OPINION OF ADVOCATE GENERAL LÉGER

delivered on 2 July 1998 *

1. The Pretura Circondariale di Bologna (Bologna District Magistrate's Court) has made a reference to the Court for a preliminary ruling on whether the provisions of Directives 75/362/EEC [1] and 75/363/EEC, [2] as amended by Directive 82/76/EEC, [3] under which doctors undergoing training to become specialists are entitled to 'appropriate remuneration' during the period of their training, have direct effect.

The relevant provisions

The relevant Community provisions

2. Directive 75/362 ('the "recognition" directive') concerns the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine and includes measures to facilitate the effective exercise of the right of establishment and freedom to provide services. [4] Directive 75/363 ('the "coordination" directive') coordinates certain provisions laid down by law, regulation or administrative action in respect of activities of doctors '... which then leaves the Member States freedom of organisation as regards teaching'. [5]

3. The 'recognition' directive draws a distinction between diplomas, certificates and other evidence of formal qualifications in specialised medicine that are common to all the Member States (Article 5(2)) and those that are peculiar to two or more Member States (Article 7).

4. Recognition of the former is automatic if, in accordance with Article 4 of the 'recognition' directive, their holders have undergone training that satisfies the minimum conditions laid down by the 'coordination' directive. In the case of the latter, Article 6 states that recognition — provided, however, that the holders can rely on having undergone training satisfying the requirements laid down by the 'coordination' directive — is automatic between these States.

* Original language: French.

1 — Council Directive 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 1995 L 167, p. 1).

2 — Council Directive of 16 June 1975 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (OJ 1995 L 167, p. 14).

3 — Council Directive of 26 January 1982 (OJ 1982 L 43, p. 21).

4 — Second recital in the preamble to the 'recognition' directive.

5 — First recital in the preamble to the 'coordination' directive.

5. The 'coordination' directive introduces some harmonisation of conditions relating to training and access to the different medical specialties '... with a view to mutual recognition of diplomas, certificates and other evidence of formal qualifications in specialised medicine and in order to put all members of the profession who are nationals of the Member States on an equal footing within the Community ...'. [6] However, these 'minimum criteria' concerning the right to take up specialised training, the minimum training period, the method by which such training is given and the place where it is to be carried out, as well as the supervision to which it should be subject 'only concern the specialties common to all the Member States or to two or more Member States'. [7]

6. These Directives were amended by Directive 82/76, [8] the purpose of which, as clearly stated in the third recital in the preamble thereto, was to define a new, stricter system for part-time training of medical specialists. [9] This Directive also made various technical amendments to the two 1975 Directives, rendered necessary as a result of changes in the domestic legislation of Member States and the experience gained in the first years of application. [10]

7. Article 1 of the 'coordination' directive places Member States under an obligation 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 of the 'recognition' directive guaranteeing that during his complete training period the person concerned has acquired the minimum knowledge set out in Article 1(1)(a) to (d) of the 'coordination' directive.

8. Article 2(1), amended by Article 9 of Directive 82/76, states that:

'1. Member States shall ensure that the training leading to a diploma, certificate or other evidence of formal qualifications in specialised medicine, meets the following requirements at least:

(a) it shall entail the successful completion of six years' study within the framework of the training course referred to in Article 1;

(b) it shall comprise theoretical and practical instruction;

6 — Second recital in the preamble to the 'coordination' directive.

7 — Ibid.

8 — Since the facts of the action, these directives have been repealed and replaced by 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).

9 — See Articles 9, 10, 12, 13 and 14 of Directive 82/76.

10 — Ibid. Articles 1 to 8 and 15 which amend *inter alia* Articles 5 and 7 of the 'Recognition' directive.

(c) it shall be a full-time course supervised by the competent authorities or bodies pursuant to point 1 of the Annex hereto; [11]

'1. Full-time training of specialists

Such training shall be carried out in specific posts recognised by the competent authority.

(d) it shall be in a university centre, in a teaching hospital or, where appropriate, in a health establishment approved for this purpose by the competent authorities or bodies;

It shall involve participation in all the medical activities of the department where the training is carried out, including on-call duties, so that the trainee specialist devotes to this practical and theoretical training all his professional activity throughout the duration of the standard working week and throughout the year according to provisions agreed by the competent authorities. Accordingly, these posts shall be subject to appropriate remuneration.

(e) it shall involve the personal participation of the doctor training to be a specialist in the activity and in the responsibilities of the establishments concerned.'

Training may be interrupted for reasons such as military service, secondment, pregnancy or sickness. The total duration of the training shall not be reduced by reason of any interruption.'

9. Article 13 of Directive 82/76 added an Annex to the 'coordination' directive, point 1 of which states:

10. Under Article 2(3) of the 'coordination' directive, the Member States are to designate the authorities or bodies competent to issue the diplomas, certificates or other evidence of formal qualifications referred to in paragraph 1.

11 — This was the only point amended by Directive 82/76.

11. Articles 4 and 5 of the same directive set the minimum lengths of the specialised training courses leading to diplomas, certificates or other evidence of formal qualifications referred to in Articles 5 and 7 of the 'recognition' directive, which are common to all the Member States or to two or more of them.

12. Lastly, Article 16 of Directive 82/76 states that Member States must take the necessary measures to comply with the directive by 31 December 1982.

The relevant national provisions

13. The 'recognition' and 'coordination' directives were implemented by the Italian Republic by Law No 217 of 22 May 1978.

14. Directive 82/76, however, was not fully transposed into national law by the Italian Republic until after the Court's judgment of 7 July 1987 in the *Commission* v *Italy* case, [12] by Legislative Decree No 257 of 8 August 1991 (hereinafter 'DL No 257'). [13]

12 — Case C-49/86 *Commission* v *Italy* [1987] ECR 2995. Articles 9, 10 and 12 to 15 of Directive 82/76 had not been transposed into the Italian legal system within the prescribed period.

13 — Gazzetta Ufficiale della Republica Italiana ('GURI') No 191 of 16 August 1991.

15. The relevant Articles of DL No 257 are as follows:

'Article 4 — Rights and obligations of trainee medical specialists

1. The full-time training of medical specialists shall involve participation in all the medical activities of the department where the training is carried out, including on-call duties and operations in the case of surgical disciplines as well as the gradual assumption of assistant duties, so that the trainee specialist devotes to this practical and theoretical training all his professional activity throughout the year.

2. Trainee medical specialists shall work as assistants as part of their practical specialist training.

3. Admission to the school and attendance at specialised medical training courses by the person registered shall not constitute an employment relationship of whatsoever kind.

4. The engagement required for specialist training shall be at least the same as that laid down for full-time national health service medical staff.'

'Article 6 — Study bursary

1. Those admitted to specialised schools ... concerning a full-time engagement for their training, shall receive throughout the duration of the course, excluding periods when the specialisation is suspended, a study bursary which in 1991 shall be ITL 21 500 000. From 1 January 1992, this amount shall be indexed annually on the basis of the anticipated rate of inflation and shall be revised every three years by Decree of the Minister for Health on the basis of the improvement in the minimum wage scale applicable to the contracts of salaried medical staff employed by the national health service.'

16. Lastly, Article 8(2) of the DL states that: 'The provisions hereof shall apply from the beginning of the 1991/92 academic year'.

Facts and procedure

17. This reference for a preliminary ruling was made in response to a case brought by Mrs. Carbonari and 121 other plaintiffs ('the applicants in the main proceedings') against the Università degli Studi di Bologna, Ministero della Sanità, Ministero dell'Università e della Ricerca Scientifica and the Ministero del Tesoro.

18. The applicants in the main proceedings are all graduates in medicine and were registered for the 1990/91 academic year in a specialised school within the faculty of medicine of the University of Bologna, in various disciplines such as cardiology, obstetrics, neurology, psychiatry, paediatrics, urology, ophthalmology, occupational medicine and other fields.

19. In an application lodged on 30 July 1992 before the Pretura Circondariale di Bologna (Bologna District Magistrate's Court), Chamber for Labour Disputes, the applicants in the main proceedings stated that, since the 1990/91 academic year, they had been engaged full-time in specialist medical training, for the full week and throughout the year, under the direction and supervision of the authorities governing it without receiving any remuneration. They claimed that under the terms of Directive 82/76, they had been entitled since 1990 to an 'appropriate remuneration' during the period of specialised training.

20. Since the outcome of the proceedings hinges on the interpretation of Community provisions, the Pretura Circondariale di Bologna, by order of 2 December 1996, has asked the Court to give a preliminary ruling on the following question:

'Must the provision of Directive 82/76/EEC providing that the training of trainee medical specialists is to be "subject to appropriate remuneration" be interpreted, in so far as no specific provisions have been adopted by the Italian Republic within the prescribed periods, as having direct effect in favour of trainee medical specialists as against the administrative authorities of the Italian Republic, and does it confer on trainee medical specialists the right to appropriate payment in respect of all the training undertaken in the departments entrusted with training duties by the State, with a corresponding obligation on those administrative authorities, including the University of Bologna, to pay such remuneration?'

The question submitted by the national court

21. By its question, the national court is seeking to ascertain whether the provisions on the right to remuneration in the 'coordination' directive, amended by Directive 82/76, are sufficiently precise and unconditional to confer rights directly on the individuals relying on them. In other words, the Court is being asked to state whether Directive 82/76 lays down criteria allowing the national court to define the content of the right to remuneration that Member States have to transpose into their domestic law.

22. It is settled case-law [14] that individuals have a right to rely in court on a directive against a Member State only where the State has failed to take the required implementing measures or has adopted measures which are incompatible with a directive.

23. It is apparent from the grounds of the order for reference that the applicants in the main proceedings, all doctors holding a diploma or certificate allowing them to exercise this profession, embarked in 1990 on specialised training in various fields, but were deprived of the benefit of the study bursary introduced by DL No 257 during that training even though they had completed a full-time course supervised by the competent authorities or bodies.

24. It is common ground that the Italian Republic, at the time of the facts in 1990, had not transposed into its domestic legal system the provisions of Directive 82/76 allowing

14 — See, in particular, Case C-148/78 *Ratti* [1979] ECR 1629, Case C-102/79 *Commission* v *Belgium* [1980] ECR 1473 and Joined Cases C-6/90 and 9/90 *Francovich and Others* v *Italian Republic* [1991] ECR I-5357, paragraph 11.

trainee medical specialists to receive remuneration. [15]

25. It is also common ground and not at all in dispute [16] that, since 1991, the Italian Republic has transposed these provisions into its domestic legal system. The representative of the Italian Government, when presenting its oral arguments, stated that since that date the specialist training undertaken by all Italian doctors has complied with the requirements of the 'recognition' and 'coordination' directives and with Directive 82/76.

26. It must follow that, since 1991, the legal situation of these doctors, with regard to their right to an appropriate remuneration, is covered by the national transposition provisions. The appropriate remuneration to which doctors undergoing training are entitled therefore corresponds to the study bursary introduced by DL No 257, which was ITL 21 500 000 in 1991.

27. Therefore, it appears that the question as to the direct effect of the Community provisions at issue should be restricted to the period prior to 1991 and, to be more precise, to 1990.

28. The Court has consistently held that only provisions that '... appear, as far as their subject-matter is concerned, to be unconditional and sufficiently *precise* ... may, in the absence of implementing measures adopted within the prescribed period, be relied upon as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the State'. [17]

29. It is therefore necessary to establish whether the provisions of Directive 82/76 which define the right to an 'appropriate remuneration' for trainee medical specialists satisfy these conditions.

30. In accordance with the settled case-law of the Court, [18] there are three points to be considered, namely the identity of the persons entitled to the right provided, the content of that right and the identity of the person subject to the corresponding obligation to guarantee that right.

31. As far as the persons entitled to these rights are concerned, the Court has already held, in the judgment in Case C-277/93 *Commission* v *Spain*, [19] that only specialties which appear on the lists set out in Article 5 or 7 of the 'recognition' directive, as amended by Directive 82/76, fall within the scope of Article

15 — See point 14 of this Opinion.

16 — See also the Answer by the Commission of 14 February 1995 to the Written Question E-2821/94 by Giovanni Burtone (OJ 1995 C 139, p. 35).

17 — Judgment in Case C-8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53, paragraph 25, emphasis added).

18 — See, in particular, *Francovich*, paragraph 12.

19 — Case C-277/93 *Commission* v *Spain* [1994] ECR I-5515.

2 of the 'coordination' directive, as amended by Directive 82/76. From that, the Court inferred that the requirement to provide remuneration for the periods of training in specialised medicine laid down in Article 2(1)(c) of the 'coordination' directive [20] 'applies only to medical specialties which are common to all the Member States or to two or more Member States and are mentioned in Article 5 or Article 7 of the "recognition" directive'. [21]

32. The attention of the national court should therefore be drawn to the need to ascertain that the applicants in the main proceedings are undergoing training which falls within the scope of the foregoing lists.

33. Moreover, the right to remuneration provided under Article 2 of the 'coordination' directive, as amended by Directive 82/76, is subject to the condition that the training shall satisfy the conditions very precisely and very clearly set out in point 1 of the Annex appearing in Article 13 of Directive 82/76.

34. Without reiterating the conditions that the training has had to satisfy since 1982, it is worth stating that they are very broadly similar to those introduced by Article 2(1) of the original 'coordination' directive in 1975 — in particular, the requirements for practical and theoretical instruction in a university centre and teaching hospital [(b) and (d)], involving the full-time personal participation of the trainee medical specialist in the activity and in the responsibilities of the establishments concerned [(c) [22] and (e)], supervised by the competent authorities or bodies [(c)]. [23] The amendments made by Directive 82/76 mainly relate to the obligation to create specific posts and the obligation to provide remuneration for such training.

35. This remuneration is provided in consideration for specific training. On that basis, the remuneration is inextricably linked to the training. That interpretation is based both on the wording and objective of these provisions.

36. Thus, at the end of the second paragraph of point 1 of the Annex to Directive 82/76, it is expressly stated that: '[Full-time training] shall involve participation in ... *Accordingly*, these posts shall be subject to appropriate remuneration'. [24]

37. As stated previously, the aim of all these provisions is to facilitate the effective exercise of the right of establishment and freedom to provide services and to put all members of the profession who are nationals of the Member States on an equal footing within the

20 — Ibid., paragraphs 16 to 19.

21 — Ibid., paragraph 20.

22 — Before the amendment introduced by Directive 82/76.

23 — Ibid.

24 — Emphasis added.

Community. [25] Accordingly, the obligation to provide remuneration for specialised training, the necessary consideration corresponding to the complete commitment of generalists to that training, is likely to ensure quality training throughout the Community, guarantee a certain equality between members of the profession, legitimise the principle of mutual recognition of specialist diplomas introduced by the 1975 directives and thus facilitate the free movement of those providers of services.

38. I must therefore conclude that these provisions are sufficiently precise and unconditional to allow the national court to decide whether the directive should or should not be held to apply to a trainee medical specialist. The court need only check whether or nor the party is undergoing training in one of the specialties listed in Article 5 or 7 of the 'recognition' directive, as amended by Directive 82/76, and whether that training meets the clear and precise requirements of Article 2(1) of the 'coordination' directive, as amended by Directive 82/76.

39. As to the content of that right, the directive simply lays down the requirement for payment of an 'appropriate' remuneration, but offers no further guidance as to how that right is to be determined.

40. The Commission and the applicants in the main proceedings concede this. However, they maintain that it is possible to determine the content of that right by recourse to national employment legislation.

41. I am not convinced by this argument. To my mind, that lack of precision affects the content of the result that Member States are required to achieve and so deprives the individual of any possibility of relying on the provisions of the directive to obtain this right to remuneration where there is no national implementing provision or where there is a national implementing provision incompatible with Community law. Because that concept is imprecise, Article 2(1) of the 'coordination' directive cannot be considered to have direct effect.

42. The Commission also considers that point 1 of the Annex is worded in such as way that the legal relationships which exist between the trainee medical specialist and his training centre must be treated as employment relations, characterised by reciprocal rights and obligations.

43. I do not think so. In my view, the reference to the concept of 'work' in Article 2 of

25 — See, in particular, the second recitals in the preambles to the 'coordination' and 'recognition' directives.

the 'coordination' directive does not necessarily require Member States to make such training subject to a contract of employment between the trainee medical specialist and his training centre. Member States clearly have that option, but it is by no means obligatory. The reference to work is, to my mind, useful only in determining the period during which the training has to be undertaken and remuneration paid. It means therefore that the obligation to provide remuneration covers the entire period of full-time training. It is only on this point — period of cover of the right to remuneration — that the Member States have no discretion.

44. As for the rest, Directive 82/76 provides no guidance. So, it does not specify the mandatory minimum amount of this remuneration nor does it take a 'by reference' approach. In particular, it does not refer to the application by analogy of existing criteria used in the Member State in question to determine the remuneration of staff carrying out a similar activity in the branch of medicine concerned. The Member States therefore have very wide discretion as far as the methods of determining this right are concerned.

45. It is therefore difficult for the national court to determine the content of the right to remuneration for trainee medical specialists on the basis of Directive 82/76 alone.

46. The provisions of Directive 82/76 concerning the right to appropriate remuneration are all the less likely to have direct effect in light of the fact that they do not specify the person or institution liable to pay that remuneration.

47. The 'coordination' directive as amended by Directive 82/76 is silent on this subject.

48. Furthermore, Article 2(1)(d) of the 'coordination' directive states that the training may also be in a health establishment approved for this purpose by the competent authorities.

49. It is therefore not at all ruled out that all or part of this training may be provided in private or public facilities. In the absence of any prohibitions or obligations laid down by Directive 82/76, it is my view that it would be quite possible to envisage a joint system of payment for this training — for instance, to say that part of the remuneration is the respon-

sibility of the State, another part that of the private or public establishment approved by the competent authorities in which the training is provided and yet another part paid by patients.

50. The necessary conclusion is therefore that the Member States have a very wide discretion when it comes to determining who is liable to guarantee the right to remuneration.

51. It follows that the provisions of Directive 82/76 are not sufficiently precise and unconditional with regard either to the content of the right to remuneration or to the identity of the guarantor of that right. They are not therefore such as to confer directly on doctors undergoing the training specified in the 'coordination' directive the right to obtain a definite remuneration where no implementing measures have been adopted within the time-limits.

52. However, for the sake of completeness, it seems to me appropriate to state that the obligation imposed on a Member State by Article 5 of the EC Treaty to transpose the provisions of a directive into its domestic legal system requires that State to discharge this obligation in such a way that beneficiaries that meet the conditions are not deprived of any remuneration.

53. Consequently, a national law or administrative practice that deprives the persons meeting the conditions laid down in the foregoing Directives of that right would fail to satisfy the requirements of an effective transposition of the directive. [26]

54. The applicants in the main proceedings point out that, since 1990, [27] they had been undergoing training meeting the requirements of Directive 82/76 and that, as a consequence, by depriving them of any remuneration in 1990 and, it appears, throughout subsequent years, the application of the transposition law was contrary to the provisions of the Directive. In support of their argument they have produced the Decree of the President of the Republic No 162 of 10 March 1982 [28] entitled 'Reorganisation of specialised teaching

26 — See, by analogy, the judgment in Case C-14/83 *von Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891, paragraph 24.

27 — I. e. at a time when the Italian Republic was not granting any mandatory remuneration to trainee medical specialists.

28 — GURI No 105 of 17 April 1982, ordinary supplement.

schools, specialisation schools and further training courses' — domestic provisions applicable before the entry into force of DL No 257. Article 3 of this Presidential Decree provides that, pending the establishment of a standardised national system, [29] the rules governing the training of Italian medical specialists are to be laid down by each Italian university in accordance with its articles of association. [30] The applicants argue that the documents in the main proceedings and the statements made by the referring court, the articles of association of the University of Bologna and the schools attended by the applicants as well as the aforementioned Presidential Decree prove that the training they have undertaken since 1990 satisfies the body of rules governing full-time training introduced in 1975 by the 'coordination' directive and amended in 1982 by Directive 82/76.

55. In any event, it is for the referring court to check that the presentation thus made of the legal and factual situation faced by the applicants in the main proceedings does actually reflect the true position.

56. If such is the case, the national court required to interpret and apply its domestic law should be reminded that, in so doing, it must comply with the obligations laid down by Article 5 and the third paragraph of Article 189 of the EC Treaty. [31]

57. In this particular case, while Article 2(1)(c) of the 'coordination' directive, as amended by Directive 82/76, does not contain an obligation that is unconditional and sufficiently precise to be directly relied on by an individual, in the absence of implementing measures adopted within the time-limits, the minimum intended result is clearly identified. The constraints associated with full-time specialised medical training as set forth in the 'coordination' directive must be subject to adequate remuneration.

58. It is therefore the responsibility of the national court to interpret and apply its domestic legislation, whether it be the domestic implementation law or other provisions of national law adopted either before or after a directive, in so far as it has discretion under domestic law, in line with the requirements of Directive 82/76. [32]

29 — When the oral arguments were heard, the representative of the Italian Government stated that the delay in adopting the implementing legislation in question was due to practical difficulties encountered by the Italian Government in introducing a system of quantitative limits.

30 — Articles 4, 5, 7, 11 and 12.

31 — See, in particular, the judgment in Case C-91/92 *Faccini Dori* v *Recreb* [1994] ECR I-3325, paragraph 26.

32 — Ibid.

Conclusion

59. For these reasons, it is therefore suggested that the Court give the following answers to the questions posed by the Pretura Circondariale di Bologna, Chamber for Labour Disputes:

Article 2(1) of 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, as amended by Council Directive 82/76/EEC of 26 January 1982, must be interpreted as not directly conferring on doctors undergoing the training specified by these directives the right to appropriate remuneration in the absence of implementing measures adopted within the time-limits. The national court is nevertheless required, when applying provisions of national law adopted either before or after a directive, to interpret them as far as possible in the light of the wording and the purpose of that directive.