JUDGMENT OF THE COURT (Fifth Chamber)
16 July 1998 *

In Case C-93/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Cour d'Arbitrage of Belgium for a preliminary ruling in the proceedings pending before that court between

Fédération Belge des Chambres Syndicales de Médecins ASBL

and

Flemish Government,

Government of the French Community,

Council of Ministers,

on the interpretation of Article 31 of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1),

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida, D. A. O. Edward (Rapporteur), J.-P. Puissochet and P. Jann, President of the Chamber, Judges,

Advocate General: G. Cosmas,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Fédération Belge des Chambres Syndicales de Médecins ASBL, by Eric Thiry, of the Brussels Bar,

— the Flemish Government, by Patrick Devers, of the Ghent Bar,

— the Government of the French Community, by Jean Bourtembourg, of the Brussels Bar,

— the Belgian Government, by Jan Devadder, Conseiller Général, Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, acting as Agent, and Tom Balthazar, of the Ghent Bar,

— the Commission of the European Communities, by Berend Jan Drijber, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Fédération Belge des Chambres Syndicales de Médecins ASBL, represented by Eric Thiry, the Flemish Government, represented by Patrick Devers, and the Commission of the European Communities, represented by Pieter van Nuffel, member of its Legal Service, acting as Agent, at the hearing on 22 January 1998,

after hearing the Opinion of the Advocate General at the sitting on 26 March 1998,

gives the following

Judgment

1 By judgment of 19 February 1997, received at the Court on 3 March 1997, the Cour d'Arbitrage (Court of Arbitration) of Belgium referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Article 31 of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1).

2 Those questions were raised in proceedings brought before the Cour d'Arbitrage on 26 January 1996 by the Fédération Belge des Chambres Syndicales de Médecins ASBL (Belgian Federation of Doctors' Associations, hereinafter 'the Fédération'), an association representing the interests of persons exercising the medical profession in Belgium, to secure the annulment of Article 4(2) of the Decree of the Flemish Community of 5 April 1995, amending the Decree of 12 June 1991 relating to universities in the Flemish Community, which makes provision for specific training in general medical practice and lays down other provisions relating to universities (*Moniteur Belge* of 29 July 1995, hereinafter 'the 1995 Decree').

Community law

3 Directive 93/16 codifies Council Directive 75/362/EEC of 16 June 1975 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1975 L 167, p. 1) and Council Directive 75/363/EEC of 16 June 1975 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (OJ 1975 L 167, p. 14); it also incorporates Council Directive 86/457/EEC of 15 September 1986 on specific training in general medical practice (OJ 1986 L 267, p. 26). Those three directives were repealed by Article 44 of Directive 93/16.

4 Under Article 2 of Directive 93/16, each Member State is to recognise the diplomas, certificates and other evidence of formal qualifications — which are listed in Article 3 — awarded to nationals of Member States by the other Member States in accordance with Article 23 by giving such qualifications, as far as the right to take up and pursue the activities of a doctor is concerned, the same effect in its territory as those which the Member State itself awards.

5 Article 3 of Directive 93/16 gives a list, for all the Member States, of the documents referred to in Article 2. Those for the Kingdom of Belgium are: '"Diplôme légal de docteur en médecine, chirurgie et accouchements/Wettelijk diploma van doctor in de genees-, heel- en verloskunde" (diploma of doctor of medicine, surgery and obstetrics required by law) awarded by the university faculties of medicine, the Central Examining Board or the State University Education Examining Board'.

6 Article 23(1) of Directive 93/16 provides that the Member States are to require persons wishing to take up and pursue a medical profession to hold a diploma, certificate or other evidence of formal qualifications in medicine referred to in Article 3 which guarantees that during his complete training period the person concerned has acquired the knowledge and experience prescribed by Article

23(1)(a) to (d). Article 23(2) states that the abovementioned complete period of medical training is to comprise at least a six-year course of study or 5 500 hours of theoretical and practical instruction given in a university or under the supervision of a university.

7 Title IV of Directive 93/16 relates to specific training in general medical practice.

8 According to Article 30, 'Each Member State which dispenses the complete training referred to in Article 23 within its territory shall institute specific training in general medical practice meeting requirements at least as stringent as those laid down in Articles 31 and 32, in such a manner that the first diplomas, certificates or other evidence of formal qualifications awarded on completion of the course are issued not later than 1 January 1990.'

9 Articles 31 and 32 of Directive 93/16 lay down the minimum requirements which such training must meet.

10 According to Article 31,

'1. The specific training in general medical practice referred to in Article 30 must meet the following minimum requirements:

(a) entry shall be conditional upon the successful completion of at least six years' study within the framework of the training course referred to in Article 23;

(b) it shall be a full-time course lasting at least two years, and shall be supervised by the competent authorities or bodies;

(c) it shall be practically rather than theoretically based; the practical instruction shall be given, on the one hand, for at last six months in an approved hospital or clinic with suitable equipment and services and, on the other hand, for at least six months in an approved general medical practice or in an approved centre where doctors provide primary care; it shall be carried out in contact with other health establishments or structures concerned with general medical practice; however, without prejudice to the aforesaid minimum periods, the practical instruction may be given for a maximum period of six months in other approved health establishments or structures concerned with general medical practice;

(d) it shall entail the personal participation of the trainee in the professional activities and responsibilities of the persons with whom he works.

...

3. Member States shall make the issue of diplomas, certificates, or other evidence of formal qualifications awarded after specific training in general medical practice, conditional upon the candidate's holding one of the diplomas, certificates or other evidence of formal qualifications referred to in Article 3.'

11 Article 32 of Directive 93/16 provides:

'If, at 22 September 1986, a Member State was providing training in general medical practice by means of experience in general medical practice acquired by the medical practitioner in his own surgery under the supervision of an authorised

training supervisor, that Member State may retain this type of training on an experimental basis on condition that:

— it complies with Article 31(1)(a) and (b), and (3);

— its duration is equal to twice the difference between the period laid down in Article 31(1)(b) and the sum of the periods laid down in the third indent hereof,

— it involves a period in an approved hospital or clinic with suitable equipment and services and a period in an approved general medical practice or in an approved centre where doctors provide primary care; as from 1 January 1995, each of these periods shall be of at least six months' duration.'

12 Article 34 of Directive 93/16 authorises the Member States, subject to certain conditions, to make provision for specific part-time training in general medical practice.

The Belgian legislation

13 Under Article 2(1) of Royal Decree No 78 of 10 November 1967 relating to the practice of health care and of related professions and to medical committees (*Moniteur Belge* of 14 November 1967), 'No person may practise medicine unless he holds the diploma of doctor of medicine, surgery and obstetrics required by

law, obtained in accordance with the legislation on the conferring of academic degrees and the university examination syllabus, or he is exempted therefrom by law...'.

14 The Decree of 12 June 1991 relating to universities in the Flemish Community (*Moniteur Belge* of 4 July 1991) provides *inter alia* for the organisation of academic teaching.

15 The 1995 Decree provides for specific training in general medical practice. Article 2 thereof added the following paragraph to Article 7 of the Decree of 12 June 1991:

'The specific training in general medical practice is academic training which follows the academic training for a doctor. It results in the award of an academic degree in general medical practice.'

16 Article 3 of the 1995 Decree also inserted the following provisions in Article 11 of the Decree of 12 June 1991:

'The common teaching programme for the first course of training for becoming a doctor and for the first three years' study of the second course of such training must satisfy the requirements laid down by ... Directive 93/16/EEC, Title IV ... The university authorities shall issue to students who have passed the annual examination for the third year of study in the second course a certificate attesting that they have successfully completed the training course referred to in Article 23 of the abovementioned directive ...

In the fourth year of study in the second course of training for becoming a doctor, the university authorities may offer a number of options, one of which must be "general medical practice". That fourth year of study with the "general medical practice" option constitutes the first year of specific training in general medical practice referred to in Title IV of Directive 93/16/EEC ...'.

17 Article 4(2) of the 1995 Decree added the following fourth paragraph to Article 14 of the Decree of 12 June 1991:

'The total extent of training in general medical practice comprises three years' study, that is to say the fourth year of study in the second course of training for becoming a doctor and the two years' training in general medical practice.'

18 The full training course for persons aspiring to become general medical practitioners in Flanders is thus made up of a first period of six years, comprising the two basic training courses in medicine; then a seventh year, which corresponds both to a fourth and last year of study in the second training course for doctors and to the first year of the specific training in general medical practice; and, finally, an eighth year and a ninth year corresponding to a third course devoted to specific training for general medical practitioners.

19 The Fédération considers that Article 4(2) of the 1995 Decree derogates from Directive 93/16 by granting access to specific training in general medical practice to students who are not entitled to assume medical responsibilities and thus creates discrimination between trainees authorised to embark on such training in the Flemish Community and trainees from the other Communities.

20 Considering that the dispute is concerned with determining the year as from which specific training in general medical practice may commence and, more specifically, whether access to such training implies that the person concerned should hold a diploma, certificate or other evidence of formal qualifications referred to in Article 3 of Directive 93/16 (hereinafter 'the basic diploma referred to in Article 3'), the Cour d'Arbitrage stayed proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'1. Must Article 31(1)(a) of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, in conjunction with Articles 3 and 23 and with the other provisions of Title IV of that directive, be interpreted as meaning that the specific training in general medical practice cannot begin until after the person concerned has obtained, after at least six years' study, the diploma referred to in Article 3?

2. Must Article 31(1)(d) of that directive be interpreted as meaning that the "personal participation of the trainee in the professional activities and responsibilities of the persons with whom he works" requires the trainee to pursue the activities of a doctor which are reserved to holders of the diplomas required by Articles 2 and 3 of the directive?

3. If so, must that same provision be interpreted as meaning that the trainee should pursue the activities of a doctor from the beginning of the specific training in general medical practice, whether that training is the full-time training provided for by Article 31 of the directive or the part-time training provided for by Article 34?'

21 It must be borne in mind at the outset that Directive 93/16 is intended, according to the twenty-first recital in its preamble, only to institute specific training in general medical practice which satisfies minimum quality and quantity requirements, and supplements the minimum basic training which medical practitioners must receive in accordance with that directive. Although they are entitled to impose more stringent requirements, the Member States are required, by Article 2 of

Directive 93/16, to recognise each other's diplomas, certificates and other evidence of formal qualifications awarded in accordance with the minimum requirements laid down by Directive 93/16.

The first question

22 By its first question, the national court seeks to ascertain whether Article 31(1)(a) of Directive 93/16 makes access to specific training in general medical practice subject to the condition that a basic diploma referred to in Article 3 must first be obtained.

23 In the Fédération's submission that question should be answered in the affirmative. Only the basic diploma referred to in Article 3 confers the right to pursue the activities of a doctor and ensures that the person concerned has acquired the requisite knowledge and experience during his complete training period.

24 The Belgian Government, the Flemish Government, the Government of the French Community and the Commission contend, conversely, that the Member States are free to decide that the training is to commence upon successful completion of the six years' studies required by Article 31(1)(a) of Directive 93/16 and that it is not therefore essential for the candidate to have obtained the basic diploma referred to in Article 3. The Member States may, but are not required to, make access to specific training in general medical practice subject to possession of such a diploma.

25 As is clear from its wording, Article 31 of Directive 93/16 draws a distinction between the requirement of successful completion of six years' study of medicine and that of possession of a basic diploma referred to in Article 3. The first requirement, laid down in Article 31(1)(a), concerns access to specific training in general

medical practice, whereas the second, laid down in Article 31(3), concerns the issue of diplomas, certificates, or other evidence of formal training in specific general medical practice.

26 It must therefore be held that the two requirements laid down in Article 31 of Directive 93/16 are different in scope and cannot be assimilated to each other.

27 Moreover, as regards the conditions for access to training leading to the award of a diploma, certificate, or other evidence of formal qualification as medical specialist, Article 24 of Directive 93/16 draws the same distinction as Article 31 between the successful completion of at least six years' study of medicine and possession of a basic diploma referred to in Article 3.

28 It follows that, contrary to the Fédération's assertion, neither the terms of Article 31 nor the scheme of Directive 93/16 require the person concerned to hold a basic diploma referred to in Article 3 in order to be granted access to specific training in general medical practice.

29 The answer to the first question must therefore be that Article 31(1)(a) of Directive 93/16 does not make access to specific training in general medical practice subject to the condition that a basic diploma referred to in Article 3 must first be obtained.

The second and third questions

30 By its second and third questions, the national court seeks essentially to ascertain whether the nature of the activities that the candidate must pursue in the course of his specific training in general medical practice in implementation of Article 31(1)(d) implies that he should have obtained a basic diploma referred to in Article 3 before embarking on that training.

31 In the submission of the Fédération, the requirement in Article 31(1)(d) of Directive 93/16 that the trainee participate personally in the professional activities and responsibilities of the persons with whom he works means that he is obliged to perform acts which are reserved to the holders of a basic diploma referred to in Article 3.

32 In support of that submission, the Fédération relies, first, on the use of the term 'medical practitioner' in Article 32, which concerns those Member States which, as at 22 September 1986, were providing training in general medical practice by means of experience in general medical practice acquired by the 'medical practitioner' in his own surgery under the supervision of an authorised training supervisor.

33 It must, however, be borne in mind that the case of the 'medical practitioner' mentioned in Article 32 of Directive 93/16, who works in his own surgery under the supervision of an authorised training supervisor and who must therefore hold a basic diploma referred to in Article 3, is different from that of the candidate mentioned in Article 31(1)(d), who shares the 'responsibilities of the persons with whom he works', the latter, for their part, being entitled to pursue the activities of a doctor. In contrast to Article 32, the latter provision does not mention the experience 'acquired by the medical practitioner in his own surgery'.

34 Second, the Fédération submits that the aspects of specific training in general medical practice described in Article 31(1)(c) and (d) also imply that the person concerned has the status of 'medical practitioner' when he embarks on specific training and, therefore, that he is in possession of a basic diploma referred to in Article 3.

35 As the Commission has rightly pointed out, training in general medical practice does not involve the exercise of the profession of doctor in an independent manner, with the attendant freedom to make diagnoses and prescribe treatment; indeed, Article 31(1)(d) merely requires participation in the activities of a fully qualified medical practitioner. As for Article 31(1)(b) of Directive 93/16, it provides that the training is to be 'supervised by the competent authorities or bodies'.

36 Directive 93/16 does not thus impose the requirement of possession of a basic diploma referred to in Article 3 in relation to participation in the professional activity referred to in Article 31(1)(d) thereof.

37 Since Directive 93/16 does not make possession of a basic diploma referred to in Article 3 a precondition for commencing specific training in general medical practice but only imposes that requirement when the diploma, certificate, or other evidence of formal training in specific general medical practice is awarded, and since that is a minimum requirement, Directive 93/16 leaves the Member States free to decide whether the trainee must already hold the basic diploma referred to in Article 3 at an earlier stage.

38 The answer to the second and third questions must therefore be that the nature of the activities which a trainee must pursue in the course of his specific training in general medical practice in implementation of Article 31(1)(d) of Directive 93/16 does not necessarily imply that he should have obtained a basic diploma referred to in Article 3 before starting such training. It is for the Member States to determine whether, and if so to what extent, the participation of a person undergoing

training in general medical practice in the professional activities and responsibilities of the persons with whom he works in the course of his training means that he should hold the basic diploma referred to in Article 3.

Costs

39 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action 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 questions referred to it by the Cour d'Arbitrage of Belgium by judgment of 19 February 1997, hereby rules:

1. **Article 31(1)(a) of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications does not make access to specific training in general medical practice subject to the condition that a diploma, certificate or other evidence of formal qualifications referred to in Article 3 of that Directive must first be obtained.**

2. **The nature of the activities which a trainee must pursue in the course of his specific training in general medical practice in implementation of Article 31(1)(d) of Directive 93/16 does not necessarily imply that he should have obtained a diploma, certificate or other evidence of formal qualifications referred to in Article 3 before starting such training. It is for the Member States to determine whether, and if so to what extent, the participation of a person undergoing training in general medical practice in the professional activities and responsibilities of the persons with whom he works in the course of his training means that he should hold the diploma, certificate or other evidence of formal qualifications referred to in Article 3 of that Directive.**

Gulmann Moitinho de Almeida Edward

Puissochet Jann

Delivered in open court in Luxembourg on 16 July 1998.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber