

Press and Information Division

**PRESS RELEASE No 69/03**

9 September 2003

Judgment of the Court of Justice in Case C-285/01

*Isabel Burbaud*

**A COMMUNITY NATIONAL SEEKING ADMISSION TO THE FRENCH PUBLIC HOSPITAL SERVICE CANNOT BE REQUIRED TO PASS THE ENTRANCE EXAMINATION FOR THE FRENCH NATIONAL SCHOOL OF PUBLIC HEALTH IF HE CAN SHOW THAT HE HAS RECEIVED EQUIVALENT TRAINING IN ANOTHER MEMBER STATE**

*Confirmation of passing the school's final examination is a diploma within the meaning of Community law and where it is established that a qualification obtained in another Member State can be regarded as a diploma and that the two training courses are equivalent, the holder's admission to the public service cannot be made subject to that person completing the school's training course or passing its final examination.*

In 1983, Ms Burbaud, a Portuguese national, with a degree in law from the University of Lisbon, was awarded the qualification of hospital administrator by the National School of Public Health, Lisbon, and she worked in that capacity in the Portuguese civil service until November 1989. Relying on the qualifications that she had obtained in Portugal, Ms Burbaud sought admission to the hospital managers' corps of the French civil service; she was refused admission on the ground that it was first necessary to pass the entrance examination of the École nationale de la santé publique (the French National School of Public Health; 'the ENSP').

Ms Burbaud challenged that decision before the French courts on the ground that it did not recognise the equivalence of her Portuguese qualification and the qualification awarded by the ENSP, qualifications which should be regarded as diplomas within the meaning of the

1988 directive on the recognition of higher-education diplomas.<sup>1</sup> The Administrative Court of Appeal, Douai (France), asked the Court of Justice for a preliminary ruling on:

- first, the nature of the document awarded on passing the ENSP examination: must it be regarded as a “diploma” within the meaning of the directive and, if so, how is the equivalence of that diploma and a qualification obtained in another Member State by a national of a Member State to be assessed?
- second, assuming that the French and Portuguese qualifications regarded as diplomas are equivalent, the compatibility with Community law of the French legislation requiring a national of another Member State who is already qualified to pass the ENSP entrance examination.

**Confirmation of passing the ENSP final examination can be regarded as a diploma. Its equivalence to the qualification awarded by the Lisbon School of Public Health must be ascertained by the national court.**

The directive defines a diploma as, among other things, any diploma, certificate or other evidence of formal qualifications awarded by a competent authority in a Member State, showing that the holder has successfully completed a post-secondary course of at least three years' duration and awarding the professional qualifications required for the taking up of a regulated profession.

The Court considered whether employment as a manager in the French public hospital service can be regarded as a regulated profession requiring a diploma. The French legislation provides that access to the employment in question is reserved for persons who have completed the ENSP course and have passed its final examination. That requirement thus presupposes confirmation of post-secondary education of at least three years' duration. Therefore, although it is not evidenced by a formal document and although it results in the permanent appointment to the civil service of students who have been members of that service from the date of their admission to the ENSP, confirmation of passing the ENSP final examination can be regarded, for the purposes of the directive, as a diploma required for the taking up of a regulated profession.

It is for the national court to determine whether the Portuguese qualification held by Ms Burbaud can be regarded as a diploma and, if so, to determine the extent to which the two training courses are similar with regard to their duration and the matters which they cover. If it transpires that the diplomas are awarded on completion of equivalent education or training, the directive precludes the French authorities from making Ms Burbaud's access to the profession of manager in the hospital public service subject to the condition that she complete the ENSP course and pass its final examination.

**Requiring qualified candidates to pass the ENSP entrance examination constitutes an obstacle to the freedom of movement of workers which is incompatible with the EC Treaty.**

---

<sup>1</sup> 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).

The Court observed that **the specific features of that method of recruitment**, which do not take account of specific qualifications in the field of hospital management obtained by candidates who are nationals of other Member States, **place those nationals at a disadvantage and are liable to dissuade them from exercising their rights, as workers, to freedom of movement.**

While such an obstacle to a fundamental freedom guaranteed by the Treaty may be justified by an objective in the general interest, such as selection of the best candidates in the most objective conditions possible, it is a further condition that that restriction does not go beyond what is necessary to achieve that objective.

The Court found that requiring candidates who are properly qualified to pass the ENSP entrance examination has the effect of downgrading them, which is not necessary to achieve the objective pursued and which cannot therefore be justified in the light of the Treaty provisions.

*Unofficial document for media use only; not binding on the Court of Justice.*

*Available in English, French, German and Portuguese.*

*For the full text of the judgment, please consult our Internet page*

[www.curia.eu.int](http://www.curia.eu.int)

*at approximately midday today.*

*For additional information please contact Christopher Fretwell*

*Phone: (00 352) 4303 3355; Fax: (00 352) 4303 2731.*