prosecution service. Praticanti who are permitted after one year to carry on those activities before the courts are called praticanti-patrocinanti.

The provisions transposing Directives 89/48 and 98/5

- 15 Legislative Decree No 115 of 27 January 1992 (GURI No 40 of 18 February 1992, p. 6; Legislative Decree No 115/92) is designed to transpose Directive 89/48.
- 16 Article 1 of that legislative decree, headed Recognition of professional training diplomas acquired in the European Community provides:
 1. Under the conditions laid down by the provisions of this decree, recognition shall be granted in Italy to diplomas issued in a Member State of the European Community certifying professional training and the holding of which is made a precondition for the pursuit of a profession by the legislation of that State ...
 2. Recognition shall be granted in favour of Community nationals for the purposes of pursuing in Italy, in a self-employed capacity or as an employed person, the profession corresponding to that for which they are qualified in the country which issued the diploma referred to in the preceding paragraph.
 3. Diplomas shall be recognised if they certify that the applicant has successfully completed a post-secondary course of at least three years' duration ... at a university or establishment of higher education or another establishment of similar level.
- 17 Article 2 of Legislative Decree No 115/92 provides: For the purposes of this decree, the following shall be considered to be professions:
 - (a) activities the pursuit of which requires enrolment in a register or list maintained by an authority or public body, where enrolment is conditional upon completion of professional training satisfying the requirements of Article 1(3);
 - ...
 - (c) activities pursued with a professional title the use of which is reserved for persons who have completed professional training in accordance with the conditions laid down in Article 1(3).
- 18 According to Article 5(1) of Legislative Decree No 115/92: Professional training certified by recognised diplomas and satisfying the criteria under Article 1(3) or Article 4 of this decree may consist of:
 - (a) satisfactory completion of a post-secondary course of study;
 - (b) a professional training period carried out under the direction of a trainer, and the satisfactory completion of which is marked by an examination;
 - (c) a period of professional activity carried out under the direction of a qualified professional ...
- 19 The second paragraph of Article 6 of Legislative Decree No 115/92 provides: Recognition shall be subject to passing an aptitude test in the case of the professions ... of avvocato ...
- 20 According to Article 8(1) and (2) of Legislative Decree No 115/92:

1. The aptitude test shall consist of an examination designed to measure the professional and ethical knowledge of the applicant and to assess his capacity to pursue the profession, taking account of the fact that the applicant is a professional qualified in his State of origin or provenance.
2. The subjects covered by the examination shall be chosen by reference to their fundamental importance for pursuing the profession.
- 21 Article 9 of Legislative Decree No 115/92 provides: Provisions and general directives for the application of Articles 5, 6, 7 and 8, by reference to the various professions and forms of professional training involved, shall be promulgated by decrees of the competent minister, within the meaning of Article 11, in cooperation with the Minister for Coordination of Community Policies and the Minister for Universities and Scientific and Technical Research, following the advice of the Consiglio di Stato.
- 22 Concerning the legal professions, Annex A to Legislative Decree No 115/92 provides that recognition of the title of avvocato is a matter for the Minister of Justice.
- 23 The procedure for recognition is governed by Article 12 of Legislative Decree No 115/92, according to which the application for recognition, accompanied by the documentation concerning the titles to be recognised, is to be submitted to the competent minister, who is to take a decision by decree within a period of four months from the submission of the application.
- 24 Legislative Decree No 96 of 2 February 2001 (Ordinary Supplement to GURI No 79 of 4 April 2001) transposed Directive 98/5. The provisions of that decree do not govern the status of praticanti and patrocinanti.

The dispute in the main proceedings and the question referred

- 25 Ms Morgenbesser, a French national living in Italy, applied to the Bar Council of Genoa on 27 October 1999 for enrolment in the register of praticanti. In support of her application, she produced a diploma of maîtrise en droit obtained in France in 1996. In April 1998, after doing legal work for eight months in a Paris law office, she joined a firm of avvocati registered with the Genoa Bar, where she was continuing to practise at the time of the hearing before the Court.
- 26 On 4 November 1999, her application was rejected by the Bar Council of Genoa, which cited point 4 of the first paragraph of Article 17 of Decree-Law No 1578/33, making enrolment in the register of praticanti subject to the holding of a legal diploma issued or confirmed by an Italian university.
- 27 Ms Morgenbesser appealed against that decision to the Consiglio Nazionale Forense, which, by decision of 12 May 2000, dismissed her appeal on the ground that she was not qualified to carry on the profession of avocat in France and did not hold the necessary professional qualification for enrolment in the register of praticanti in Italy.
- 28 Ms Morgenbesser then applied to the Università degli Studi di Genoa for recognition of her maîtrise en droit. The Consiglio di Corso di Laurea in Giurisprudenza (law faculty) of that university made such recognition subject to her completing a shortened course of two years, passing 13 examinations, and writing a final thesis.
- 29 Ms Morgenbesser appealed against that latter decision before the Tribunale Amministrativo Regionale della Liguria (Italy), the judgment of which, upholding that appeal, was itself challenged before the Consiglio di Stato (Italy).
- 30 In the meantime, Ms Morgenbesser appealed on a point of law against the decision of the Consiglio Nazionale Forense of 12 May 2000.
- 31 On that appeal, the Corte suprema di cassazione decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling: Irrespective of recognition and confirmation of equivalence, can a diploma issued to a Community national in a Member State (in this case, France) automatically be relied upon for the purposes [of obtaining enrolment in the register of persons undertaking the necessary period of practice for admission to the bar] in another Member State (in this case Italy), by virtue of the rules of the EC Treaty ... on freedom of establishment and the freedom to provide services (Articles 10 EC, 12 EC, 14 EC, 39 EC and 43 EC ...) and by virtue of Article 149 EC ...?

The question referred

- 32 The order for reference shows that Articles 10 EC, 12 EC, 14 EC, 39 EC, 43 EC and 149 EC are mentioned in the question referred only because they were cited by Ms Morgenbesser.
- 33 It is, however, clear from that order that the question referred by the Corte suprema di cassazione essentially asks whether Community law precludes the authorities of a Member State from refusing to enrol the holder of a legal diploma obtained in another Member State in the register of persons undertaking the necessary period of practice for admission to the bar solely on the ground that it is not a legal diploma issued or confirmed by a university of the first State.
- 34 According to its own wording, that question is asked [i]rrespective of recognition and confirmation of equivalence. Indeed, the application for recognition of the *maîtrise en droit* diploma obtained by Ms Morgenbesser in France forms the subject-matter of another dispute, pending before the Consiglio di Stato (see paragraphs 28 and 29 of this judgment).

Observations submitted to the Court

- 35 Ms Morgenbesser argues that the activity of a *praticante*, and more particularly of a *praticante-patrocinante*, falls within the definition of a regulated profession within the meaning of Directive 89/48, firstly because those activities include the independent management of current cases, advice to clients and, in certain instances, their representation and defence, and, secondly, because the professional rules of the bar apply.
- 36 In her submission, the requirement for prior recognition of the diploma by an Italian university, laid down in point 4 of the first paragraph of Article 17 of Decree-Law No 1578/33, infringes Directive 89/48. She argues that that directive makes it sufficient for her to present a diploma obtained in a Member State in order to pursue a profession in another Member State, since diplomas which fulfil the conditions laid down by the directive are automatically equivalent.
- 37 Should Directive 89/48 not apply, Ms Morgenbesser argues, citing Case C-234/97 *Fernández de Bobadilla* [1999] ECR I-4773, that Article 43 EC requires the authority responsible for handling applications for access to the profession, in this case the Bar Council of Genoa, to make an assessment and comparative examination of the applicant's knowledge by reference exclusively to her diploma of *maîtrise en droit*.
- 38 The Bar Council of Genoa argues that *praticanti* do not pursue either a regulated profession within the meaning of Directive 89/48 or an activity within the meaning of Article 43 EC et seq., but are in a simple training relationship.
- 39 The Danish Government takes the view that Directive 89/48 does not apply to the main proceedings in this case, since the necessary training for access to the profession has not been completed. The principles set out by the Court of Justice in Case C-340/89 *Vlassopoulou* [1991] ECR I-2357 do not require automatic recognition of the foreign diploma, but only a comparative examination of the knowledge and qualifications certified by the diploma obtained in another Member State. However, a period of practical training carried out in another Member State might be recognised under Article 5 of Directive 89/43.
- 40 The Italian Government argues that the dispute in the main proceedings concerns the recognition of academic qualifications, which should be distinguished from the recognition of professional qualifications.
- 41 The Commission takes the view that only activities which are habitually pursued in a long-term and definitive manner can be regarded as a regulated profession within the meaning of Directive 89/48. The Commission doubts whether the activity of a *praticante*, at issue in the main proceedings, can fall within that concept.
- 42 Should Directive 89/48 not apply, the general principles for interpreting Article 43 EC, set out in *Vlassopoulou*, cited above, and in Case C-55/94 *Gebhard* [1995] ECR I-4165, might preclude national legislation which makes enrolment in the register of persons pursuing a period of practice conditional on a university of the Member State where the applicant intends to undertake that period recognising a legal diploma issued in another Member State, where that recognition requires the person concerned to complete a shortened course, pass 13 examinations and write a final thesis. Moreover, Ms Morgenbesser did not have the opportunity to argue that, at the time when she submitted her application for enrolment in the register of *praticanti*, she had already worked full-time in Italian law firms.

The Court's reply

- 43 In order to reply to the question referred, it must first be examined whether a person such as the applicant in the main proceedings can benefit from the provisions of Directive 98/5 concerning the profession of lawyer or from those of Directive 89/48 on the mutual recognition of diplomas. If those directives do not apply, it will then be necessary to examine whether Articles 39 EC and 43 EC, as interpreted by the Court of Justice, particularly in its judgment in *Vlassopoulou*, cited above, can be relied on in a situation such as that at issue in the main proceedings.
- 44 It should be noted at the outset, having regard to the wording of the question referred, that neither Directive 98/5, nor Directive 89/48, nor Articles 39 EC and 43 EC require recognition of a diploma to be purely automatic.
- 45 Directive 98/5 concerns only lawyers fully qualified as such in their Member State of origin, and therefore does not apply to persons who have not yet acquired the professional qualification necessary to practise the profession of lawyer. It is therefore not applicable in a case such as that at issue in the main proceedings.
- 46 According to Article 2 of Directive 89/48, that directive applies to any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person.
- 47 Ms Morgenbesser argues that she is not claiming access to the profession of *avvocato* as such, but, at this stage, to that of *praticante*. She maintains that the activities of a *praticante* fall within the definition of a regulated profession within the meaning of Directive 89/48. Since, she argues, the only precondition for access to that profession is a legal diploma, she can rely on her *maîtrise en droit* in order to obtain that access. She points out that a significant number of *praticanti* and *praticanti-patrocinanti* who have not passed the final examination continue to carry on their legal activities without being removed from the register of *praticanti*.
- 48 According to the definition given in Article 1(c) of Directive 89/48, a regulated profession is the regulated professional activity or range of activities which constitute this profession in a Member State and, according to the definition appearing in Article 1(d), a regulated professional activity is a professional activity, in so far as the taking up or pursuit of such activity or one of its modes of pursuit in a Member State is subject, directly or indirectly by virtue of laws, regulations or administrative provisions, to the possession of a diploma.
- 49 A profession must therefore be regarded as regulated, within the meaning of Directive 89/48, where access to, or pursuit of, the professional activity in question is governed by laws, regulations or administrative provisions that create a system under which that professional activity is expressly reserved for those who fulfil certain conditions and access to it is prohibited to those who do not fulfil them (Case C-164/94 *Aranitis* [1996] ECR I-135, paragraph 19, and *Fernández de Bobadilla*, paragraph 17).
- 50 Access to the activities of *praticante* and *praticante-patrocinante* which are at issue in the main proceedings, and the pursuit of those activities, are governed by legal provisions establishing a system which reserves those activities for persons who fulfil certain conditions and prohibits access to persons who do not fulfil them.
- 51 However, it follows from those provisions that the pursuit of those activities is designed to constitute the practical part of the training necessary for access to the profession of *avvocato*. If, at the end of those six years, the *praticante-patrocinante* does not pass the examination prescribed by point 6 of the first paragraph of Article 17 of Decree-Law No 1578/33, he will no longer be authorised, under those provisions, to pursue the activities which he carried on in that capacity.
- 52 In those circumstances, the activity of *praticante-patrocinante* cannot be described as a regulated profession within the meaning of Directive 89/48 separate from that of *avvocato*.
- 53 The fact that a significant number of *praticanti-patrocinanti* who have not passed the final examination continue to exercise legal activities and are not removed from the register of *praticanti* cannot have the effect of qualifying the activities of *praticante* or *patrocinante*, considered in isolation, as a regulated profession within the meaning of Directive 89/48.
- 54 It also appears that, since Ms Morgenbesser has not obtained in France the *certificat d'aptitude à la profession d'avocat* (CAPA), she does not hold the professional qualifications for access to the status of *stagiaire* at the bar of that Member State. In those circumstances, the *maîtrise en droit* which she holds

does not, in itself, constitute a diploma, certificate or other evidence of formal qualifications within the meaning of Article 1(a) of Directive 89/48.

- 55 It follows that Ms Morgenbesser is not able to rely on Directive 89/48.
- 56 Having regard to the above, it needs to be examined whether Articles 39 EC and 43 EC apply in the circumstances of the case in the main proceedings. Only if those provisions do not apply will it be necessary to examine the other provisions of the Treaty mentioned by the referring court in its question.
- 57 According to the case-law the principles of which were set out in *Vlassopoulou*, the authorities of a Member State, when considering a request by a national of another Member State for authorisation to exercise a regulated profession, must take into consideration the professional qualification of the person concerned by making a comparison between the qualifications certified by his diplomas, certificates and other formal qualifications and by his relevant professional experience and the professional qualifications required by the national rules for the exercise of the profession in question (see, most recently, Case C-232/99 *Commission v Spain* [2002] ECR I-4235, paragraph 21).
- 58 That obligation extends to all diplomas, certificates and other evidence of formal qualifications as well as to the relevant experience of the person concerned, irrespective of whether they were acquired in a Member State or in a third country, and it does not cease to exist as a result of the adoption of directives on the mutual recognition of diplomas (Case C-238/98 *Hocsman* [2000] ECR I-6623, paragraphs 23 and 31; *Commission v Spain*, paragraph 22).
- 59 According to the Bar Council of Genoa, the activity of praticante is a training activity, to which the provisions of Articles 39 EC and 43 EC do not apply.
- 60 However, the period of practice at issue in the main proceedings comprises the pursuit of activities, normally remunerated by the client or by the firm for which the praticante works, with a view to access to a regulated profession to which Article 43 EC applies. In so far as the remuneration of the praticante takes the form of a salary, Article 39 EC may also apply.
- 61 Both Article 39 EC and Article 43 EC may therefore apply to a situation such as that in the main proceedings. However, the analysis does not differ according to whether it is freedom of movement for workers or the freedom of establishment which is relied upon in opposing the refusal, on the part of the Bar Council of Genoa acting in its capacity as the competent authority for enrolling praticanti on the register, to take the legal diploma obtained in another Member State and the professional experience acquired into account for the purposes of enrolment.
- 62 As the Court has already held, the exercise of the right of establishment is hindered if national rules fail to take account of learning, skills and qualifications already acquired by the person concerned in another Member State, so that the competent national authorities must measure whether such factors sufficiently demonstrate that missing learning and skills have been acquired (*Vlassopoulou*, paragraphs 15 and 20; *Fernández de Bobadilla*, paragraph 33).
- 63 In that context, contrary to what the Italian Government claims, a case such as that at issue in the main proceedings is not concerned with a simple question of recognising academic qualifications.
- 64 It is true that the recognition, for academic and civil purposes, of the equivalence of a diploma obtained in one Member State may be relevant, and even decisive, for enrolment with the bar of another Member State (Case 71/76 *Thieffry* [1977] ECR 765).
- 65 It does not follow, however, that, for the purposes of the comparative examination which the competent authority of the host Member State must undertake in circumstances such as those in the main proceedings, it is necessary to examine the academic equivalence of the diploma relied upon by the person concerned in relation to the diploma normally required of nationals of that State.
- 66 The taking into account of the diploma of the person concerned, such as the maîtrise en droit granted by a French university, must therefore be carried out in the context of the assessment of the whole of the training, academic and professional, which that person is able to demonstrate.
- 67 It is therefore the duty of the competent authority to examine, in accordance with the principles set out by the Court of Justice in *Vlassopoulou* and *Fernández de Bobadilla*, whether, and to what extent, the knowledge certified by the diploma granted in another Member State and the qualifications or professional

experience obtained there, together with the experience obtained in the Member State in which the candidate seeks enrolment, must be regarded as satisfying, even partially, the conditions required for access to the activity concerned.

- 68 That examination procedure must enable the authorities of the host Member State to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. That assessment of the equivalence of the foreign diploma must be carried out exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess having regard to that diploma, having regard to the nature and duration of the studies and practical training to which the diploma relates (Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 13; *Vlassopoulou*, paragraph 17).
- 69 In the course of that examination, a Member State may, however, take into consideration objective differences relating to both the legal framework of the profession in question in the Member State of origin and to its field of activity. In the case of the profession of lawyer, a Member State may therefore carry out a comparative examination of diplomas, taking account of the differences identified between the national legal systems concerned (*Vlassopoulou*, paragraph 18).
- 70 If that comparative examination of diplomas results in the finding that the knowledge and qualifications certified by the foreign diploma correspond to those required by the national provisions, the Member State must recognise that diploma as fulfilling the requirements laid down by its national provisions. If, on the other hand, the comparison reveals that the knowledge and qualifications certified by the foreign diploma and those required by the national provisions correspond only partially, the host Member State is entitled to require the person concerned to show that he has acquired the knowledge and qualifications which are lacking (*Vlassopoulou*, paragraph 19).
- 71 By the same token, the competent national authorities must measure whether the learning and skills acquired in the host Member State, either through a course of study or by way of practical experience, sufficiently demonstrate that the missing knowledge and qualifications have in the meantime been acquired (*Vlassopoulou*, paragraph 20).
- 72 In the light of the above, the answer to the referring court must be that Community law precludes the authorities of a Member State from refusing to enrol the holder of a legal diploma obtained in another Member State in the register of persons undertaking the necessary period of practice for admission to the bar solely on the ground that it is not a legal diploma issued, confirmed or recognised as equivalent by a university of the first State.

Costs

- 73 The costs incurred by the Italian and Danish Governments and by the Commission, 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 pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Corte suprema di cassazione by order of 19 April 2001, hereby rules:

Edward

La Pergola

von Bahr

Delivered in open court in Luxembourg on 13 November 2003.

R. Grass

V. Skouris

Registrar

President