

Case C-238/98

Hugo Fernando Hocsman

v

Ministre de l'Emploi et de la Solidarité

(Reference for a preliminary ruling from the Tribunal
administratif de Châlons-en-Champagne)

(Article 52 of the EC Treaty (now, after amendment, Article 43 EC) — Council Directive 93/16/EEC — Community national holding an Argentine diploma recognised by the authorities of a Member State as equivalent in that State to a university degree in medicine and surgery — Obligations of another Member State with respect to an application to practise medicine on its territory)

Opinion of Advocate General Jacobs delivered on 16 September 1999 . . . I-6625
Judgment of the Court (Fifth Chamber), 14 September 2000 I-6640

Summary of the Judgment

Freedom of movement for persons — Freedom of establishment — Restrictions arising from the legislation of the Member State of establishment on the exercise of certain activities — Situation not regulated by a directive on mutual recognition of diplomas — Obligation of the Member State to compare the diplomas and qualifications required by national law with those obtained by the person concerned
(EC Treaty, Arts 52 and 57 (now, after amendment, Arts 43 EC and 47 EC))

Article 52 of the Treaty (now, after amendment, Article 43 EC) is to be interpreted as meaning that where, in a situation not regulated by a directive on mutual recognition of diplomas, a Community national applies for authorisation to practise a profession access to which depends, under national law, on the possession of a diploma or professional qualification, or on periods of practical experience, the competent authorities of the Member State concerned must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities certified by those diplomas and that experience with the knowledge and qualifications required by the national rules.

That interpretation is merely the expression in individual cases of a principle which is inherent in the fundamental freedoms of the Treaty. While that principle was indeed applied in cases concerning professions for the practice of which there were no harmonisation or coordination measures in existence at the time, its legal ambit cannot be reduced as a result of the adoption of

directives on mutual recognition of diplomas. The object of such directives is to make it easier for persons to take up and pursue activities as self-employed persons, and hence to make the existing possibilities of taking up those activities easier for nationals of other Member States.

The function of directives which lay down common rules and criteria for mutual recognition of diplomas is thus to introduce a system in which Member States are obliged to accept the equivalence of certain diplomas and cannot require the persons concerned to comply with requirements other than those laid down by the relevant directives, and where the requirements set out in the directives are satisfied, that recognition renders superfluous the recognition of the diplomas under the above principle. However, that principle remains relevant in situations not covered by such directives.

(see paras 24, 31 to 34, 40 and operative part)