JUDGMENT OF THE COURT (Fourth Chamber)

3 October 2000 *

In Case C-371/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunale Civile e Penale di Venezia, Italy, for a preliminary ruling in the proceedings pending before that court between

Cinzia Gozza and Others

and

Università degli Studi di Padova and Others,

on the interpretation of Council Directive 82/76/EEC of 26 January 1982 amending Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate effective exercise of the right of establishment and freedom to provide services, and Directive 75/363/EEC concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (OJ 1982 L 43, p. 21),

* Language of the case: Italian.

THE COURT (Fourth Chamber),

composed of: D.A.O. Edward (Rapporteur), President of the Chamber, A. La Pergola and H. Ragnemalm, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Italian Government, by Professor U. Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, and O. Fiumara, Avvocato dello Stato,

— the Spanish Government, by P. Plaza García, Abogado del Estado, acting as Agent,

— the Commission of the European Communities, by E. Traversa, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Cinzia Gozza and Others, represented by R. Mastroianni, of the Cosenza Bar, and P. Piva, of the Venice Bar, and of the Spanish Government, represented by N. Díaz Abad, Abogado del Estado, acting as Agent, at the hearing on 6 April 2000,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2000,

gives the following

Judgment

1 By order of 7 October 1997, received at the Court on 27 October 1997, the Tribunale Civile e Penale di Venezia (Civil and Criminal District Court, Venice) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of Council Directive 82/76/EEC of 26 January 1982 amending Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate effective exercise of the right of establishment and freedom to provide services, and Directive 75/363/EEC concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (OJ 1982 L 43, p. 21).

2 Those questions were raised in proceedings brought by Cinzia Gozza and 635 other applicants against the Università degli Studi di Padova (hereinafter 'the University of Padua'), the Ministero dell'Università e della Ricerca Scientifica e Tecnologica, the Ministero della Sanità and the Ministero della Pubblica Istruzione concerning the right of trainee medical specialists to 'appropriate remuneration' during their training.

Community legislation

3 Council Directive 75/362/EEC of 16 June 1975 (OJ 1975 L 167, p. 1, '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 the freedom to provide services. Council Directive 75/363/EEC of 16 June 1975 (OJ 1975 L 167, p. 14, 'the "coordination" directive') concerns the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors. Those directives were amended by, *inter alia*, Directive 82/76.

4 The 'recognition' directive draws a distinction between three situations for the recognition of specialist qualifications. Where the specialty in question 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 peculiar to two or more Member States and is mentioned in Article 7(2), recognition is automatic between them (Article 6). Finally, Article 8 provides that, for specialties not listed either in Article 5 or in Article 7, the host Member State may require nationals of Member States to fulfil the conditions of training laid down in that respect by its own domestic law; it is, however, to take into account the training periods completed by those nationals and attested by evidence of formal training issued by the competent authorities of the Member State of origin or the Member State from which the foreign national comes, provided such training periods correspond to those required in the host Member State for the specialised training in question.

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.

6 The second recital in the preamble to that directive explains that, in order to coordinate the requirements for training in specialised medicine, it is necessary to

lay down 'certain 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' and, in the last phrase, adds that 'these criteria only concern the specialities common to all the Member States or to two or more Member States'.

7 Article 2(1) of the 'coordination' directive, as amended by Article 9 of Directive 82/76, specifies the minimum requirements to be met by training leading to a diploma, certificate or other evidence of formal qualifications in specialised medicine. In particular, under Article 2(1)(c) the training is to be a full-time course supervised by the competent authorities or bodies pursuant to point 1 of the annex to the directive.

8 Under Article 3 of the 'coordination' directive, as amended by Article 10 of Directive 82/76, Member States may permit part-time specialist training. That part-time training must be given in accordance with point 2 of the annex to the directive.

9 The annex to the directive, added by Article 13 of Directive 82/76 and entitled 'Characteristics of full-time and part-time training of specialists', provides:

'1. *Full-time training of specialists*

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

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.

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.

2. *Part-time training of specialists*

This training shall meet the same requirements as full-time training, from which it shall differ only in the possibility of limiting participation in medical activities to a period at least half of that provided for in the second subparagraph of point 1.

The competent authorities shall ensure that the total duration and quality of part-time training of specialists are not less than those of full-time trainees.

Appropriate remuneration shall consequently be attached to such part-time training.'

10 Articles 4 and 5 of the 'coordination' directive fix the minimum length 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, and which are common to all the Member States or to two or more of them.

11 Article 16 of Directive 82/76 lays down that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 31 December 1982 at the latest, and are forthwith to inform the Commission thereof.

12 After the facts which gave rise to the main proceedings, the 'recognition' and 'coordination' directives and Directive 82/76 were 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).

National legislation

13 The 'recognition' and 'coordination' directives were transposed into Italian domestic law by Law No 217 of 22 May 1978 (*Gazzetta Ufficiale della Repubblica Italiana* No 146 of 29 May 1978).

14 By judgment of 7 July 1987 in Case 49/86 *Commission* v *Italy* [1987] ECR 2995, the Court of Justice declared that, by failing to adopt within the prescribed period the provisions necessary to comply with Directive 82/76, the Italian Republic had failed to fulfil its obligations under the EEC Treaty.

15 Following that judgment, Directive 82/76 was implemented by Legislative Decree No 257 of 8 August 1991 (GURI No 191 of 16 August 1991), which entered into force 15 days after the date of publication.

16 Article 4 of Legislative Decree No 257 determines the rights and obligations of trainee medical specialists, and Article 6 establishes a study bursary for their benefit.

17 Article 6(1) provides:

'Those admitted to specialised schools ... in connection with 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 increased annually on the basis of the anticipated rate of inflation and shall be revised every three years by decree made by 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.'

18 Finally, Article 8(2) of the Legislative Decree specifies that the provisions thereof are to apply from the beginning of the 1991/92 academic year.

19 It is clear from the order for reference that that provision has been interpreted as meaning that the study bursary established by Legislative Decree No 257 does not apply, even after the 1991/92 academic year, to trainee medical specialists admitted before that time.

Main proceedings

20 The applicants in the main proceedings, all graduates in medicine and surgery, pursued training courses in various specialist schools attached to the University of Padua during the 1990/91 academic year. Since they did not receive the study bursary established by Legislative Decree No 257, they sought recognition of their entitlement to appropriate remuneration in accordance with the 'recognition' and 'coordination' directives and Directive 82/76. They accordingly applied for an order requiring the University of Padua and the other defendants — the Ministry for Universities and Scientific and Technological Research, the Ministry of Health and the Ministry of Education — to pay the sums owing, the precise amount of which was to be quantified in the course of the proceedings.

21 The defendants in the main proceedings pleaded that the directives in question could not have direct effect because they did not identify the person liable to pay the appropriate remuneration and, in particular, did not define the criteria for determining it.

22 The defendants in the main proceedings also maintained that Legislative Decree No 257 did not create any disparity in treatment between trainee medical specialists, such as the applicants, who had registered before the 1991/92 academic year — to whom the new national rules did not apply — and those who had registered after that year — to whom they did apply. Unlike trainees who had registered after 1991/92, trainees, including the applicants, who had registered before then were not in any way required to work full-time or to promise not to engage in an occupation. The defendants in the main proceedings conceded, however, that the applicants undertook part-time specialist training.

23 Since the Tribunale Civile e Penale di Venezia considered that the outcome of the case turned on the interpretation of Directive 82/76, it decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does the provision in Directive 82/76/EEC under which both full-time and part-time training in specialist medicine is to be subject to "appropriate remuneration" fall to be construed, even for the period during which no specific rules were adopted by the Italian State, as having direct effect for trainee medical specialists so as to confer on them an unrestricted right, as against the competent authorities of the State, to receive appropriate remuneration corresponding to the work performed in the course of their professional training?

2. If the existence of the aforementioned right is recognised, what are the criteria for determining "appropriate remuneration" with regard to both full-time and part-time training activities?'

Admissibility

24 In their written observations, the Italian and Spanish Governments have contended that the questions are inadmissible.

25 The Spanish Government submits that they are inadmissible because the facts are incomplete. It states that the requirement to provide appropriate remuneration

for the periods of training in specialised medicine laid down in Article 2(1)(c) of the 'coordination' directive, as amended by Directive 82/76, applies only to specialties which are common to all the Member States or to two or more of them and are mentioned in Article 5 or Article 7 of the 'recognition' directive. In the present case the referring court failed to specify the precise nature of the medical specialties pursued by the applicants before it.

26 The Court has already held, in Case C-277/93 *Commission* v *Spain* [1994] ECR I-5515, at paragraph 20, 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, as amended by Directive 82/76, applies only to medical specialties which are common to all the Member States or to two or more of them and are mentioned in Article 5 or Article 7 of the 'recognition' directive.

27 However, the lack of detail concerning the precise nature of the medical specialties pursued by the applicants in the main proceedings is not such as to prevent the Court from answering the questions raised by the referring court.

28 The 'recognition' and 'coordination' directives specify clearly, for the specialist training courses concerned, both the designations in force in the Member States and the authorities or bodies competent to issue the diplomas, certificates and other evidence of formal qualifications corresponding to the specialties in question. It is accordingly for the referring court to determine which of the applicants in the main proceedings are on one of those specialist training courses and may thus be entitled under the 'coordination' directive, as amended by Directive 82/76, to appropriate remuneration during their training period.

29 The Italian Government submits that the questions are inadmissible because they have been referred for a preliminary ruling by the Giudice Istruttore (Examining Judge) of the Tribunale Civile e Penale, that is to say a judge who, under the Italian rules of procedure, is not called upon to rule on the substance of the case.

30 It is not for the Court of Justice, given the allocation of functions between itself and the national courts, to determine whether the decision to refer has been taken in accordance with the rules of national law governing the organisation of courts and their procedure (see Joined Cases C-332/92, C-333/92 and C-335/92 *Eurico Italia and Others* v *Ente Nazional Risi* [1994] ECR I-711, paragraph 13, and Case C-435/97 *WWF and Others* v *Autonome Provinz Bozen and Others* [1999] ECR I-5613, paragraph 33).

31 Accordingly, the questions referred for a preliminary ruling are admissible.

Substance

32 By those questions, the referring court essentially asks, first, whether, where Directive 82/76 has not been transposed within the time-limit, its provisions relating to the obligation to provide appropriate remuneration for full-time and part-time specialised training are unconditional and sufficiently precise so that trainee medical specialists may rely on that obligation before the national courts against the administrative authorities of a Member State and, second, what the criteria are for determining 'appropriate remuneration'.

33 In Case C-131/97 *Carbonari and Others* v *Università degli Studi di Bologna and Others* [1999] ECR I-1103, the Court gave a ruling on the interpretation of

Article 2(1)(c) of the 'coordination' directive and point 1 of the annex to that directive, as amended by Directive 82/76, which require appropriate remuneration for full-time training, and it has therefore provided national courts with all the criteria necessary for deciding that type of case.

34 First, the Court found that Article 2(1)(c) of the 'coordination' directive and point 1 of the annex to that directive, as amended by Directive 82/76, imposed an obligation on Member States, in respect of doctors liable to benefit from the system of mutual recognition, to provide remuneration for periods of training in medical specialties in so far as they fell within the scope of the directive. That obligation was, in itself, unconditional and sufficiently precise (*Carbonari*, paragraph 44).

35 Second, the Court stated that, in order to determine whether that entitlement was to be accorded to trainee doctors, it was for the referring court to ascertain whether they belonged to the category of doctors on one of the specialist training courses specified in Article 5 or Article 7 of the 'recognition' directive (*Carbonari*, paragraphs 27 and 28) and whether that training was carried out in accordance with the requirements of the 'coordination' directive, as amended by Directive 82/76 (*Carbonari*, paragraphs 33 and 34).

36 Third, the Court held that Article 2(1)(c) of the 'coordination' directive and point 1 of the annex to that directive, as amended by Directive 82/76, were not unconditional in so far as they contained no indication as to which institution bore the obligation to pay the appropriate remuneration, what was to be

understood as corresponding to appropriate remuneration or the method by which that remuneration was to be fixed (*Carbonari*, paragraph 47).

37 Fourth, the Court stated, however, that it was for the national court to determine to what extent all provisions of national law, and more specifically, for the period after their entry into force, the provisions of a law adopted in order to implement Directive 82/76, could be interpreted after the date of entry into force of those provisions in the light of the wording and the purpose of that directive in order to achieve the result pursued by it (*Carbonari*, paragraph 49).

38 Finally, the Court pointed out that, if the result prescribed by the 'coordination' directive, as amended by Directive 82/76, could not be achieved by interpreting national law in conformity with the directive, Community law required the Italian Republic to make good damage caused by it to individuals, provided that three conditions were fulfilled: the rule of law infringed was intended to confer rights on individuals and the content of those rights could be identified; the breach was sufficiently serious; and there was a direct causal link between the breach of the State's obligation and the damage suffered by the persons affected (*Carbonari*, paragraph 52).

39 In that connection, retroactive application in full of the measures implementing Directive 82/76 would enable the harmful consequences of its belated transposition to be remedied, provided that the directive was properly transposed. However, it was for the national court to ensure that reparation of the loss or damage sustained by the beneficiaries was adequate. Retroactive and proper application in full of the measures implementing Directive 82/76 would suffice for that purpose unless the beneficiaries established the existence of complementary loss sustained on account of the fact that they had been unable to benefit at

the appropriate time from the financial advantages guaranteed by that directive with the result that such loss also had to be made good (*Carbonari*, paragraph 53).

40 The referring court raises in addition the issue of the interpretation of the provisions of the 'coordination' directive, as amended by Directive 82/76, concerning the obligation to provide appropriate remuneration for part-time specialised training.

41 The analysis, regarding full-time training, contained in the judgment in *Carbonari* and reviewed in paragraphs 33 to 39 of this judgment is entirely applicable to part-time training in specialised medicine.

42 That conclusion can be drawn both from the aims and from the wording of the 'coordination' directive and Directive 82/76. Article 3(2) of the 'coordination' directive and point 2 of the annex to that directive, as amended by Directive 82/76, provide that part-time training must likewise be the subject of 'appropriate remuneration'.

43 That remuneration, granted in return for, and in recognition of, the work carried out, is intended for trainee medical specialists who participate in all the medical activities of the department where the training is carried out. They devote to that practical and theoretical training all their professional activity throughout the working week or, in the case of a part-time trainee specialist, a significant proportion of the working week.

44 The referring court must therefore take account of the aims of the 'coordination directive', as amended by Directive 82/76, construed in that way, when applying the principles reviewed in paragraphs 33 to 39 of this judgment in order to identify both the institution which bears the obligation to pay the appropriate remuneration and the method by which that remuneration is to be fixed.

45 In those circumstances, the answer to the first question must be that, on a proper construction of Article 2(1)(c) of the 'coordination' directive and point 1 of the annex to that directive, as amended by Directive 82/76, and of Article 3(2) of the 'coordination' directive and point 2 of the annex to that directive, as amended by Directive 82/76:

— the obligation to provide appropriate remuneration for periods of both full-time and part-time training in specialised medicine is binding only in respect of the medical specialties which are common to all the Member States or to two or more of them and are mentioned in Article 5 or Article 7 of the 'recognition' directive;

— that obligation is binding only if the conditions for full-time training set out in point 1 of the annex to the 'coordination' directive, as amended by Directive 82/76, or those for part-time training, set out in point 2 of the annex to the 'coordination' directive, as amended by Directive 82/76, are complied with by the trainee medical specialists;

— that obligation is unconditional and sufficiently precise in so far as it requires, for a medical specialist to be able to benefit from the system of mutual recognition established by the 'recognition' directive, that his training be full-time or part-time and remunerated;

— that obligation in itself does not, however, enable the national court to determine which body is liable to pay the appropriate remuneration or the level thereof.

The national court is required, however, when it applies 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.

46 In view of the answer to the first question, there is no need to rule on the second question, concerning the criteria for determining the appropriate remuneration.

Costs

47 The costs incurred by the Italian and Spanish Governments and the Commission, which have 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 (Fourth Chamber),

in answer to the questions referred to it by the Tribunale Civile e Penale di Venezia by order of 7 October 1997, hereby rules:

On a proper construction of Article 2(1)(c) 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 and point 1 of the annex to that directive, as amended by Council Directive 82/76/EEC of 26 January 1982 amending Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate effective exercise of the right of establishment and freedom to provide services and Directive 75/363, and of Article 3(2) of Directive 75/363 and point 2 of the annex to that directive, as amended by Directive 82/76:

— the obligation to provide appropriate remuneration for periods of both full-time and part-time training in specialised medicine is binding only in respect of the medical specialties which are common to all the Member States or to two or more of them and are mentioned in Article 5 or Article 7 of 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;

— that obligation is binding only if the conditions for full-time training set out in point 1 of the annex to Directive 75/363, as amended by Directive 82/76, or those for part-time training, set out in point 2 of the annex to Directive 75/363, as amended by Directive 82/76, are complied with by the trainee medical specialists;

— that obligation is unconditional and sufficiently precise in so far as it requires, for a medical specialist to be able to benefit from the system of mutual recognition established by Directive 75/362, that his training be full-time or part-time and remunerated;

— that obligation in itself does not, however, enable the national court to determine which body is liable to pay the appropriate remuneration or the level thereof.

The national court is required, however, when it applies 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.

Edward La Pergola Ragnemalm

Delivered in open court in Luxembourg on 3 October 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fourth Chamber