# JUDGMENT OF THE COURT (Fifth Chamber)
11 July 2002 *

In Case C-294/00,

REFERENCE to the Court under Article 234 EC by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between

**Deutsche Paracelsus Schulen für Naturheilverfahren GmbH**

and

**Kurt Gräbner,**

on the interpretation of Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 and 49 EC) and of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25),

* Language of the case: German.

THE COURT (Fifth Chamber),

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

Advocate General: J. Mischo,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Deutsche Paracelsus Schulen für Naturheilverfahren GmbH, by R. Ratschiller, Rechtsanwalt,

— Mr Gräbner, by G. Huber, Rechtsanwalt,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the United Kingdom Government, by J.E. Collins, acting as Agent, and by C. Lewis, Barrister,

— the Commission of the European Communities, by M. Patakia and C. Schmidt, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Deutsche Paracelsus Schulen für Naturheilverfahren GmbH, of the United Kingdom Government and of the Commission at the hearing on 11 October 2001,

after hearing the Opinion of the Advocate General at the sitting on 13 December 2001,

gives the following

## Judgment

1 By order of 13 July 2000, received at the Court on 31 July 2000, the Oberster Gerichtshof referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC) and of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25).

2 Those questions were raised in an action brought by Deutsche Paracelsus Schulen für Naturheilverfahren GmbH ('Deutsche Paracelsus Schulen') against Mr Gräbner for payment of ATS 90 390 by the latter to Deutsche Paracelsus Schulen as performance of a training contract concluded between them.

## Legal framework

### *Directive 92/51*

3 In accordance with the fourth and fifth recitals of the preamble, Directive 92/51 introduces a second general system of recognition of professional training which supplements that introduced by Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16). The aim of Directive 92/51 is to facilitate the pursuit of all professional activities which in a host Member State are dependent on the completion of a certain level of education and training based on the same principles and containing *mutatis mutandis* the same rules as the initial general system.

4 Article 1(e) and (f) of Directive 92/51 provide:

'For the purposes of this Directive, the following definitions shall apply:

...

(e) regulated profession: the regulated professional activity or range of activities which constitute this profession in a Member State;

(f) regulated professional activity: a professional activity the taking up or pursuit of which, or one of its modes of pursuit in a Member State, is subject, directly or indirectly, by virtue of laws, regulations or administrative provisions, to the possession of evidence of education and training or an attestation of competence....

...'

5 In accordance with Article 2 of Directive 92/51, which is the sole article in Chapter II, 'Scope':

'This Directive shall apply to any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person.

This Directive shall apply to neither professions which are the subject of a specific directive establishing arrangements for the mutual recognition of diplomas by Member States, nor activities covered by a directive listed in Annex A.

...'

*Austrian law*

6 In accordance with Paragraph 1(1) of the Ausbildungsvorbehaltsgesetz (BGBl. 378/1996) in the version applicable at the material time ('the Austrian training law'), training in activities regulated by, *inter alia*, the Ärztegesetz 1998 (BGBl. 169/1998) ('the Austrian law on doctors') may be dispensed only by the institutions designated for that purpose by federal law. Pursuant to that provision, it is prohibited for other persons or institutions to offer or procure such training.

7 In accordance with Paragraph 1(2) of the Austrian training law, the advertising of training prohibited under Paragraph 1(1) of that law is regarded as an attempted infringement of that provision and may be penalised as such.

8 Paragraph 2 of the Austrian training law provides for fines of up to ATS 500 000. The nullity of training contracts concluded in breach of the law is not expressly provided for as a penalty by that law.

9 According to the Explanatory Notes to the Austrian training law (150 BlgNR 20. GP, 24), the prohibition introduced by that law is intended to counter the activity of institutions, from Germany in particular, which become established in Austria and intensively advertise training as a 'Heilpraktiker' (lay health practitioner). According to those notes, urgent legislative action was required, in particular to protect consumers.

10 In accordance with Paragraph 2(2) of the Austrian law on doctors, the exercise of the medical profession covers any activity based on medical scientific knowledge and practised directly on a person or indirectly for a person, in particular the diagnosis and treatment of illness or physical or mental disorders.

11 Paragraph 3(1) and (4) of the Austrian law on doctors prohibits the exercise of that profession by any person other than a qualified doctor.

*German law*

12 The profession of Heilpraktiker is regulated by the Heilpraktikergesetz (Law on lay health practitioners) of 17 February 1939 (RGBl. I, p. 251), as amended by the law of 2 March 1974 ('HPrG').

13 Under Paragraph 1(1) of the HPrG, any person not qualified as a doctor of medicine and wishing to exercise the profession of Heilpraktiker is obliged to obtain authorisation.

14 In accordance with Paragraph 1(2) of the HPrG, the activity of a Heilpraktiker is the professional or commercial activity involving the diagnosis, treatment or alleviation of human illness, pain or physical injury.

15 Under the relevant provisions of the Order on the application of the HPrG of 18 February 1939 (RGBl. I, p. 259), permission to exercise the profession of Heilpraktiker is to be granted to the applicant unless he falls within one of the prohibitions referred to in that order. In particular, permission is to be refused if the applicant has not yet reached the age of 25 or cannot offer proof that he has successfully completed a Volksschulbildung (elementary school education). It is also to be refused if an examination of the knowledge and aptitude of the applicant by the health services shows that the exercise of the profession by the applicant would constitute a danger to public health.

## The dispute in the main proceedings and the questions referred for a preliminary ruling

16 Deutsche Paracelsus Schulen is a company established in Munich (Germany) which offers training courses in the profession of Heilpraktiker. It also organises courses in Austria. Finding interested persons for the courses offered is done, *inter alia*, by placing advertisements in newspapers.

17 In January 1996, having seen such an advertisement, Mr Gräbner, an Austrian national residing in Austria, contacted Deutsche Paracelsus Schulen which then sent him information and an application form. The form contained applications for admission to the first two levels of training as a Heilpraktiker. For each of those levels, information was given on the content of the training and on a video training programme which was also offered as a supplementary method of learning. The study regulations were reproduced on the form, which also included a statement drawing attention to the fact that the profession of Heilpraktiker could not be exercised in Austria and that the examination for entry to that profession had to be taken in Germany.

18 On 20 February 1996, Mr Gräbner signed a contract for the first two levels of training at a total cost of ATS 90 390. The training for which he registered included attendance at courses which could be held in Germany or Austria and a video cassette for practical studies.

19 Mr Gräbner had no further contact with Deutsche Paracelsus Schulen. He did not exercise his right of withdrawal within the prescribed period of one week and did not give written notice of termination of the agreements he had concluded.

20 Before the Austrian courts, Deutsche Paracelsus Schulen sought payment of ATS 90 390 on the basis of the contract for training as a Heilpraktiker concluded with Mr Gräbner. Mr Gräbner claimed, in particular, that the contract was void because it infringed the Austrian training law. Deutsche Paracelsus Schulen responded by claiming that under Community law training as a Heilpraktiker must be permitted in Austria, and that in any event it must be possible to advertise in Austria training for professions prohibited there.

21 At first instance, the Bezirksgericht (District Court) Linz-Land (Austria) ordered Mr Gräbner by judgment of 29 January 1999 to pay the sum of ATS 90 390. On appeal, the Landesgericht (Regional Court) Linz (Austria) upheld the decision by judgment of 26 May 1999 but gave leave to appeal on a point of law.

22 Mr Gräbner lodged such an appeal before the Oberster Gerichtshof (Supreme Court), which found that the outcome of the dispute depended on the

interpretation of Community law and therefore decided to stay proceedings and refer the following two questions to the Court for a preliminary ruling:

'1. May a Member State continue, particularly after the adoption of Directive 92/51/EEC on a second general system of recognition of professional education and training, to restrict the exercise of an activity allied to medicine, such as that of a Heilpraktiker within the meaning of the German law on lay health practitioners, to holders of a doctor's qualification or does that now run counter to, in particular, Article 43 EC (formerly Article 52 of the EC Treaty) on the freedom of establishment and Article 50 EC (formerly Article 60 of the EC Treaty) on the freedom to provide services?

2. Do the abovementioned provisions of Community law preclude national rules which reserve training for professions regulated by health legislation to the institutions designated for that purpose and which prohibit other persons or institutions from offering or procuring such training or advertising therefor even if such training concerns only certain areas of medical practice?'

23 In the order for reference, the Oberster Gerichtshof states that under its case-law a contract which is in breach of a legal prohibition is considered void not only where that legal consequence is expressly provided for by the law but also where the purpose of the prohibition necessarily requires that it be void. The national court considers, in particular, that the purpose of the Austrian training law requires that the contract in question be considered void. However, it is unsure whether that legislation is compatible with Community law.

24 The Oberster Gerichtshof points out that in Case C-61/89 *Bouchoucha* [1990] ECR I-3551 the Court of Justice ruled that, in the absence of harmonisation at Community level regarding activities which fall solely within the scope of the practice of medicine, Article 52 of the Treaty does not preclude a Member State from restricting an activity allied to medicine, such as osteopathy, to persons with a doctor's qualification. However, it is unsure whether Directive 92/51, which was adopted after that judgment was delivered, or another rule of Community law has changed the law in that regard.

## The first question

25 By its first question, the national court asks essentially whether any provision of Community law precludes a Member State from restricting an activity such as that of a Heilpraktiker within the meaning of the German legislation to holders of a doctor's qualification.

26 In that regard, it should be stated at the outset that consistent case-law shows that, in the absence of harmonisation of a profession, Member States remain, in principle, competent to define the exercise of that profession but must, when exercising their powers in this area, respect the basic freedoms guaranteed by the Treaty (see, in particular, Case C-58/98 *Corsten* [2000] ECR I-7919, paragraph 31, and Case C-108/96 *Mac Quen and Others* [2001] I-837, paragraph 24).

27 In order to answer the first question, therefore, it is necessary to establish, first, whether in a situation such as that in the main proceedings the exercise of the activity of a Heilpraktiker within the meaning of the German legislation is regulated by harmonisation at Community level and, if not, to determine,

secondly, whether Articles 52 and 59 of the EC Treaty, which are applicable in the present case, preclude a Member State from restricting the exercise of such an activity to qualified doctors.

*Harmonisation of the activity of Heilpraktikers*

28 First of all, it is clear that the activity of Heilpraktikers is not regulated by any specific Community provision.

29 In particular, it is not regulated 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). That directive concerns mutual recognition of the diplomas, certificates and other evidence of formal qualifications as a doctor of medicine listed therein, none of which relates to training as a Heilpraktiker.

30 Secondly, it is necessary to determine whether the activity of Heilpraktikers falls within the scope of Directive 92/51, as Deutsche Paracelsus Schulen maintains.

31 According to Article 1(e) and (f), in conjunction with Article 2, of that directive, it applies only to regulated professions, defined as professional activities of which the taking up or pursuit, or one of the modes of pursuit in a Member State, is subject directly or indirectly, by virtue of laws, regulations or administrative provisions, to the possession of evidence of education and training or an attestation of competence.

32 With respect to the similar definitions of the terms 'regulated profession' and 'regulated professional activity' appearing in Article 1(c) and (d) of Directive 89/48, the Court has already held that access to or pursuit of a profession must be regarded as directly governed by legal provisions where the laws, regulations or administrative provisions of the host Member State concerned create a system under which that professional activity is expressly reserved to those who fulfil certain conditions and access to it is prohibited to those who do not fulfil them (Case C-164/94 *Aranitis* [1996] ECR I-135, paragraph 19, and Case C-234/97 *Fernández de Bobadilla* [1999] I-4773, paragraph 17). A profession must be regarded as indirectly regulated where there is indirect legal control of access to or pursuit of that profession (see *Aranitis*, cited above, paragraph 27).

33 It follows from the above that a profession is regulated in a Member State for the purposes of Directives 89/48 and 92/51 if it is authorised in that Member State and access to or pursuit of it is restricted there to persons fulfilling the legal requirements directly or indirectly governing that profession.

34 Under Paragraph 3(1) and (4) of the Austrian law on doctors, the exercise of the profession of doctor is prohibited in Austria for any person other than those with a doctor's qualification. The activity of Heilpraktikers, as defined in Germany by Paragraph 1(2) of the HPrG, includes activities which, in Austria, are covered by the notion of exercise of the medical profession as defined in Paragraph 2(2) of the Austrian law on doctors. Thus, the exercise of the profession of Heilpraktiker within the meaning of the German legislation by persons other than those qualified as a doctor of medicine is prohibited in Austria.

35 Since there is in Austria no right of access to or pursuit of those activities for persons other than those with a doctor's qualification, there are no legal rules laying down, directly or indirectly, the conditions for acquiring that right.

36 It follows that the exercise of the activity of Heilpraktiker within the meaning of the German legislation by persons other than those with a doctor's qualification cannot be regarded as a regulated profession in Austria for the purposes of Directive 92/51 and that, consequently, that directive is in any event not applicable to the dispute in the main proceedings.

37 Therefore, in a situation such as the one in the main proceedings, the exercise of the activity of a Heilpraktiker within the meaning of the German legislation by persons other than those with a doctor's qualification is not regulated by harmonisation at Community level.

*Articles 52 and 59 of the Treaty*

38 Articles 52 and 59 of the Treaty require the removal of restrictions on the freedom of establishment and the freedom to provide services respectively. All measures which are liable to prohibit, impede or render less attractive the exercise of those freedoms must be considered to be such restrictions (see to that effect, as regards freedom of establishment, Case C-168/91 *Konstantinidis* [1993] ECR I-1191, paragraph 15, and, as regards freedom to provide services, Case C-205/99 *Analir and Others* [2001] ECR I-1271, paragraph 21).

39 According to the Court's case-law, national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty can be justified only if they fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by overriding reasons based on the general interest; they must be suitable for securing the attainment of the

objective which they pursue; and they must not go beyond what is necessary in order to attain that objective (see Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 37, Case C-424/97 *Haim* [2000] ECR I-5123, paragraph 57, and *Mac Quen*, cited above, paragraph 26).

40 It is undisputed that legislation of a Member State, such as the Austrian law on doctors, which prohibits altogether the exercise in Austria of the profession of Heilpraktiker, recognised in Germany, constitutes a restriction of the exercise of the freedom of establishment and the freedom to provide services. It is therefore necessary to consider whether such legislation may be justified by reference to the four conditions established in the Court's case-law.

41 It is clear, first, that the prohibition imposed by the Austrian law on doctors applies regardless of the nationality and the Member State of establishment of the persons at which it is directed.

42 Secondly, with regard to the question whether there is an overriding reason based on the general interest which may justify the prohibition, it must be borne in mind that the protection of public health is one of the reasons cited in Article 56(1) of the EC Treaty (now, after amendment, Article 46(1) EC) as capable of justifying restrictions on the freedom of establishment. The provisions of that paragraph apply to the freedom to provide services pursuant to Article 66 of the EC Treaty (now Article 55 EC).

43 Thirdly, the decision of a Member State to restrict to a group of professionals with specific qualifications, such as qualified doctors, the right to carry out medical diagnoses and prescribe treatments for illness or to alleviate physical or mental disorders may be considered to be a suitable means of achieving the objective of safeguarding public health.

44 Fourthly, it is necessary to consider whether the prohibition on the exercise of a medical activity imposed on those not qualified as doctors is necessary and proportionate in the light of the aim pursued.

45 Deutsche Paracelsus Schulen submits, first, that the profession of Heilpraktiker is recognised in Germany without endangering public health there, and, secondly, that the aim of guaranteeing quality of care for patients could be achieved in Austria by a less restrictive measure than prohibition of that profession by making the exercise thereof subject to a certain period of practice or to an examination similar to that provided for by the German legislation.

46 It should be borne in mind, however, that the fact that one Member State imposes less strict rules than another Member State does not necessarily mean that the latter's rules are disproportionate and hence incompatible with Community law (see Case C-3/95 *Reisebüro Broede* [1996] ECR I-6511, paragraph 42, *Mac Quen*, paragraph 33, and Case C-309/99 *Wouters and Others* [2002] ECR I-1577, paragraph 108).

47 The mere fact that a Member State has chosen a system of protection different from that adopted by another Member State cannot affect the appraisal of the need for and proportionality of the provisions adopted (Case C-67/98 *Zenatti* [1999] ECR I-7289, paragraph 34, and *Mac Quen*, paragraph 34).

48 Furthermore, in the absence of a definition at Community level of activities which are restricted to persons with a doctor's qualification, each Member State may decide, in accordance with its understanding of the protection of public health,

whether or not to authorise practitioners without such qualifications to exercise activities of a medical nature, laying down, where appropriate, requirements relating to experience or qualifications which such practitioners must fulfil.

49 In any event, the assessment carried out by the Austrian legislature of the risks for public health which may arise as a consequence of the exercise of the profession of Heilpraktiker within the meaning of the German legislation by persons other than those with a doctor's qualification is liable to change over time, particularly as a result of the progress made with respect to knowledge of methods used in this activity and their effects on health (see, to that effect, *Mac Quen*, paragraph 36).

50 Consequently, national legislation prohibiting, as the Austrian law on doctors does, the exercise of the profession of Heilpraktiker does not go beyond what is necessary to achieve the aim of safeguarding public health.

51 Accordingly, Articles 52 and 59 of the EC Treaty do not preclude such national legislation.

52 In view of all those considerations, the answer to the first question must be that no provision of Community law, as it presently stands, precludes a Member State from restricting the exercise of an activity such as that of a Heilpraktiker within the meaning of the German legislation to holders of a doctor's qualification.

## The second question

53 By its second question, the national court asks essentially whether Articles 52 and 59 of the Treaty preclude a Member State which prohibits in its territory the exercise of the activity of a Heilpraktiker within the meaning of the German legislation by persons other than those with a doctor's qualification from likewise prohibiting, firstly, the organisation of training in such activity by institutions not authorised to do so and, secondly, advertising of that training.

### *The prohibition on organising training as a Heilpraktiker*

54 It is undisputed that legislation of a Member State, such as the Austrian training law, which restricts to authorised institutions the right to organise certain types of training impedes the exercise of the right of establishment and the freedom to provide services by nationals of another Member State who wish to offer such training.

55 In accordance with the case-law mentioned in paragraph 39 of this judgment, it is necessary to consider whether a national measure which thus impedes the exercise of the fundamental freedoms guaranteed by Articles 52 and 59 of the Treaty may be justified by reference to the four conditions established in that case-law.

56 In that regard, it must be stated, first, that the prohibition imposed by the Austrian training law on the organisation of training as a Heilpraktiker by

unauthorised institutions applies regardless of the nationality and Member State of establishment of the persons at which it is directed.

57 Secondly, in order to determine whether there is an overriding reason based on the general interest which may justify the prohibition, it is necessary to consider whether it may be justified by the need to safeguard public health.

58 The prohibition may be regarded as being directly justified by that aim only if the risk posed by such training to public health has been shown by reference to its content, which is not the case.

59 As is apparent from the Explanatory Notes to the Austrian training law, the prohibition is based rather on the fact that the profession of Heilpraktiker is not recognised as such in Austria because it consists of the exercise of activities which are regarded as pertaining to the exercise of the medical profession, which is restricted to persons with a doctor's qualification.

60 The issue is whether, as Mr Gräbner, the Austrian Government, the United Kingdom Government and the Commission submit, a Member State may prohibit the organisation of training as a Heilpraktiker by unauthorised institutions on the ground that the exercise of the profession of Heilpraktiker itself is prohibited in that Member State.

61 As Advocate General Mischo points out in paragraph 87 of his Opinion, if Community law does not preclude a Member State from prohibiting the profession of Heilpraktiker, it must also permit that prohibition to be applied in a coherent and credible manner. The need to ensure the efficacy of a national measure which complies with Community law, such as the prohibition on exercising the profession of Heilpraktiker, which is justified by the aim of safeguarding public health, may therefore be regarded as an overriding reason based on the general interest.

62 Thirdly, without prejudice to training which may be organised by institutions authorised to offer such training in the medical sector, the prohibition of training as a Heilpraktiker may be regarded as a suitable means of ensuring the efficacy of the national measure prohibiting the exercise of the profession of Heilpraktiker.

63 Accordingly, it is necessary to consider, fourthly, whether the prohibition on the organisation of training as a Heilpraktiker by unauthorised institutions is necessary and proportionate in light of the objective pursued.

64 It should be noted that not all of the forms of training as a Heilpraktiker which may be offered in a Member State necessarily prejudice the efficacy of the national measure prohibiting the profession in that Member State.

65 The efficacy of the measure is liable to be affected only by training in a form which may create confusion in the minds of the public as to whether the activity

in which the training is provided may be exercised as a profession in the territory of the Member State in which the training takes place.

66 It is for the national court to assess, in the main proceedings, in the light of that criterion, whether, taking into account the fact that the training concerned is essentially to take place in Germany and that Mr Gräbner was informed that the profession of Heilpraktiker could not be exercised in Austria, the performance of the contract for training as a Heilpraktiker is liable to undermine the effectiveness of the national measure prohibiting the exercise of that profession and, if so, to decide in accordance with domestic law whether the contract must be regarded as void for that reason.

*Prohibition on advertising training as a Heilpraktiker*

67 The first point to be noted is that, in response to a question posed by the Court, the Austrian Government stated that an advertisement in Austria for training as a Heilpraktiker offered in another Member State is not covered by the prohibition on advertising for this type of training which follows from the Austrian law on training since, according to its purpose, that law is directed only at institutions intending to offer training in Austria.

68 If the national court does not follow that interpretation of the scope of the Austrian law on training, it should be noted at the outset that the prohibition on

advertising in a Member State for training as a Heilpraktiker offered in a different Member State is a measure impeding the exercise of the freedom to provide services by nationals of the latter State which is not justified by an overriding reason based on the general interest. If such advertising states where the training is to take place and mentions that the profession of Heilpraktiker cannot be exercised in the first Member State, it does not undermine the effectiveness of the national measure prohibiting the exercise of that profession in that Member State.

69 A prohibition by a Member State on advertising for training as a Heilpraktiker to be offered, at least in part, in its territory constitutes an obstacle which is justified if it relates to training of a kind prohibited in that Member State in accordance with the Treaty.

70 In view of all of those considerations, the answer to the second question referred for a preliminary ruling must be that Articles 52 and 59 of the Treaty do not preclude

— a Member State which prohibits in its territory the exercise of the activity of a Heilpraktiker within the meaning of the German legislation by persons other than those with a doctor's qualification from likewise prohibiting the organisation in its territory of training in that activity by unauthorised institutions, provided that that prohibition is applied in such a way that it covers only training of a kind liable to create confusion in the minds of the public as to whether the profession of Heilpraktiker may lawfully be

exercised in the territory of the Member State in which the training is to take place;

— a Member State which prohibits in its territory the exercise of the activity of a Heilpraktiker by persons other than those with a doctor's qualification and prohibits training in that activity from likewise prohibiting the advertising of such training offered in its territory if that advertising concerns training of a kind which is prohibited in that Member State in accordance with the Treaty.

However, Article 59 of the Treaty precludes a Member State which prohibits in its territory the exercise of the profession of Heilpraktiker and training in the activity of a Heilpraktiker from likewise prohibiting the advertising of such training offered in a different Member State, if that advertising states where the training is to take place and mentions the fact that the profession of Heilpraktiker may not be exercised in the first Member State.

## Costs

71 The costs incurred by the Austrian and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Fifth Chamber),

in answer to the questions referred to it by the Oberster Gerichtshof by order of 13 July 2000, hereby rules:

1. No provision of Community law, as it presently stands, precludes a Member State from restricting the exercise of an activity such as that of a Heilpraktiker within the meaning of the German legislation to holders of a doctor's qualification.

2. Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC) do not preclude

— a Member State which prohibits in its territory the exercise of the activity of a Heilpraktiker within the meaning of the German legislation by persons other than those with a doctor's qualification from likewise prohibiting the organisation in its territory of training in that activity by

unauthorised institutions, provided that that prohibition is applied in such a way that it covers only training of a kind liable to create confusion in the minds of the public as to whether the profession of Heilpraktiker may lawfully be exercised in the territory of the Member State in which the training is to take place;

— a Member State which prohibits in its territory the exercise of the activity of a Heilpraktiker by persons other than those with a doctor's qualification and prohibits training in that activity from likewise prohibiting the advertising of such training offered in its territory if that advertising concerns training of a kind which is prohibited in that Member State in accordance with the Treaty.

However, Article 59 of the Treaty precludes a Member State which prohibits in its territory the exercise of the profession of Heilpraktiker and training in the activity of a Heilpraktiker from likewise prohibiting the advertising of such training offered in a different Member State, if that advertising states where the training is to take place and mentions the fact that the profession of Heilpraktiker may not be exercised in the first Member State.

Jann Edward La Pergola

Delivered in open court in Luxembourg on 11 July 2002.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber