JUDGMENT OF THE COURT
6 December 1994 *

In Case C-277/93,

Commission of the European Communities, represented by José Luis Iglesias Buhigues and Antonio Caeiro, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Spain, represented by Alberto José Navarro González, Director-General of Community Legal and Institutional Coordination, and Antonio Hierro Hernández-Mora, Abogado del Estado, replaced by Maria Gloria Calvo Díaz, Abogado del Estado in the Community Legal Affairs Department, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

defendant,

APPLICATION for a declaration that, by not providing remuneration for the periods of training necessary to obtain in Spain formal qualifications in the medical specialties listed in the third section of the Annex to Royal Decree No 127/1984 of 11 January 1984 concerning specialized medical training and the award of qualifications in specialized medicine, the Kingdom of Spain has failed to fulfil its obligations under Council Directives 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

* Language of the case: Spanish.

right of establishment and freedom to provide services (OJ 1975 L 167, p. 1) and 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),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, R. Joliet, F. A. Schockweiler (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, J. L. Murray and D. A. O. Edward (Rapporteur), Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 21 June 1994, at which the Commission was represented by José Luis Iglesias Buhigues and Gérard Berscheid, of its Legal Service, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 September 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 May 1993, the Commission of the European Communities brought an action under Article 169 of the EEC

Treaty for a declaration that, by not providing remuneration for the periods of training necessary to obtain in Spain formal qualifications in the medical specialties listed in the third section of the Annex to Royal Decree No 127/1984 of 11 January 1984 concerning specialized medical training and the award of qualifications in specialized medicine, namely stomatology, medical hydrology, space medicine, sports and physical education medicine, forensic medicine and occupational medicine, the Kingdom of Spain has failed to fulfil its obligations under Council Directives 75/362/EEC and 75/363/EEC, both of 16 June 1975.

2 Directive 75/362 (hereinafter 'the "recognition" directive') is intended to achieve 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. Directive 75/363 (hereinafter 'the "coordination" directive') is intended to achieve the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of doctors. Those directives have been amended by Council Directives 82/76/EEC of 26 January 1982 (OJ 1982 L 43, p. 21) and 89/594/EEC of 30 October 1989 (OJ 1989 L 341, p. 19).

3 The 'recognition' directive distinguishes between three situations with regard to the recognition of specialist diplomas. Where the specialty concerned is common to all the Member States and is listed in Article 5(2) of that directive, recognition is automatic (Article 4). Where the specialty is common to two or more Member States and is mentioned in Article 7(2), recognition as between those States is automatic (Article 6). Finally, Article 8 provides that for those specialties which are not listed either in Article 5 or in Article 7, the host Member State may require nationals of other Member States to fulfil the conditions of training laid down in that respect by its own national law, but taking into account the training periods completed by those nationals and attested by evidence of a training qualification awarded by the competent authorities in the Member State of origin or the Member State from which the foreign national comes, where those periods correspond to those required by the host Member State for the specialized training in question.

4 For the purposes of mutual recognition of diplomas, certificates and other evidence of formal qualifications in specialized medicine, the 'coordination' directive provides for a degree of harmonization of the conditions relating to training for, and access to, the various medical specialties.

5 The second recital in the preamble to that directive states that, with a view to coordinating the conditions of training in specialized medicine, it is necessary to lay down 'certain minimum criteria ... concerning the right to take up specialized 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' and adds, in the last sentence, that 'these criteria only concern the specialties common to all the Member States or to two or more Member States'.

6 Article 2(1) of the 'coordination' directive, as amended by Article 9 of Directive 82/76, provides in particular that training leading to a diploma, certificate or other evidence of formal qualifications in specialized medicine must meet the conditions specified therein. Article 2(1)(c) requires in particular that the training 'shall be a full-time course supervised by the competent authorities or bodies pursuant to point 1 of the Annex hereto'. Point 1 provides that the training in specialized medicine is to be subject to 'appropriate remuneration'.

7 In Spain, Royal Decree No 127/1984 concerning specialized medical training and the award of qualifications in specialized medicine (Boletín Oficial del Estado, 31 January 1984, p. 2524) distinguishes between two training categories, as a 'junior doctor' and as a 'student'. The third section of the annex to that decree lists six specialties which do not require hospital training: stomatology ('Estomatología'), medical hydrology ('Hidrología'), space medicine ('Medicina Espacial'), sports and physical education medicine ('Medicina de la Educación Física y del Deporte'), forensic medicine ('Medicina Legal y Forense') and occupational medicine ('Medicina del Trabajo').

8 In accordance with Article 13(1) of the Ministerial Orders of 28 June 1990 and 31 July 1991, concerning respectively selection tests for the years 1990-1991 and 1991-1992 for admission to specialized health-care training in accredited centres and hospitals, doctors who have obtained a post in one of the six medical specialties referred to above 'shall be subject to the "student" system in the teaching centre concerned and shall be required to pay the course fees without being entitled to any remuneration whatsoever'.

9 The Commission maintains that, by refusing to provide remuneration for the periods of training necessary to obtain in Spain formal qualifications in the medical specialties referred to in paragraph 7, the Kingdom of Spain has failed to fulfil its obligations under the 'recognition' and 'coordination' directives.

10 The Kingdom of Spain does not deny the infringement with regard to stomatology, which, pursuant to Annex I, Part II(f)(1)(b) and (d), to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23), is set out in Article 7(2) of the 'recognition' directive as a specialty recognized by the Kingdom of Spain.

11 However, the Kingdom of Spain does not consider itself bound to amend its legislation governing the conditions and periods of training for doctors in respect of the other five specialties. It points out that the designation 'Medicina del Trabajo' (occupational medicine) features only as a heading under Article 7(2) in the Spanish-language version of the 'recognition' directive, as amended by Article 4(23)(a) of Directive 89/594, cited above, without its being apparent that Spain recognizes that specialty. As for the other four specialties at issue in this case, the defendant contends that, since they are not mentioned at all in the 'recognition' directive, they are not subject to the conditions laid down in Article 2 of the 'coordination' directive.

12 The Kingdom of Spain disputes the Commission's claim that under Article 2 of the 'coordination' directive the Member States are required to provide remuneration in respect of periods of training for all medical specialties, including those not listed in Articles 5 and 7 of the 'recognition' directive.

13 It should be borne in mind at the outset that Articles 4 and 6 of the 'recognition' directive provide for the formal qualifications in specialized medicine awarded by one Member State to be recognized by the other Member States in certain circumstances. Such recognition presupposes that the conditions of training relating to the medical specialties concerned have been coordinated and harmonized.

14 Article 2 of the 'coordination' directive accordingly sets out the conditions for the award by any Member State of a formal qualification in specialized medicine in order to ensure that it is recognized by the other Member States. Recognition is automatic and compulsory for all the Member States as regards formal qualifications in the medical specialties listed in Article 5 of the 'recognition' directive, whereas in the case of the formal qualifications listed in Article 7, it is automatic and compulsory only as between the Member States mentioned therein.

15 As for the medical specialties peculiar to one Member State or which that State has not included in the list in Article 7 of the 'recognition' directive, Article 8 of that directive provides only for recognition which is neither automatic nor compulsory, as the host Member State is obliged merely to consider applications for recognition case by case.

16 As pointed out above (paragraph 13), the purpose of coordinating and harmonizing the conditions of training in medical specialties is to facilitate recognition of

those specialties. The host Member State therefore retains the right to set its own conditions of training for the recognition of formal qualifications which are specific to that State or which it has decided not to include in the list in Article 7 of the 'recognition' directive.

17 Since recognition of the formal qualifications which are peculiar to one Member State is not compulsory, compliance with the minimum conditions of training set out in Article 2 of the 'coordination' directive cannot be considered to be compulsory either.

18 That interpretation is borne out by the second recital in the preamble to the 'coordination' directive, according to which the minimum criteria for training in specialized medicine 'only concern the specialties common to all the Member States or to two or more Member States'.

19 It is important to note, moreover, that that recital was incorporated word for word in 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, fourteenth recital in the preamble).

20 It follows that the requirement to provide remuneration for the periods of training in specialized medicine, laid down in Article 2(1)(c) of the 'coordination' directive, applies only to medical specialties which are common to all the Member States or to two or more Member States and which are mentioned in Article 5 or Article 7 of the 'recognition' directive.

21 In the circumstances, it is common ground that, of the Spanish qualifications in specialized medicine which are at issue, only stomatology ('Estomatología') is mentioned in Article 7(2) of the 'recognition' directive as a specialty recognized by that State. By contrast, occupational medicine ('Medicina del Trabajo') is not mentioned except as a heading in the Spanish version of that provision, and Spain does not appear in the list of Member States which recognize that specialty. As for the other four specialties, namely medical hydrology, space medicine, sports and physical education medicine and forensic medicine, they are not set out in that directive even as headings. Spain is therefore under no obligation to provide remuneration for periods of training in those specialties.

22 It follows from the foregoing considerations that, by not providing remuneration for the periods of training necessary to obtain in Spain a formal qualification in stomatology ('Estomatología'), the Kingdom of Spain has failed to fulfil its obligations under Council Directive 75/362/EEC and Council Directive 75/363/EEC, both of 16 June 1975, as amended by Council Directive 82/76/EEC of 26 January 1982.

23 So far as concerns the other five specialties, the application is dismissed.

Costs

24 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has failed on one head and the Commission on the other heads, the parties must be ordered to bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by not providing remuneration for the periods of training necessary to obtain in Spain a formal qualification in stomatology ('Estomatología'), the Kingdom of Spain has failed to fulfil its obligations under 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, 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, both as amended by Council Directive 82/76/EEC of 26 January 1982.**

2. **Dismisses the remainder of the application.**

3. **Orders the parties to bear their own costs.**

Rodríguez Iglesias Joliet Schockweiler

Mancini Moitinho de Almeida Murray Edward

Delivered in open court in Luxembourg on 6 December 1994.

R. Grass G. C. Rodríguez Iglesias

Registrar President