OPINION OF ADVOCATE GENERAL LÉGER

delivered on 30 March 1995 *

1. By this action the Commission asks the Court to declare that, by deferring, by Law No 471 of 31 October 1988 ('the 1988 Law'), until 1984/85, with regard to diplomas in medicine and surgery, the final date set in Article 19 of Council Directive 78/686/EEC of 25 July 1978, concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the rights of establishment and freedom to provide services [1] ('the recognition directive'), the Italian Republic has failed to fulfil its obligations under the abovementioned Article 19 and under Article 1 of Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners [2] ('the coordination directive').

2. The coordination directive lays down the conditions of training to which the Member States must make the right to take up a dental profession subject. It constitutes a preliminary to the recognition of diplomas and provides for minimum standards ensuring a high level of medical care. The criteria used relate to the quality [3] and the total duration of training. [4]

3. The recognition directive, in particular Article 2, lays down the principle that each Member State undertakes to give diplomas awarded by the other Member States [5] the same effect in its territory as diplomas which the Member State itself awards.

4. Article 19 of this directive, which is at the centre of this action, provides as follows:

'From the date on which Italy takes the measures necessary to comply with this Directive, Member States shall recognize, for the purposes of carrying out the activities referred to in Article 1 of this Directive, the diplomas, certificates and other evidence of formal qualifications in medicine awarded

* Original language: French.

1 — OJ 1978 L 233, p. 1.

2 — Ibid., p. 10.

3 — Article 1(1)(a), (b), (c), (d) and (e) of the abovementioned directive.

4 — Ibid., paragraph (2), i. e. five years of theoretical and practical study.

5 — Article 3 of the directive contains an exhaustive list of the national diplomas which are automatically recognized.

in Italy to persons who had begun their university medical training not later than 18 months after notification of this Directive, accompanied by a certificate issued by the competent Italian authorities, certifying that these persons have effectively, lawfully and principally been engaged in Italy in the activities specified in Article 5 of Directive 78/687/EEC for at least three consecutive years during the five years prior to the issue of the certificate and that these persons are authorized to carry out the said activities under the same conditions as holders of the diploma, certificate or other evidence of formal qualifications referred to in Article 3(f) of this Directive.

The requirement of three years' experience referred to in the first subparagraph shall be waived in the case of persons who have successfully completed at least three years of study which are certified by the competent authorities as being equivalent to the training referred to in Article 1 of Directive 78/687/EEC.'

5. In 1985 the Italian Republic implemented these directives by creating the profession of dental practitioner [6] and by restricting the practice thereof to holders of a final degree in odontology and dental prostheses and to graduates in medicine and surgery holding a diploma specializing in odontology. [7]

6. By the 1988 Law, which contains a single article, the right to take up the profession of dental practitioner, by way of admission to the National Society of Dental Practitioners, was granted to graduates in medicine enrolled on courses in medicine in the academic years from 1980 to 1985:

'(1) Graduates in medicine and surgery enrolled on courses in medicine and surgery in the academic years 1980/81, 1981/82, 1982/83, 1983/84 and 1984/85 and authorized to practise their profession shall have the right to obtain admission to the National Society of Dental Practitioners for the purpose of pursuing the activity referred to in Article 2 of Law No 409 of 24 July 1985.

(2) This right must be exercised by 31 December 1991.' [8]

7. This is the provision which the Commission regards as incompatible with Article 19 of the recognition directive and Article 1 of the coordination directive.

6 — Law No 409 of 24 July 1985 ('the 1985 law') and its Articles 1 and 2.

7 — Ibid., Article 1.

8 — GURI No 262, 8.11.1988.

8. As the Italian Republic failed to reply to the formal notice [9] and the reasoned opinion [10] of the Commission, the latter brought an action under Article 169 of the EEC Treaty, by application lodged at the Court Registry on 9 February 1993, for a declaration that, by the 1988 Act, the Italian Republic has failed to fulfil its obligations under Article 19 of the recognition directive and Article 1 of the coordination directive.

9. According to the Commission, Article 1 of the coordination directive requires persons wishing to take up the profession to hold a diploma which satisfies specific requirements with regard to training. Article 19 of the recognition directive provides for exceptional arrangements for Italy. By extending beyond the limits set by the Community measure the option offered to certain doctors of taking advantage of these exceptional arrangements, the 1988 Law is said to have broadened access to the dental profession to include persons without the diplomas conforming to Community standards outside the cases provided for by the directive, and therefore the Italian Republic is alleged to have failed to fulfil its obligations under the abovementioned Articles 19 and 1.

10. The Italian Republic denies the charge that it is in breach of its obligations and contends that the recognition and coordination directives ('the 1978 directives' or 'the 1978 system') do not prohibit unilateral extension of the transitional measures specific to itself.

11. Article 2 of the recognition directive lays down the general principle that, as from the entry into force of the new provisions, any Community national holding a diploma or equivalent qualification obtained in one of the Member States [11] is free to take up the activities of a dental practitioner [12] in other Member States *provided that his diplomas or equivalent qualifications meet the minimum requirements with regard to training laid down in Article 1 of the coordination directive.* [13]

12. The Community legislature intended, by means of the 1978 directives, to uphold the specific nature of the dentist's work as opposed to that of a doctor. [14] Furthermore, an exact definition of the dentist's work is given in Article 5 of the coordination directive. [15]

13. Before 1978 the dental profession in Italy was unregulated and ordinary doctors

9 — Letter of 19 October 1990.

10 — Of 28 November 1991.

11 — Article 3 of the same directive.

12 — Article 1 of the recognition directive and Article 5 of the coordination directive.

13 — Prescribing the qualitative and quantitative criteria.

14 — See in particular the fourth and seventh recitals of the coordination directive.

15 — This is not the case with regard to doctors, see Council Directives 75/362/EEC and 75/363/EEC of 16 June 1975 (OJ 1975 L 167, pp. 1 and 14).

could practise dentistry. The new Community rules had the consequence that it was necessary to set up a new training system and a new profession in that Member State. [16] The Community legislature took special account of this situation [17] by making exceptional arrangements for Italy.

14. Therefore, while the 1978 system came into force in the entire Community on 28 January 1980, it has been applicable in Italy only since 28 July 1984, [18] i. e. six years after notification. In addition, 'old dentists' in Italy were granted wider rights than those granted to existing dentists who were nationals of the other Member States.

15. Continuance of the right to practise the newly regulated profession for 'old dentists' with diplomas in dentistry not fulfilling the requirements of the coordination directive is provided for by Article 7 of the recognition directive. The conditions to be satisfied for continuing exercise of this right are as follows:

(a) *only diplomas in dentistry obtained before 28 January 1980 confer the right to take up and pursue that profession,*

(b) on condition that *proof is given that the activities in question have actually been pursued* by means of the production of a certificate that the holders of such diplomas have effectively and lawfully been engaged in the activities in question for at least three consecutive years during the five years prior to the date of issue of the certificate.

16. Therefore the recognition directive requires two conditions to be fulfilled: the person concerned must hold a diploma obtained *before the entry into force* of the 1978 system and must furnish proof that the activity in question has actually been engaged in.

17. For Italy, the Community legislature applies an even more favourable system. These exceptional arrangements, laid down by Article 19 of the recognition directive, permit *graduates in medicine* holding diplomas obtained *after this system came into force in Italy* to take up the profession of dental practitioner under the same condi-

16 — Thirteenth recital of the recognition directive and seventh recital of the coordination directive.

17 — Seventh recital of the coordination directive, thirteenth, fourteenth and fifteenth recitals of the recognition directive.

18 — Article 24 of the recognition directive and Article 8 of the coordination directive. The directives were notified to all Member States on 28 July 1978 (point 1 of the Commission's application).

tions as holders of a dentist's diploma conforming to the Community requirements. However, this right is subject to three conditions:

(1) the Italian Republic must comply with the recognition directive (in particular, it must create diplomas specifically for dentists satisfying the conditions laid down by the system provided for by the directives; it must recognize dentists' diplomas awarded in the other Member States which conform with the conditions set out by the two directives);

(2) applicants must hold a diploma in medicine awarded to students *who began their university medical training before 28 January 1980*;

(3) applicants must also be able to produce a certificate issued by the competent national authorities certifying:

(a) that they were effectively, lawfully and principally engaged in Italy in the profession of dentistry for at least three consecutive years during the five years prior to the issue of the certificate, and

(b) that they are authorized to carry out those activities under the same conditions as holders of the diploma provided for in Article 3 of the recognition directive (i. e. holder of a diploma included in the exhaustive list drawn up by the Member States in connection with the recognition directive).

18. The 1988 law extends to categories of doctor which are not provided for by Article 19 of the recognition directive the option of taking advantage of the exceptional arrangements and therefore manifestly infringes the second condition laid down by Article 19 of the recognition directive. *In this way it permits the exceptional arrangements to continue beyond the time-limits set by the Community measure itself.* Moreover, the 1988 law does not require the certificate prescribed by Article 19. Consequently the Italian Republic opens the way for dentistry to be practised by persons who are outside the substantive scope of the directive.

19. The principle that any exception to fundamental Community rules must be strictly interpreted and applied has been upheld by the Court's case-law in very diverse areas of activity. [19] In particular, it has been consistently held to apply in relation to freedom of movement for persons. [20] Accordingly in a

19 — See in particular the relevant judgments cited in the Commission's statement in reply, point 5, second paragraph.

20 — See the judgments in Cases 67/74 *Bonsignore* [1975] ECR 297, paragraph 6, second subparagraph; 77/82 *Peskeloglou* [1983] ECR 1085, paragraphs 12 and 13; and C-3/87 *Agegate* [1989] ECR 4459, paragraphs 39 to 41.

judgment of 15 March 1988, Case 147/86, [21] the Court held that freedom of establishment is a fundamental rule and that any derogation from that rule must be interpreted and applied strictly.

20. This rule falls to be applied particularly with regard to harmonization.

21. Therefore, by not complying strictly with the conditions laid down by Article 19 of the recognition directive, the Italian Republic has deliberately, unilaterally failed to fulfil its obligations under the 1978 directives.

22. Contrary to the position taken by the representative of the Italian Government during the hearing, the 1978 directives do indeed have the objective of harmonizing the conditions of training for dental practitioners with a view to practising that profession in each of the Member States. [22] This is clear from the preambles to the 1978 directives, particularly the fourth recital of the recognition directive, [23] and the third, [24] fourth, [25] fifth [26] and sixth [27] recitals of the coordination directive.

23. I am hardly persuaded by the arguments of the Italian Republic based on Article 1(4) of the coordination directive and the *Tawil-Albertini* judgment. [28] That case concerned a French national who held a *dental practitioner's diploma awarded in the Lebanon* and recognised in Belgium. The Court held that the recognition by one Member State of a qualification awarded by a non-Member State is not binding on the other Member States. [29] The 1988 law relates to an entirely different situation and regulates the relations between a Member State and the holders of a *diploma awarded by the same Member State.*

24. Before I set out my conclusion, I wish to point out that the 1988 law is contrary to the

21 — *Commission* v *Greece* [1988] ECR 1637, paragraphs 7 to 9.

22 — See Cassan, M.: *L'Europe Communautaire de la Santé*, Coopération et Développement, Édition Economica, 1989, p. 91, first and third paragraphs, and p. 92, paragraph 1; Pertek, J.: 'Professions Médicales et Paramédicales — Libre Circulation — Reconnaissance des Diplômes', *Juris-Classeurs Europe*, Éditions Techniques, 1994, particularly points 40 to 68.

23 — '... Whereas the aim of this directive is the recognition of diplomas, certificates and other evidence of formal qualifications of a dental practitioner enabling activities in the field of dentistry to be taken up and pursued and the recognition of diplomas, certificates and other evidence of formal qualifications in respect of practitioners of specialized dentistry'.

24 — 'Whereas it is necessary for reasons of public health to move within the Community towards a common definition of the field of activity of the professional persons concerned ...'.

25 — 'Whereas Member States will ensure that, as from the implementation of this directive, the training of dental practitioners will provide them with the skills necessary for carrying out all activities involving the prevention, diagnosis and treatment of anomalies and diseases of the teeth, mouth, jaws and associated tissues'.

26 — 'Whereas coordination of the conditions for the pursuit of these activities, as provided for under this directive ...'.

27 — 'Whereas the coordination envisaged by this directive covers the professional training of dental practitioners ...'.

28 — Case C-154/93 [1994] ECR I-451, paragraphs 11 and 12.

29 — Ibid., paragraph 13.

underlying objective of the 1978 harmonization directives. By calling into question the harmonization of the conditions for the training of dental practitioners in the Community, the Italian Republic is wrecking the principle of mutual trust established by this system and the principle of the automatic recognition of diplomas which was introduced on the implementation of the 1978 directives. [30] Furthermore, patients who are nationals of other Member States and find themselves in Italy are rightly entitled to believe that, after the Community legislation came into force, dentists established in Italy who acquired their qualification in that Member State offer the minimum safeguards required by Community law for practising dentistry. However, application of the 1988 law permits members of professions without the qualifications awarded on completion of a specified minimum training to be admitted as dental practitioners under the same conditions as the graduates referred to by Article 2 of the 1985 law (diploma conforming to the Community requirements). In doing so, the 1988 law gives rise to confusion which is detrimental to all Community patients.

25. Consequently I propose that the Court rule that there is a failure in respect of Community obligations as follows:

— By deferring, by Law No 471 of 31 October 1988, until 1984/85, with regard to diplomas in medicine and surgery, the final date set in Article 19 of Council Directive 78/686/EEC of 25 July 1978, concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the rights of establishment and freedom to provide services, the Italian Republic has failed to fulfil its obligations under Article 19 of Directive 78/686/EEC, Article 1 of Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners, and Article 189 of the EEC Treaty;

— and order the Italian Republic to pay the costs.

30 — Ibid., paragraph 11.