JUDGMENT OF THE COURT (Third Chamber)
12 June 1986 *

In Joined Cases 98, 162 and 258/85

REFERENCES to the Court under Article 177 of the EEC Treaty by the Pretura di Roma [Magistrate's Court, Rome] in the cases pending before that court between

Michele Bertini and Giuseppe Bisignani

and

Regione Lazio [Lazio Region] **and Unità sanitarie locali** [Local Health Authorities] **RM (Rome) 30 and LT (Latina) 4** (Case 98/85),

and between

Di Santo and Others

and

Regione Lazio and Unità sanitarie locali RM (Roma) 28 and 30, RI (Rieti) 1 and LT (Latina) 4 (Case 162/85)

and between

Lino Pugnaloni and Others

and

Regione Lazio and Unità sanitarie locali RM (Roma) 3, 4, 9, 11, 16, 22, 26, 27, 30, 34 and 35, LT (Latina) 4 and VT (Viterbo) 3 (Case 258/85)

on the interpretation of Articles 3 (c) and 57 (3) of the EEC Treaty,

* Language of the Case: Italian.

THE COURT (Third Chamber)

composed of: U. Everling, President of the Chamber, Y. Galmot and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Mr Pugnaloni and others, by Antonio Funari, of the Rome Bar, in the written procedure in Case 258/85 and on behalf of Mr Pugnaloni and others, Mr Bertinini and Mr Bisignani and Mr Di Santo and others, by Antonio Funari, of the Rome Bar, in the oral procedure,

Unità sanitarie locale RM 11, by its President, Giancarlo Pascucci, in the written procedure in Case 258/85,

the Government of the Italian Republic, by Marcello Conti, Avvocato dello Stato, in the written procedure in Case 162/85 and in the oral procedure,

the Government of the Kingdom of Belgium, by Francis Herbert, of the Brussels Bar, in the written procedure in Case 98/85 and in the oral procedure,

the Commission of the European Communities, by Guido Berardis, a member of its Legal Department, assisted by Silvio Pieri, an Italian civil servant seconded to the Commission under an exchange scheme with national civil servants, in the written and the oral procedure,

after hearing the Opinion of the Advocate General delivered at the sitting on 24 April 1986,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By three orders dated 2 April, 9 May and 13 June 1985, which were received at the Court on 16 April, 29 May and 20 August 1985 respectively, the Pretura di Roma referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 3 (c) and 57 (3) of the EEC Treaty and of the Community directives on freedom of movement for doctors, in ordder to ascertain whether those provisions require Member States to limit the number of students admitted to medical faculties by introducing a *numerus clausus* system.

2 That question arose in disputes between a number of doctors, who for several years had worked under contract in the emergency medical service, and their employers, the Lazio Region and various local health authorities. The disputes concern the termination of the contracts of employment of those doctors.

3 The Pretura di Roma made an interim order suspending the operation of the decisions terminating the contracts of the plaintiffs in the main proceedings pending the decision of the Court on the following question:

'Do Article 3 (c) and Article 57 (3) of the EEC Treaty require all the Member States to lay down conditions for admissions to university medical studies which ensure:

a level of training corresponding to the criteria of quality fixed by the Community directives and to the criteria indicated by the Advisory Committee on Vocational Training;

the proper development of the profession within the framework of the rules of professional ethics, for which purpose it is necessary that the number of doctors available should correspond to the number required?

In particular, does the Court of Justice consider that the absence of any fixing in advance or planning of the number of students admitted to study medicine having regard to the teaching capacity of the medical faculties complies with and is compatible with the provisions and objectives of the Treaty of Rome and of the Community directives on freedom of movement for doctors?

Does the extension to all the Member States of a *numerus clausus* system, which already operates in eight of the 10 Member States, therefore constitute an indispensable measure and hence something which the Member States are obliged to adopt in order to apply the Treaty and the directives on freedom of movement?'

4 The documents before the Court show that the disputes in the main proceedings are set in the general context of, on the one hand, the large number of young doctors seeking posts in Italy and the limited possibilities for them to exercise their profession and, on the other, the lack of any restrictions on the number of medical students admitted to Italian universities.

5 The Local Health Authority RM (Rome) 11, the Italian and Belgian Governments and the Commission have expressed doubts as to whether the Court has jurisdiction to reply to the question submitted, referring to the judgment of 16 December 1981 in Case 244/80 *Foglia* v *Novello* [1981] ECR 3045. They maintain that the conditions of access of students to medical faculties can in no respect be relevant to the disputes in the main proceedings, which concern the contractual relations between doctors and their employers. In their view, purely hypothetical questions, for which the dispute in the main proceedings is merely a pretext, may not be referred to the Court.

6 As far as that point is concerned, it should first be recalled that in its judgment of 16 December 1981, cited above, the Court stated that in order that it may perform its tasks in accordance with the Treaty it is essential for national courts to explain, when the reasons are not clear from the documents available, why they consider that a reply to their questions is necessary to enable them to give judgment.

7 It is therefore regrettable that the national court has not supplied any grounds for its orders requesting a preliminary ruling, particularly since it is not possible to determine either from the documents submitted or from the facts of the cases what use the questions have for the purposes of the judgments which it must give.

Nevertheless, the Court considers that, in the circumstances of this case, to decline to reply to the questions submitted by the national court solely for that reason would not be in the interests of procedural economy.

8 Moreover, as the Court has consistently held and was confirmed in its aforesaid judgment of 16 December 1981, it is for the national court to assess, having regard to the facts of the case, the need to obtain a preliminary ruling to enable it to give judgment. Its assessment must be respected even if, as in this case, it is difficult to see how the answers which the Court is asked to give can influence the decision in the main proceedings. It should be added that there is nothing to suggest that those proceedings constitute in reality a procedural contrivance.

9 As regards the substance of the questions submitted by the national court, the plaintiffs in the main proceedings claim that the establishment of freedom of movement for doctors makes it necessary to ensure in all the Member States that the quality of training for doctors attains a certain level and to prevent the discrimination and distortion which would result from an artificial migration of students and doctors. For that reason, the introduction of a *numerus clausus* for faculties, as exists in almost all the Member States, is essential.

10 The Italian and Belgian Governments and the Commission stress that the relevant Community rules contain no provision regarding the restriction of access to medical faculties, which the Member States are at liberty to regulate within the framework of their own powers. The absence of a restriction on the number of students admitted to university cannot impede the free movement of doctors.

11 In that respect it is sufficient to point out that neither Article 3 (c) nor Article 57 (3) of the Treaty, to which the national court refers, requires the Member States to modify the provisions applicable within their territories to their own nationals regarding the exercise of the medical professions or the training for those professions. Such obligations could only arise from directives adopted by the Coucil to coordinate the relevant national rules. No measure adopted by the Council for that purpose concerns the restriction of the number of students admitted to medical faculties.

12 The reply to the question submitted by the Pretura di Roma must therefore be that no provision of Community law requires the Member States to limit the number of students admitted to medical faculties by introducing a *numerus clausus* system.

Costs

13 The costs incurred by the Governments of the Italian Republic and the Kingdom of Belgium and by the Commission of the European Communities, which have submitted observations to the Court are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in reply to the question submitted to it by the Pretura di Roma by orders of 2 April, 9 May and 13 June 1985, hereby rules:

No provision of Community law requires the Member States to limit the number of students admitted to medical faculties by introducing a numerus clausus system.

Everling Galmot Moitinho de Almeida

Delivered in open court in Luxembourg on 12 June 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber