JUDGMENT OF THE COURT (Fifth Chamber)

14 September 2000 *

In Case C-16/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Cour Administrative, Luxembourg, for a preliminary ruling in the proceedings pending before that court between

Ministre de la Santé

and

Jeff Erpelding,

on the interpretation of 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),

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward (Rapporteur), President of the Chamber, L. Sevón, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: P. Léger,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Dr Erpelding, by A. Kronshagen, of the Luxembourg Bar,

— the Italian Government, by Professor U. Leanza, Head of the Legal Service in the Ministry of Foreign Affairs, acting as Agent, assisted by G. Aiello, Avvocato dello Stato,

— the Finnish Government, by T. Pynnä, Valtionasiamies, acting as Agent,

— the Commission of the European Communities, by C. Tufvesson, Legal Adviser, and B. Mongin, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Dr Erpelding, represented by A. Kronshagen; the Italian Government, represented by F. Quadri, Avvocato dello Stato; and the Commission, represented by B. Mongin, at the hearing on 13 January 2000,

after hearing the Opinion of the Advocate General at the sitting on 13 January 2000,

gives the following

Judgment

1 By judgment of 21 January 1999, received at the Court on 25 January 1999, the Cour Administrative (Higher Administrative Court) 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 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).

2 The two questions have arisen in proceedings between Dr Erpelding and the Luxembourg Ministère de la Santé (Ministry of Health) concerning the ministry's refusal to authorise him to use the professional title of specialist in cardiology in Luxembourg.

The applicable legislation

Directive 93/16

3 Directive 93/16 aims to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications. With respect to diplomas, certificates and other evidence of formal qualifications in specialised medicine peculiar to two or more Member States, Article 6 of the directive provides:

'Each Member State with provisions on this matter laid down by law, regulation or administrative action shall recognise the diplomas, certificates and other evidence of formal qualifications in specialised medicine awarded to nationals of Member States by the other Member States in accordance with Articles 24, 25, 27 and 29 and which are listed in Article 7, by giving such qualifications the same effect in its territory as those which the Member State itself awards.'

4 Apart from Article 7, the articles referred to in Article 6 coordinate the national rules concerning specialised medicine with a view to mutual recognition of the corresponding qualifications. They lay down *inter alia*, in the words of the 14th recital in the preamble to the directive, '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'.

5 Under Article 7, in the version subsequent to the accession of the Republic of Austria to the European Union (see the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of

Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1), in particular Annex I(XI)(D)(III)(1)(d)):

'1. The diplomas, certificates and other evidence of formal qualifications referred to in Article 6 shall be those which, having been awarded by the competent authorities or bodies listed in Article 5(2), correspond, for the purposes of the specialised training in question, to the designations listed in paragraph 2 of this Article in respect of those Member States which give such training.

2. The designations currently used in the Member States which correspond to the specialist training courses in question are as follows:

...

— *cardiology:*

...

Luxembourg: cardiologie et angiologie

...'

6 While internal (UK: general) medicine is one of the qualifications in specialised medicine common to all Member States and hence may benefit from automatic recognition in all Member States under Articles 4 and 5 of Directive 93/16, cardiology is one of the qualifications in specialised medicine peculiar to two or more Member States, so that automatic recognition of diplomas, certificates and other evidence of formal qualifications in cardiology is limited to the Member States listed in Article 7(2) of Directive 93/16. As appears from the preceding paragraph, that article, in the version subsequent to the accession of the Republic of Austria to the European Union, with respect to cardiology mentions Luxembourg but makes no reference to Austria.

7 Article 8 of Directive 93/16 states:

'1. Nationals of Member States wishing to acquire one of the diplomas, certificates or other evidence of formal qualifications of specialist doctors not referred to in Articles 4 and 6, or which, although referred to in Article 6, are not awarded in the Member State of origin or the Member State from which the foreign national comes, may be required by a host Member State to fulfil the conditions of training laid down in respect of the speciality by its own law, regulation or administrative action.

2. The host Member State shall, however, take into account, in whole or in part, the training periods completed by the nationals referred to in paragraph 1 and attested by the award of a diploma, certificate or other evidence of formal training 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.

3. The competent authorities or bodies of the host Member State, having verified the content and duration of the specialist training of the person concerned on the basis of the diplomas, certificates and other evidence of formal qualifications submitted, shall inform him of the period of additional training required and of the fields to be covered by it.'

8 In Chapter V, 'Use of academic title', Article 10(1) of Directive 93/16 states:

'Without prejudice to Article 19, host Member States shall ensure that the nationals of Member States who fulfil the conditions laid down in Articles 2, 4, 6 and 9 have the right to use the lawful academic title or, where appropriate, the abbreviation thereof, of their Member State of origin or of the Member State from which they come, in the languages of that State. Host Member States may require this title to be followed by the name and location of the establishment or examining board which awarded it.'

9 In Chapter VI, 'Provisions to facilitate the effective exercise of the right of establishment and freedom to provide services in respect of the activities of doctors', Article 19 states:

'Where in a host Member State the use of the professional title relating to one of the activities of a doctor is subject to rules, nationals of other Member States who fulfil the conditions laid down in Articles 2 and 9(1), (3) and (5) shall use the professional title of the host Member State which, in that State, corresponds to those conditions of qualification and shall use the abbreviated title.

The first paragraph shall also apply to the use of professional titles of specialist doctors by those who fulfil the conditions laid down in Articles 4, 6 and 9(2), (4), (5) and (6).'

National law

10 Articles 10 and 19 of Directive 93/16 were transposed into Luxembourg domestic law by Articles 5(3) and 5(2) respectively of the Law of 29 April 1983 on the practice of the professions of doctor, dental surgeon and veterinary surgeon, as amended by the Law of 31 July 1995 (*Mémorial* A 1995, p. 1802).

The main proceedings and the questions referred for a preliminary ruling

11 On 30 March 1985, Dr Erpelding obtained the Austrian diploma of *Doktor der gesamten Heilkunde* (doctor of medicine), awarded by the University of Innsbruck. That diploma was recognised on 11 April 1986 by the Luxembourg Ministry of Education.

12 On 10 April 1991 he was authorised by the Österreichische Ärztekammer (the professional organisation of Austrian doctors) to practise medicine as a *Facharzt für Innere Medizin* (specialist in internal medicine). By decision of the Luxembourg Minister for Health of 29 August 1991, he was authorised to practise as a specialist in internal medicine in Luxembourg.

13 On 11 May 1993 the Österreichische Ärztekammer awarded Dr Erpelding the diploma of *Facharzt für Innere Medizin — Teilgebiet Kardiologie* (specialist in internal medicine, cardiology practice). By decision of 9 July 1993 the Luxembourg Minister for Health authorised Dr Erpelding to use, in addition to his professional title of specialist in internal medicine, his academic title in the

language of the State where he had been trained, namely *Facharzt für Innere Medizin — Teilgebiet Kardiologie*.

14 On 15 April 1997 Dr Erpelding informed the Minister for Health that, as he intended to devote himself exclusively to the practice of cardiology, he intended to abandon the professional title of specialist in internal medicine, provided that he was authorised to use the title of specialist in cardiology.

15 By decision of 25 April 1997, the Minister for Health refused that request on the ground that, since the discipline of cardiology did not constitute a specialist field recognised by the Austrian authorities, Dr Erpelding could not be authorised to practise medicine in that field. The Minister also stated that it was not for him to transcribe foreign diplomas and that under Luxembourg law diplomas could be recognised only as worded.

16 On application by Dr Erpelding, that decision was set aside by a judgment of the Tribunal Administratif (Administrative Court) of 18 February 1998 on the ground that it was in breach *inter alia* of Article 19 of Directive 93/16.

17 On 31 March 1998 the Luxembourg Minister for Health appealed against that judgment to the Cour Administrative.

18 Since the Cour Administrative considered that the outcome of the case depended on the interpretation not only of Article 19 of Directive 93/16, on the use of the

professional title of doctor, but also of Article 10, on the use of academic titles in medicine, it stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1. May Article 19 of Directive 93/16/EEC to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications be applied, in a State with provisions on this matter laid down by law, in favour of an applicant with a qualification obtained in another Member State but not included in the list of specialist training courses contained in Article 7 of the directive who requests authorisation, on the basis of the training he has acquired in the other Member State, to use an equivalent professional title in the host State?

If not,

2. Does Article 10 of Directive 93/16/EEC confer on holders of academic titles acquired in another Member State merely the option of using their academic title or, where appropriate, the abbreviation thereof, or, conversely, should the text of the directive be interpreted to the effect that only the academic title in the language of the country in which it was awarded may be authorised, to the exclusion of equivalent titles formulated in the language and according to the terminology of the host State?'

The scope of the questions referred

19 The questions referred for a preliminary ruling relate to the interpretation of Articles 10 and 19 of Directive 93/16 and arise in the context of an application by Dr Erpelding to be authorised to use in Luxembourg the professional title of

specialist in cardiology, in reliance on the diploma of *Facharzt für Innere Medizin — Teilgebiet Kardiologie* he obtained in 1993 in Austria.

20 The questions referred to the Court do not concern the conditions of training required to obtain a Luxembourg diploma of specialist in cardiology on the basis of an Austrian diploma under Article 8 of Directive 93/16. Nor do they relate to the possible recognition of the Austrian diploma as equivalent to the Luxembourg diploma of specialist in cardiology under the *Vlassopoulou* case-law (see Case C-340/89 *Vlassopoulou* v *Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg* [1991] ECR I-2357 and most recently Case C-238/98 *Hocsman* v *Ministre de l'Emploi et de la Solidarité* [2000] ECR I-6623).

21 Moreover, as neither Article 8 of Directive 93/16 nor the *Vlassopoulou* line of case-law was mentioned in the judgment of the referring court, it was not disputed at the hearing that the Court's answer to the questions should be confined to the interpretation of Articles 10 and 19 of that directive.

The first question

22 By its first question the national court asks, in essence, whether a doctor who has obtained in another Member State a diploma in specialised medicine which does not appear on the list of specialist training courses in Article 7 of Directive 93/16 may rely on Article 19 of that directive to use the corresponding professional title of specialist in the host State.

23 Directive 93/16 establishes a system of automatic and compulsory mutual recognition for the diplomas, certificates and other evidence of formal

qualifications in medicine and specialised medicine awarded to nationals of the Member States by those States, in accordance with Articles 3, 5 and 7 of the directive.

24 This system of automatic compulsory recognition would be incomplete and its effectiveness would be seriously undermined if its beneficiaries were not entitled to use the professional title of doctor or specialist doctor, as the case may be, in the host Member State. Without the right to use those titles in that State, the beneficiaries of the system of mutual recognition would be deprived of the possibility of making their professional qualifications known in the relevant circles in the same way and under the same conditions as Community nationals who had obtained such a title in the host Member State.

25 The right to use the title of doctor or specialist doctor in the host Member State, in the language of that State and in accordance with its nomenclature, is thus a necessary corollary of the mutual recognition of diplomas, certificates and other evidence of formal qualifications established by Directive 93/16.

26 However, that applies only if the title of doctor or specialist doctor satisfies the minimum conditions required for this automatic and compulsory mutual recognition. It is thus fully consistent with that system of mutual recognition that Article 19 of Directive 93/16 entitles Community nationals to use the professional title of doctor or specialist doctor only if they fulfil the conditions laid down in the first and second paragraphs of that provision.

27 The answer to be given to the first question must therefore be that a doctor who has obtained in another Member State a diploma in specialised medicine which

does not appear on the list of specialist training courses in Article 7 of Directive 93/16 may not rely on Article 19 of that directive to use the corresponding professional title of specialist in the host State.

The second question

28 The national court considers that Article 10 of Directive 93/16 may be construed in two different ways. The first interpretation is that the provision does no more than ensure that the beneficiaries of the system of mutual recognition of diplomas established by the directive have the right to use their academic titles in the language of the Member State of origin or Member State from which they come. The second interpretation is that the provision, while acknowledging that the beneficiaries of the system have that right, precludes any possibility of the host Member State authorising use of the equivalent title in the language and according to the nomenclature of that State.

29 Directive 93/16 regulates the right of the beneficiaries of the system of mutual recognition of diplomas established by the directive to use, first, their professional title of doctor or specialist doctor and, second, their academic titles in the host Member State.

30 Since any restriction on the use in the host Member State of an academic title obtained in another Member State is liable to render that title less attractive and hence to hamper the exercise of fundamental freedoms guaranteed by the Treaty, it must comply with the requirements of the Treaty (see Case C-19/92 *Kraus* v *Land Baden-Württemberg* [1993] ECR I-1663, paragraph 32). Community legislation, including Article 10 of Directive 93/16 which is the subject of the

national court's question, must likewise be interpreted in the light of those requirements.

31 The first sentence of Article 10(1) substantially repeats the ninth recital in the preamble to the directive, which states that, since a directive on the mutual recognition of diplomas does not necessarily imply equivalence in the training covered by such diplomas, the use of the academic title should be authorised only in the language of the Member State of origin or of the Member State from which the person comes.

32 The first sentence of Article 10(1) of Directive 93/16 should therefore be interpreted as referring only to the right of beneficiaries of the system of mutual recognition of diplomas established by the directive to use their academic title, and if appropriate its abbreviation, in the language of the Member State of origin or the Member State from which they come. However, neither the wording of that provision nor the structure of Directive 93/16 indicates that the host Member State may not authorise the use in its territory of the academic title or an equivalent title in a language other than that of the Member State of origin or Member State from which the person concerned comes.

33 The answer to be given to the second question must therefore be that the first sentence of Article 10(1) of Directive 93/16 is to be interpreted as referring only to the right of beneficiaries of the system of mutual recognition of diplomas established by the directive to use their academic title, and if appropriate its abbreviation, in the language of the Member State of origin or the Member State from which they come. This does not affect the right of the host Member State to authorise the use in its territory of the academic title or an equivalent title in a language other than that of the Member State of origin or Member State from which the person concerned comes.

Costs

34 The costs incurred by the Italian and Finnish 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 proceedings, 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 Cour Administrative by judgment of 21 January 1999, hereby rules:

1. **A doctor who has obtained in another Member State a diploma in specialised medicine which does not appear on the list of specialist training courses in Article 7 of 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 may not rely on Article 19 of that directive to use the corresponding professional title of specialist in the host State.

2. The first sentence of Article 10(1) of Directive 93/16 must be interpreted as referring only to the right of beneficiaries of the system of mutual recognition of diplomas established by the directive to use their academic title, and if appropriate its abbreviation, in the language of the Member State of origin or the Member State from which they come. This does not affect the right of the host Member State to authorise the use in its territory of the academic title or an equivalent title in a language other than that of the Member State of origin or Member State from which the person concerned comes.

Edward Sevón Jann

Ragnemalm Wathelet

Delivered in open court in Luxembourg on 14 September 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber