JUDGMENT OF THE COURT (First Chamber)

19 May 2011 *

In Case C-452/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Corte d'appello di Firenze (Italy), made by decision of 6 October 2009, received at the Court on 18 November 2009, in the proceedings

Tonina Enza Iaia,

Andrea Moggio,

Ugo Vassalle

v

Ministero dell'Istruzione, dell'Università e della Ricerca,

Ministero dell'Economia e delle Finanze,

* Language of the case: Italian.

Università degli studi di Pisa,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, A. Borg Barthet, E. Levits and M. Safjan (Rapporteur), Judges,

Advocate General: J. Kokott,
Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 2 December 2010,

after considering the observations submitted on behalf of:

— T. Iaia, A. Moggio and U. Vassalle, by F. Frati and A. Castagna, avvocati,

— the Italian Government, by W. Ferrante, acting as Agent, assisted by S. Varone, avvocato dello Stato,

— the French Government, by G. de Bergues and B. Cabouat, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the European Commission, by E. Traversa and S. La Pergola, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The present reference for a preliminary ruling concerns the interpretation of European Union ('EU') law relating to the protection of rights conferred by a directive which has not been transposed.

2 The reference has been made in proceedings between Ms Iaia, Mr Moggio and Mr Vassalle ('the appellants in the main proceedings') and the Ministero dell'Istruzione, dell'Università e della Ricerca, the Ministero dell'Economia e delle Finanze ('the Italian State') and the Università degli studi di Pisa concerning payment of 'appropriate remuneration' provided for in 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).

Legal context and background to the dispute

3 Directive 82/76, inter alia by way of an annex concerning 'characteristics of full-time and part-time training of specialists' and supplementing 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 (OJ 1975 L 167, p. 14), provided that the full-time and part-time period of specialisation for doctors had to be subject to 'appropriate remuneration' in all the Member States.

4 By its judgment in Case 49/86 *Commission* v *Italy* [1987] ECR 2995, the Court held that the Italian Republic had failed to fulfil its obligations under Community law by not transposing Directive 82/76 within the prescribed period.

5 Following that judgment against it, the Italian Republic transposed Directive 82/76 by way of Legislative Decree No 257/91 of 8 August 1991. That decree provided, however, in Article 8(2) thereof, that its provisions were to enter into force only with effect from the academic year 1991/92, to the exclusion of doctors registered during the academic period covering the years 1983 to 1991.

6 As the obligation under Directive 82/76 to provide appropriate remuneration ought to have entered into force in 1983, the adoption of that decree resulted in a large number of actions between, on the one hand, doctors admitted as specialists during the academic years 1983 to 1991 and, on the other, the Italian State and certain Italian universities.

7 In its judgments in Case C-131/97 *Carbonari and Others* [1999] ECR I-1103, paragraphs 47 and 48, and in Case C-371/97 *Gozza and Others* [2000] ECR I-7881, paragraphs 36 and 37, the Court held that the obligation to provide appropriate remuneration for periods of training in specialised medicine did not, in itself, enable national courts to determine which body was liable to pay the appropriate remuneration or the level thereof. It was, none the less, for those national courts, responsible for applying national law, and, in particular, legislative provisions which were specially introduced in order to implement Directive 82/76, to interpret that national law so far as possible in the light of the wording and purpose of that directive in order to bring about the result which it sought to achieve.

8 If, the Court ruled, the result prescribed by Directive 82/76 could not be achieved by way of an interpretation in conformity with that directive, the Italian Republic would be required to make reparation for loss or damage caused to individuals by its failure to transpose that directive within the prescribed period. In that connection, the Court stated that retroactive and full application of the measures to guarantee correct implementation of Directive 82/76 would suffice, in principle, to remedy the harmful consequences of the delay in that implementation. However, if the beneficiaries established the existence of complementary loss sustained by reason of the fact that they had been unable to benefit at the appropriate time from the financial advantages guaranteed by that directive, such loss would also have to be made good (see *Carbonari and Others*, paragraphs 52 and 53, and *Gozza and Others*, paragraphs 38 and 39).

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

9 On 23 November 2001, the appellants in the main proceedings, who are doctors who had followed their specialisation courses prior to the academic year 1991/92, brought an action against the Italian State and the Università degli studi di Pisa by which they sought to recover the amount to which they would have been entitled on the basis of Directive 82/76, or, failing that, compensation for the damage caused by the failure of the Italian State to implement that directive correctly within the prescribed period.

10 The Tribunale di Firenze dismissed their application on the basis of the expiry of the five-year limitation period under Article 2948(4) of the Civil Code for the main claim for payment and under Article 2947 of that code for the subsidiary claim for compensation.

11 According to the national court, that period had in fact started to run from the day on which the right could have been asserted, that is to say, from the date of the entry into force of Legislative Decree No 257/91, namely 15 days after its publication on 16 August 1991. From that time, the appellants in the main proceedings could have known who was required to pay the appropriate remuneration or the level thereof and could have claimed that that decree was incompatible with Community law in regard to doctors who had been registered for specialist courses in the years 1983 to 1991.

12 The appellants in the main proceedings appealed against that decision and requested that the solution adopted in Case C-208/90 *Emmott* [1991] ECR I-4269 be applied. The Corte d'appello di Firenze takes the view, however, that subsequent case-law has restricted the applicability of that decision to those cases in which national limitation periods for bringing proceedings have the result of depriving applicants of any possibility of asserting their rights under Directive 82/76.

13 Harbouring doubts as to the scope of that restriction, given that the normal effect of the expiry of limitation periods is to deprive an applicant of any possibility of asserting his rights, the national court is unsure whether this should be regarded as a genuine reversal which has brought to an end the prohibition of invoking expiry of a limitation period or whether that restriction relates only to limitation periods which definitively preclude reliance on a right even on a future basis.

14 In view of the fact that, on appeal, the normal 10-year limitation period under Article 2946 of the Civil Code in respect of infringement of a right where such infringement does not involve a wrongful act was also considered, the Corte d'appello di Firenze decided, having taken care to state that the requirement that limitation periods must be equivalent to those generally provided for under Italian law for similar applications based on national law is satisfied in the present case, to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is it compatible with Community law that the Italian State may, in relation to the period preceding the adoption of the first national legislation implementing Directive 82/76/EEC, lawfully rely on 5-year limitation periods or 10-year ordinary limitation periods, in respect of a right arising under that directive — without thereby definitively preventing that right, relating to remuneration, from being exercised, or, failing which, an action for compensation from being brought?

(2) Is it compatible with Community law, on the other hand, that all preliminary objections of limitation be precluded because they definitively prevent the above right from being exercised?

(3) In the alternative, is it compatible with Community law that all preliminary objections of limitation be precluded until such time as the Court of Justice confirms the infringement of Community law (in the present case, up until 1999)?

(4) In the further alternative, is it compatible with Community law that all preliminary objections of limitation be precluded in any event until such time as the directive establishing the right has been correctly and fully transposed into national law (which, in the present case, never occurred), as laid down in the judgment in *Emmott*?'

Consideration of the questions referred

15 By its questions, which it is appropriate to examine together, the national court asks the Court of Justice, in essence, whether EU law allows a Member State to invoke the expiry of a limitation period as a defence against the exercise of a right arising under a directive or against the enforcement of the right to compensation for the damage resulting from the failure to transpose the directive correctly within the prescribed period, and if relevant, whether that possibility arises only from the point at which the Court finds that there has been a breach of EU law.

16 It is settled case-law that, in the absence of EU rules in the matter, it is for the internal legal order of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding in full rights which individuals derive from EU law, provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render virtually impossible or excessively difficult the exercise of the rights conferred by EU law (principle of effectiveness) (see Joined Cases C-114/95 and C-115/95 *Texaco and Olieselskabet Danmark* [1997] ECR I-4263, paragraph 41; Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 34; and Case C-445/06 *Danske Slagterier* [2009] ECR I-2119, paragraph 31).

17 As regards that latter principle, the Court has stated that it is compatible with EU law to lay down reasonable periods within which proceedings must be brought in the interests of legal certainty, which protects both the individual and the authorities concerned. Such periods are not by their nature liable to make it virtually impossible or excessively difficult to exercise the rights conferred by EU law, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (see Case C-90/94 *Haahr Petroleum* [1997] ECR I-4085, paragraph 48; Case

C-188/95 *Fantask and Others* [1997] ECR I-6783, paragraph 48; Case C-231/96 *Edis* [1998] ECR I-4951, paragraph 35; and *Marks & Spencer*, paragraph 35).

18 With regard to the point at which a limitation period starts to run, it is true that the Court had held that, until such time as a directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon that individual by the provisions of the directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time (*Emmott*, paragraph 23).

19 The Court has, however, subsequently acknowledged that a defaulting Member State may rely on the expiry of a limitation period as a defence against legal proceedings, even though by the date on which the actions in question were brought that Member State had not yet correctly transposed the directive in question, ruling that the solution established in *Emmott* had been justified by the circumstances particular to that case, in which a time-bar had had the result of depriving the applicant in the main proceedings of any opportunity whatever to invoke her right to equal treatment under a directive (see Case C-338/91 *Steenhorst-Neerings* [1993] ECR I-5475; Case C-410/92 *Johnson* [1994] ECR I-5483; *Fantask and Others*, paragraphs 50 to 52; Case C-30/02 *Recheio - Cash & Carry* [2004] ECR I-6051; and *Danske Slagterier*, paragraphs 53 to 56).

20 In the case which gave rise to the judgment in *Emmott*, the conduct of the national authorities had, in actual fact, prevented the applicant in the main proceedings from claiming the benefit of the rights conferred by the directive at issue (paragraphs 10 to 14; see also, to that effect *Steenhorst-Neerings*, paragraph 20, and *Johnson*, paragraph 27).

21 It follows that EU law does not preclude a national authority from relying on the expiry of a reasonable limitation period unless, by its conduct, it was responsible for the delay in the application, thereby depriving the applicant in the main proceedings of

the opportunity to enforce his rights under an EU directive before the national courts (see, to that effect, *Edis*, paragraph 48, and Case C-228/96 *Aprile* [1998] ECR I-7141, paragraph 43; see also, by analogy, Case C-327/00 *Santex* [2003] ECR I-1877, paragraphs 57 to 61, and Case C-542/08 *Barth* [2010] ECR I-3189, paragraphs 33 to 36).

22 It should also be made clear that, in accordance with settled case-law, the fact that the Court may have ruled that the breach of EU law has occurred generally does not affect the starting point of the limitation period (see, to that effect, *Edis*, paragraph 20; *Recheio — Cash & Carry*, paragraph 23; and *Danske Slagterier*, paragraphs 36 to 39).

23 This is *a fortiori* the case where, as in the main proceedings, the breach of EU law was not in doubt. In such a situation, a ruling by the Court that there has been such a breach is not necessary to enable the beneficiaries to ascertain the full extent of their rights. The fact that the period starts to run before the Court has given its ruling does not therefore render it virtually impossible or excessively difficult to safeguard the rights derived from EU law.

24 In the light of the foregoing, the answer to the questions referred is that EU law does not preclude a Member State from relying on the expiry of a reasonable limitation period as a defence in legal proceedings brought by an individual for the purpose of safeguarding rights conferred by a directive, even though the Member State did not transpose that directive correctly, on condition that, by its conduct, that Member State was not responsible for the delay in bringing the action. The finding by the Court that there has been a breach of EU law does not affect the starting point of the limitation period, in the case where that breach is not in doubt.

Costs

25 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

European Union law must be interpreted as not precluding a Member State from relying on the expiry of a reasonable limitation period as a defence in legal proceedings brought by an individual for the purpose of safeguarding rights conferred by a directive, even though the Member State did not transpose that directive correctly, on condition that, by its conduct, that Member State was not responsible for the delay in bringing the action. The finding by the Court that there has been a breach of European Union law does not affect the starting point of the limitation period, in the case where that breach is not in doubt.

[Signatures]